

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

STATE OF OHIO, ex rel.)	
MICHAEL DEWINE)	CASE NO.
Attorney General of Ohio)	
30 East Broad Street, 14th Floor)	JUDGE
Columbus, Ohio 43215)	
)	
Plaintiff,)	<u>COMPLAINT AND REQUEST</u>
)	<u>FOR INJUNCTIVE AND</u>
v.)	<u>DECLARATORY RELIEF,</u>
)	<u>CONSUMER RESTITUTION,</u>
)	<u>AND CIVIL PENALTIES</u>
DAVID D. ROSE)	
DBA ALL-STAR POWERHOUSE)	
DISCIPLES PROFESSIONAL)	
LANDSCAPING AND)	
TREE SERVICE LLC)	
229 N. Burnett Road)	
Springfield, OH 45503)	
)	
Defendant.)	

JURISDICTION

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Michael DeWine, having reasonable cause to believe that violations of Ohio’s consumer 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. 1345.07.
2. The actions of Defendant, as described below, have occurred in counties throughout Ohio, including Montgomery County and, as set forth below, are in violation of the Ohio Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 et seq. and its Substantive Rules, O.A.C. 109:4-3-01 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 (B)(3) in that Montgomery County, Ohio is a county in which Defendant conducted activity that gave rise to the claim for relief.

DEFENDANT

5. Defendant David D. Rose (“Rose”) is a natural person who, upon information and belief, resides at 229 N. Burnett Road, Springfield, Ohio 45503.
6. At all times relevant to this action, Defendant used the fictitious name All-Star Powerhouse Disciples Professional Landscaping and Tree Service LLC (“All-Star Powerhouse”).
7. Defendant is a “supplier” as that term is defined in R.C. 1345.01(C), as Defendant was, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting and providing services to individuals for purposes that were primarily personal, family, or household within the meaning specified in R.C. 1345.01(A) and (D).

STATEMENT OF FACTS

8. At all times relevant to this action, Defendant Rose engaged in the business of advertising, soliciting, offering, and selling tree cutting and lawn services as All-Star Powerhouse.
9. Defendant solicited, offered, and sold his tree cutting and lawn services by going to consumers’ residences.
10. Defendant accepted money from consumers as full payments for the ordered services, which often included tree cutting, grinding out tree stumps, and collecting and disposing of debris.
11. Defendant failed to inform and provide consumers with a notice of their three day right to cancel.

12. Defendant failed to provide all the services for which he received payment.
13. In most instances, Defendant provided shoddy or unworkmanlike services by failing to grind out the tree stumps and collect and dispose of the debris after cutting down trees.
14. When consumers contacted Defendant about his partial work, Defendant promised to return to complete the work, but he never completed the services for which he received payment or returned any of the money.
15. Defendant conducted and continues to conduct business in the State of Ohio using a fictitious business name that Defendant never registered with the Ohio Secretary of State.
16. All facts alleged above have occurred in the last two years prior to this lawsuit.

PLAINTIFF'S FIRST CAUSE OF ACTION:
VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT I
FAILURE TO DELIVER VIOLATION

17. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of this Complaint.
18. Defendant committed unfair or deceptive acts or practices in violation of R.C. 1345.02 of the CSPA and the Failure to Deliver Rule, O.A.C. 109:4-3-09(A)(2), by accepting money from consumers for services and permitting eight weeks to elapse without delivering the promised services or issuing a full refund.

COUNT II
SHODDY OR UNWORKMANLIKE SERVICES

19. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of this Complaint.

20. Defendant committed unfair or deceptive acts or practices in violation of R.C. 1345.02(A) of the CSPA, by performing shoddy and unworkmanlike tree cutting and lawn services and then failing to correct such work within a reasonable time.
21. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violations after such decisions were available for public inspection.

COUNT III
FAILURE TO REGISTER FICTITIOUS NAME

22. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of this Complaint.
23. Defendant committed unfair or deceptive acts or practices in violation of R.C. 1345.02(A) of the CSPA, by failing to register with the Ohio Secretary of State his use of a fictitious business name, as required by R.C. 1329.01.
24. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violations after such decisions were available for public inspection.

SECOND CAUSE OF ACTION
VIOLATION OF THE HOME SOLICITATION SALES ACT

COUNT IV
FAILURE TO PROVIDE NOTICE OF
THREE DAY RIGHT OF RESCISSION

25. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of this Complaint.

26. Defendant violated the Home Solicitation Sales Act, R.C. 1345.23 and R.C. 1345.02(A), by failing to provide notice to consumers of their right to cancel their contract by a specific date.
27. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violations after such decisions were available for public inspection.

PRAAYER FOR RELIEF

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

- A. ISSUE a permanent injunction enjoining Defendant David D. Rose, doing business as All-Star Powerhouse Disciples Professional Landscaping and Tree Service LLC or under any other names, his agents, representatives, salesmen, employees, successors, or assigns, and all persons acting in concert and participation with him, directly or indirectly, from committing any unfair, deceptive, or unconscionable act or practice that violates the CSPA, R.C. 1345.01 et seq., and its Substantive Rules, O.A.C. 109:4-3-01 et seq., including, but not limited to, violations of the specific code sections and rules set forth herein.
- B. DECLARE that each act or practice complained of herein violates the CSPA and its Substantive Rules in the manner set forth in this Complaint.
- C. ASSESS, FINE, AND IMPOSE upon Defendant a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein, pursuant to R.C. 1345.07(D).
- D. ORDER Defendant to pay all actual damages, including non-economic damages, to all consumers injured by the conduct of the Defendant as set forth in this Complaint.

- E. ISSUE an Injunction prohibiting Defendant from engaging in business as a supplier in any consumer transaction in the State of Ohio until such time as he has satisfied all monetary obligations ordered by this Court, and any other Court in Ohio, related to the conduct set forth herein.
- F. GRANT the Ohio Attorney General his costs in bringing this action.
- G. ORDER Defendant to pay all court costs.
- H. GRANT such other relief as the Court deems to be just, equitable, and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General

/s/Brittany M. Steele

BRITTANY M. STEELE (0089188)
Assistant Attorney General
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 466-9529
(866) 566-7358 (fax)
Brittany.steele@ohioattorneygeneral.gov

Counsel for Plaintiff