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**COMMON PLEAS DIVISION**

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Hamilton County, Ohio  
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**STATE OF OHIO EX REL  
ATTORNEY GENERAL DAVE  
YOST  
vs.  
JAMES C BOSWELL II**

**A 2200168**

**FILING TYPE: INITIAL FILING (OUT OF COUNTY) WITH NO JURY  
DEMAND**

**PAGES FILED: 7**

**IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO**

STATE OF OHIO ex rel.	)	
ATTORNEY GENERAL	)	
DAVE YOST	)	Case No:
30 E. Broad St., 14 <sup>th</sup> Floor	)	
Columbus, Ohio 43215	)	
	)	Judge:
Plaintiff,	)	
v.	)	
	)	
JAMES C. BOSWELL II	)	<b><u>COMPLAINT AND REQUEST FOR</u></b>
A 785403	)	<b><u>DECLARATORY JUDGMENT,</u></b>
Madison Correctional Institution	)	<b><u>INJUNCTIVE RELIEF, CONSUMER</u></b>
1851 State Route 56	)	<b><u>RESTITUTION, CIVIL PENALTIES</u></b>
Madison, Ohio 43140	)	<b><u>AND OTHER APPROPRIATE RELIEF</u></b>
	)	
and	)	
	)	
EDWARD BOSWELL	)	
207 Viehl Ave.	)	
Saint Louis, Missouri 63125	)	
	)	
Defendants.	)	

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**JURISDICTION AND VENUE**

1. Plaintiff, State of Ohio, by and through its counsel, the Attorney General of Ohio, Dave Yost, having reasonable cause to believe that violations of Ohio's consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by R.C. 1345.01 *et seq.*
  
2. The actions of James C. Boswell, II and Edward Boswell ("Defendants"), hereinafter described, have occurred in Hamilton and other counties in the State of Ohio and, as set

forth below, are in violation of the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 *et seq.* and the Home Solicitation Sales Act (“HSSA”), R.C. 1345.21 *et seq.*

3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(3) and (6), in that Defendants conducted activity giving rise to the claims for relief in Hamilton County, and all or part of the claims for relief arose in Hamilton County.

### **DEFENDANTS**

5. Defendant James C. Boswell II is a natural person residing at 1851 State Route 56, Madison, Ohio 43140.
6. Defendant Edward Boswell is a natural person residing at 207 Viehl Ave., Saint Louis, MO 63125.
7. Defendants are each a “supplier,” as that term is defined in R.C. 1345.01(C), as they engaged in the business of effecting “consumer transactions” by soliciting consumers either directly or indirectly for driveway repair, paving, and sealing and home improvement goods and services for a fee, within the meaning of R.C. 1345.01(A).
8. Defendants each engaged in “home solicitation sales” as a “seller” as that term is defined in R.C. 1345.21, as they made personal solicitations of their sales at the residences of buyers, within the meaning of R.C. 1345.21(A).

### **STATEMENT OF FACTS**

9. Defendants engaged in the business of providing driveway paving, sealing, and other goods and services to consumers.

10. In some instances, Defendants failed to deliver driveway paving, sealing, and other goods and services within eight weeks.
11. After receiving payment, Defendants sometimes began work, but failed to complete the work.
12. Defendants provided shoddy and substandard driveway paving and sealing services to consumers and failed to correct the shoddy and substandard work.
13. Defendants represented to consumers that they would provide the ordered goods and services within an estimated time and then failed to provide such goods and services in the time promised.
14. Defendants have refused to refund consumers' deposits or payments despite consumers' requests for refunds.
15. On May 1, 2019 the Court entered a Judgment against Defendants, including a declaratory judgment, injunctive relief, consumer damages, and a civil penalty payable to the Attorney General's Office. (State of Ohio ex rel., Attorney General Dave Yost v. James C. Howell, et al., Hamilton Co. A1702318.)
16. Since the entry of that Judgment, Defendants have engaged in consumer transactions involving driveway paving, sealing, and other goods and services while failing to pay a judgment that resulted from actions arising out of unfair and deceptive acts and practices in previous consumer transactions.
17. At the time of the consumer transactions, Defendants failed to provide consumers with notice of their right to cancel their transactions within three business days.

**PLAINTIFF'S FIRST CAUSE OF ACTION: VIOLATIONS OF THE CSPA**

**COUNT I- FAILURE TO DELIVER**

18. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-17 of this Complaint.
19. Defendants committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09(A) and the CSPA, R.C. 1345.02(A), by accepting money from consumers for goods and services and then permitting eight weeks to elapse without making shipment or delivery of the goods and services ordered, making a full refund, advising the consumers of the duration of an extended delay and offering to send a refund within two weeks if so requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.

**COUNT II- SHODDY AND SUBSTANDARD WORK**

20. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-19 of this Complaint.
21. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing shoddy and substandard work and failing to correct such work.
22. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

**COUNT III – ENGAGING IN CONSUMER TRANSACTIONS AFTER FAILING TO PAY A JUDGMENT**

23. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set

forth in paragraph 1-22 of this Complaint.

24. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by engaging in consumer transactions while having an unsatisfied judgment against the Defendants arising from consumer transactions.

25. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

**PLAINTIFF'S SECOND CAUSE OF ACTION: VIOLATIONS OF THE HSSA**

**FAILURE TO PROVIDE NOTICE OF RIGHT TO CANCEL**

26. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-25 of this Complaint.

27. Defendants violated the HSSA, R.C. 1345.23 and the CSPA, R.C. 1345.02(A), by failing to provide consumers with notice of their right to cancel their transactions within three business days.

28. The act or practice described above has been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. ISSUE A DECLARATORY JUDGMENT that each act or practice complained of herein violates the CSPA, R.C. 1345.01 *et seq.*, its Substantive Rules, and the HSSA, R.C. 1345.21 *et seq.*, in the manner set forth in the Complaint.
- B. ISSUE A PERMANENT INJUNCTION enjoining the Defendants, their agents, employees, successors or assigns, and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership, or other association, under these or any other names, from engaging in the acts and practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 *et seq.*, its Substantive Rules, and the HSSA, R.C. 1345.21 *et seq.*
- C. ORDER Defendants, pursuant to R.C. 1345.07(B), to pay actual damages to all consumers injured by the conduct of the Defendants as set forth in this Complaint.
- D. ASSESS, FINE and IMPOSE upon Defendants a civil penalty of up to \$25,000.00 for each separate and appropriate violation of the CSPA described herein pursuant to R.C. 1345.07(D).
- E. ISSUE AN INJUNCTION prohibiting Defendants from engaging in business as a Supplier in any consumer transactions in this state until such time as Defendants have satisfied all monetary obligations ordered pursuant to this litigation, the judgment against Defendants in State of Ohio ex rel., Attorney General Dave Yost v. James C. Bowell, et al., Hamilton Co. A1702318, and any other judgments.
- F. GRANT Plaintiff its costs incurred in bringing this action.
- G. ORDER Defendants to pay all court costs associated with this matter.
- H. GRANT such other relief as the court deems to be just, equitable, and appropriate.

Respectfully submitted,

DAVE YOST  
Attorney General



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