

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

STATE OF OHIO, *ex rel.*
MICHAEL DEWINE,
ATTORNEY GENERAL
30 East Broad Street
State Office Tower – 14th Floor
Columbus, Ohio 43215

Plaintiff,

v.

FLORISTS' TRANSWORLD
DELIVERY, INC.
3113 Woodcreek Drive
Downers Grove, Illinois 60515

and

FTD.COM
3113 Woodcreek Drive
Downers Grove, Illinois 60515

Defendants.

) CASE NO.

) JUDGE

) **COMPLAINT FOR**
) **DECLARATORY JUDGMENT,**
) **INJUNCTIVE RELIEF, CIVIL**
) **PENALTIES AND COSTS**

COMPLAINT

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Michael DeWine and his Consumer Protection Section brings this action to enjoin Defendants Florists' Transworld Delivery, Inc. and FTD.COM (hereinafter referred to collectively as "Defendants") from engaging in unfair or deceptive trade practices in the course of offering and selling consumer goods and services, and to obtain relief for consumers victimized by the Defendants' unfair or deceptive trade practices.

PARTIES

2. Plaintiff is the State of Ohio, by and through the Attorney General of Ohio, Michael DeWine and his Consumer Protection Section, who brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him pursuant to Ohio Revised Code (R.C.) 1345.07 of the Consumer Sales Practices Act.
3. Plaintiff has brought this action in connection with a multi-state investigation of the Defendants conducted by the Attorneys General of Alabama, Alaska, Delaware, Florida, Idaho, Illinois, Kansas, Maryland, Maine, Michigan, Nebraska, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Vermont, Washington and Wisconsin (hereinafter collectively referred to as the “Attorneys General”).
4. Defendant Florists’ Transworld Delivery, Inc. is a Michigan corporation located at 3113 Woodcreek Drive, Downers Grove, Illinois 60515, that offers and sells flowers and other gifts through its subsidiary, FTD.COM Inc., at the www.ftd.com website that is available to Ohio consumers.
5. Defendant FTD.COM Inc. is a Delaware corporation that is located at 3113 Woodcreek Drive, Downers Grove, Illinois 60515, that offers and sells flowers and other gifts through its website located at www.ftd.com website, which is available to Ohio consumers.
6. At all relevant times, Defendants committed the acts, caused or directed others to commit the acts, ratified the acts, or permitted others to commit the acts alleged in this Complaint.

JURISDICTION AND VENUE

7. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Michael DeWine and his Consumer Protection Section, 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 pursuant to R.C. 1345.07 of the Consumer Sales Practices Act.
8. The actions of Defendants, hereinafter described, have occurred in the State of Ohio, County of Franklin and various other counties, and as set forth below, are in violation of the Consumer Sales Practices Act, R.C. 1345.01 *et seq.*
9. Defendants, as described below, are "suppliers" as that term is defined in R.C. 1345.01(C) as Defendants were, at all times relevant herein, engaged in the business of effecting "consumer transactions" by advertising, soliciting, selling, promoting and operating the Classmates social networking website in the State of Ohio for purposes that were primarily for personal, family or household use within the meaning specified in R.C. 1345.01(A) and (D).
10. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Consumer Sales Practices Act.
11. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that some of the transactions complained of herein and out of which this action arose, occurred in Franklin County.

ALLEGATIONS

12. The Defendants engage and have engaged in the business of offering and selling consumer goods and consumer services to Ohio consumers via the Internet through websites controlled by the Defendants.
13. Between 2005 and 2010, the Defendants entered into a number of post-transaction marketing agreements with a marketing partner named Webloyalty, Inc. (“Webloyalty” or “marketing partner”).
14. Pursuant to the Defendants’ marketing agreements with its marketing partner, the Defendants agreed to display advertisements offering free trials in Webloyalty’s membership programs, such as discount clubs, travel rewards programs, and insurance-type products. At the conclusion of the free trials, if the consumers did not cancel their memberships, the free trial converted to subscription-based programs that charged consumers monthly fees (a practice known as negative option marketing), a fact that was not adequately disclosed to consumers.
15. Some of the marketing partner’s advertisements were published in the course of consumers’ transactions with the Defendants while in other cases the advertisements were published immediately following the consumers’ transactions with the Defendants. In other instances, the advertisements were presented to consumers with the Defendants’ logo while they were in the process of completing their transactions with Defendants. This gave consumers the impression that they were still conducting business with the Defendants (as opposed to the Defendants’ marketing partner).
16. In some instances, consumers were encouraged to respond to the marketing partner’s offers by clicking a “Continue” or “Yes” button in order to claim a discount or cash

back reward on the consumer's purchase with the Defendants, making the advertisement appear as if it were presented by the Defendants instead of a marketing partner. In other instances, consumers needed only to enter their email addresses or check a box in order to accept the marketing partner's offer, unaware due to inadequate disclosure that, by doing so, they were agreeing to enroll in a membership program offered by a marketing partner.

17. The Defendants did not adequately inform consumers that by responding to the various ads placed by the Defendants' marketing partners, consumers were being directed to an entirely different website hosted by a marketing partner, where they entered into separate transactions for trial memberships, which consumers did not understand would result in their being billed for the services if the memberships were not cancelled.
18. As a result of the above-described practices, many of the consumers who enrolled in membership programs did so without knowing they were agreeing to enroll in a membership program that could cost them money they did not intend to spend. Many consumers also never availed themselves of the membership programs' purported benefits.
19. In order to facilitate the marketing partner's billing practices, the Defendants, without adequately obtaining permission from consumers, electronically passed consumers' credit or debit card account information to their marketing partner when the consumers enrolled in membership programs. This practice has more recently been made illegal under the Restore Online Shoppers' Confidence Act, 15 U.S.C. §8401, et seq.

20. The Defendants' privacy policies were misleading, inconsistent or failed to adequately inform consumers that the Defendants shared consumers' personal information with third parties, including the Defendants' marketing partner, when consumers enrolled in a membership program.

CAUSE OF ACTION

COUNT ONE

UNFAIR OR DECEPTIVE CONSUMER SALES PRACTICES

21. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 20 as if fully set forth below.
22. The Defendants have engaged in transactions that constitute unfair or deceptive acts or practices, and is therefore unlawful under R.C. 1345.02(A). Defendants have:
 - a. made representations, express and implied, concerning their offer and sale of subscription services and membership programs, that mislead consumers; and
 - b. failed to state material facts in connection with their offer and sale of subscription services and membership programs and their sharing of consumers' personal information, the omission of which deceived or tended to deceive consumers.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Adjudge and decree that Defendants have engaged in acts or practices in violation of the Consumer Sales Practices Act., R. C. 1345.01 *et seq.*, as previously set forth.
2. Permanently enjoin and restrain the Defendants from engaging in unfair or deceptive consumer sales practices set forth herein and from violating the Consumer Sales

Practices Act.

3. Adjudge and decree that the Defendants are liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions.
5. Assess, fine and impose upon Defendants a civil penalty pursuant to R. C. 1345.07(D) of Twenty-Five Thousand Dollars (\$25,000.00) for each unfair or deceptive act or practice alleged herein.
6. Order that all costs in this cause be taxed against Defendants.
7. Grant Plaintiff such other and further relief as this Court deems just, equitable and appropriate.

Respectfully Submitted,

MICHAEL DeWINE
Attorney General

/s/ Michael S. Ziegler
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