

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i>	:	
MICHAEL DEWINE	:	CASE NO.
ATTORNEY GENERAL OF OHIO	:	
30 East Broad Street, 14 th Floor	:	JUDGE
Columbus, Ohio 43215	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THOMAS HUBER JR.	:	<u>COMPLAINT, REQUEST FOR</u>
845 Moon Road	:	<u>DECLARATORY JUDGMENT,</u>
Columbus, Ohio 43224	:	<u>INJUNCTIVE RELIEF, CONSUMER</u>
	:	<u>RESTITUTION, AND CIVIL PENALTIES</u>
Defendant.	:	

JURISDICTION AND VENUE

1. Plaintiff, Ohio Attorney General Michael DeWine, having reason to believe that Defendant has violated the consumer protection laws of Ohio, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 et seq., and the Home Solicitation Sales Act (“HSSA”), R.C. 1345.21 et seq.
2. This Court has personal jurisdiction over the Defendant, pursuant to R.C. 2307.382, because this cause of action arises from the Defendant’s business transactions with residents of Franklin County, Ohio.
3. This Court has subject matter jurisdiction over this action, pursuant to R.C. 1345.04, because the claims in this Complaint arise from consumer transactions subject to R.C. 1345.01 to 1345.13.

4. Venue is proper with this Court, pursuant to Ohio Civ. R. 3(B)(1) or, alternately, Ohio Civ. R. 3(B)(3), because the Defendant resides in Franklin County, Ohio, and the actions giving rise to this Complaint occurred in Franklin County, Ohio.

DEFENDANT

5. Defendant, Thomas Huber Jr. (“Huber”), is a resident of the State of Ohio, currently living at 845 Moon Road, Columbus, OH 43224.
6. Huber is a “supplier,” as defined in R.C. 1345.01(C) because he engaged in the business of effecting consumer transactions by soliciting, offering for sale, and selling home improvement services, specifically landscaping services, to individuals in Franklin County for purposes that were primarily personal, family, or household within the meaning specified in R.C. 1345.01(A) and (D).
7. Huber is a “seller,” as defined in R.C. 1345.21(C), because he engaged in the business of effecting home solicitation sales, as defined in R.C. 1345.21(A), by soliciting, offering for sale, and selling home improvement services, including landscaping services, to “buyers” in the State of Ohio for purposes that are primarily personal, family, or household, within the meaning of R.C. 1345.21(E).

STATEMENT OF FACTS

Huber Solicited Consumers in Person at Consumers’ Residences, Representing Himself to be a Professional, Full-Service, Certified Arborist

8. Huber personally solicited, offered, and sold landscaping services, a form of home improvement services, to residents in Franklin County, Ohio, for primarily personal, family, or household purposes.

9. Huber solicited, offered, and sold these landscaping services in person at consumers' residences, sometimes after having left a flyer at the residence and having received a call from the resident consumer.
10. Huber called his landscaping service different names, including "Huber's Tree Care," "Capital Tree Service," and "Tree Doctor," but did not register any of them as businesses with the Ohio Secretary of State.
11. Huber represented to consumers that he was a professional, full-service, certified arborist.
12. Huber offered pesticide application services to consumers. For example, he told consumers that he could save their ash trees with his "special formula" pesticide. Mr. Huber is not a licensed pesticide applicator in the State of Ohio.
13. As a result of Huber's representations, consumers believed Mr. Huber was properly licensed to use pesticides and relied upon that belief when they decided to contract with and pay Huber to provide landscaping services using pesticides.
14. The State of Ohio prohibits the unlicensed application of pesticides for a pesticide business without direct supervision of someone who is properly licensed. R.C. 921.06(A)(1)(a). Ohio also prohibits someone from owning or operating a pesticide business without obtaining a license from the director of agriculture. R.C. 921.09. A "pesticide business" includes any person "who performs pesticide business activities." R.C. 921.01(LL).
15. It is unknown whether Huber is truly a certified arborist. The Ohio Chapter of the International Society of Arboriculture (ISA) does not recognize Huber as an ISA-certified arborist.

Huber Demanded, and Accepted, Payments in Advance of Services

16. Huber demanded consumers pay for his landscaping services in advance of service.
17. Consumers paid in advance for Huber's service. These deposits exceeded \$25, were typically several hundred dollars, and sometimes exceeded \$1,000 in total.
18. Huber documented consumers' deposits with handwritten receipts that included the services the consumer ordered, the consumer's name, sometimes the consumer's signature, and a note that the consumer "Paid in Full."
19. Consumers paid Huber in cash or by check.

Huber Failed to Meet Numerous Legal Requirements Before Commencing Services

20. Mr. Huber failed, at the time of the initial face-to-face contact, and prior to the commencement of any services, to provide consumers a written disclosure of the consumer's right to receive an estimate and choose the form of that estimate, written or oral.
21. Huber did not evidence the sales by a written agreement or offer to purchase that meets the specific requirements of R.C. 1345.23(A).
22. Having produced no written agreement or offer to purchase, Huber also did not leave with the consumers a copy of that written agreement with the notice of the consumer's right to cancel within three days that is required by R.C. 1345.23(B)(1).
23. Having produced no written agreement or offer to purchase, Huber also did not provide to consumers a completed Notice of Cancellation form that meets the requirements of R.C. 1345.23(B)(2) and (B)(3).
24. Huber failed to wait three business days before commencing services.

Huber Did Not Deliver the Services As Promised

25. On numerous occasions, Huber failed to deliver the landscaping services in the same quantity and quality that consumers paid him in advance to deliver.
26. On some occasions, Huber delivered some but not all of the services represented and paid for, such as pruning and trimming far less than what he represented, failing to return each month to monitor the results of his insect-control treatments, and failing to cut tree and bush stumps level with the ground.
27. On several occasions, Huber failed to deliver any of the services that he was paid in advance to deliver. Examples of services that Huber totally failed to deliver include: Fertilization, fertilization-boosting, trimming, pesticide application and other insect control, brush removal, garden-bed cleaning, and wood removal.
28. By failing to fully deliver the services as he promised, Huber also failed to honor the “guarantees” that he noted on several consumer-buyers’ receipts.

Huber Has Not Returned To Complete Services and Will Not Return Phone Calls

29. Huber has not returned to complete the pre-paid services as promised to the consumers.
30. Consumers have made repeated attempts to contact Huber but failed to reach him. Consumers called the number he provided to them and left messages, but Huber has not responded.
31. Having failed to deliver or finish delivering services already paid for by consumers, having failed to respond to customers phone calls, and maintaining no fixed business address for consumers to file their complaints, Huber has also failed to provide consumers with a post-service, written, itemized receipt listing the services he delivered.

32. More than eight weeks have elapsed since the consumers paid, and Huber accepted, money for services. To date, Huber has not fully delivered those services ordered, made a full refund, advised the consumer of the duration of any extended delay, offered to send the consumer a refund within two weeks of a consumer-buyer request, or furnished similar services of equal or greater value as a good-faith substitute.

PLAINTIFF'S FIRST CAUSE OF ACTION

VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT I

FAILURE TO DELIVER GOODS OR SERVICES, OR PROVIDE REFUNDS

33. Plaintiff incorporates by reference the allegations set forth in paragraphs four through thirty-two of this Complaint.
34. Huber has committed unfair and deceptive acts and practices in violation of R.C. 1345.02(A) and O.A.C. 109:4-3-09(A)(2) by failing to fully deliver those services ordered by consumers, failing to fully refund the consumers, failing to advise consumers of the duration of an extended delay, and failing to furnish similar services of equal or greater value within eight weeks of accepting payment for those services.
35. Such acts and practices have been determined by Ohio courts to violate the CSPA, R.C. 1345.02 et seq. Such acts and practices have also been declared deceptive by rule adopted by the Attorney General pursuant to R.C. 1345.05(B)(2). Huber committed these violations after the rule and court decisions were made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT II

VIOLATIONS OF THE REPAIRS OR SERVICES RULE

36. Plaintiff incorporates by reference the allegations set forth in paragraphs four through thirty-two of this Complaint.
37. Huber has committed unfair and deceptive acts and practices in violation of R.C. 1345.02(A) and O.A.C. 109:4-3-05(D)(12) by failing to provide consumers with a written itemized list of repairs performed or services rendered that included a list of parts or materials and a statement of whether they were used, remanufactured, or rebuilt, if not new, and the cost thereof to the consumer, the amount charged for labor, and the identity of the individual performing the repair or service.
38. Huber has committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) and O.A.C. 109:4-3-05(A)(1) by failing to provide to consumers, at the time of the initial face-to-face contact and prior to the commencement of any services, a written disclosure of the consumer's right to receive an estimate and choose the form of that estimate, written or oral.
39. Such acts and practices have been determined by Ohio courts to violate the CSPA, R.C. 1345.02 et seq. Such acts and practices have also been declared deceptive by rule adopted by the Attorney General pursuant to R.C. 1345.05(B)(2). Huber committed these violations after the rule and court decisions were made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT III

VIOLATIONS OF THE DEPOSITS RULE

40. Plaintiff incorporates by reference the allegations set forth in paragraphs four through thirty-two of this Complaint.
41. Huber has committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) and O.A.C. 109:4-3-07(B)(5) by failing to provide to consumers, at the time of the initial deposit, a dated written receipt stating clearly and conspicuously whether the deposit was refundable and under what conditions it was refundable.
42. Such acts and practices have been determined by Ohio courts to violate the CSPA, R.C. 1345.02 et seq. Such acts and practices have also been declared deceptive by rule adopted by the Attorney General pursuant to R.C. 1345.05(B)(2). Huber committed these violations after the rule and court decisions were made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT IV

UNFAIR AND DECEPTIVE ACTS AND PRACTICES

43. Plaintiff incorporates by reference the allegations set forth in paragraphs four through thirty-two of this Complaint.
44. Huber has committed unfair and deceptive acts or practices in violation of R.C. 1345.02(A) by owning and operating a pesticide business, advertising that business, and applying pesticide without a pesticide license required by R.C. 921.09 or R.C. 921.06(A)(1)(a).

45. Huber committed unfair and deceptive acts and practices in violation of R.C. 1345.02(B)(6) by representing that the subject of a consumer transaction would be supplied in greater quantity than Huber intended.
46. Huber committed unfair and deceptive acts and practices in violation of R.C. 1345.02(B)(10) by representing that consumer transactions involved a warranty, or other obligations when the representation was false.
47. Huber committed unfair and deceptive acts and practices in violation of R.C. 1345.02(B)(1) by representing that the subject of the consumer transactions had performance characteristics, uses, or benefits that it did not.
48. Such acts or practices have been determined by Ohio courts to violate R.C. 1345.02. Huber committed these violations after Court decisions were made available for public inspection pursuant to R.C. 1345.05(A)(3).

PLAINTIFF'S SECOND CAUSE OF ACTION

VIOLATIONS OF THE HOME SOLICITATION SALES ACT

COUNT I

FAILURE TO EVIDENCE CONTRACT WITH A WRITTEN AGREEMENT

49. Plaintiff incorporates by reference the allegations set forth in paragraphs four through thirty-two of this Complaint.
50. Huber engaged in unfair and deceptive acts or practices in violation of R.C. 1345.23(A) by failing to provide each consumer-buyer a written agreement or offer to purchase in the same language as he used in the oral sales presentations and containing the name and address of the seller.

51. Huber has committed unfair and deceptive acts or practices in violation of R.C. 1345.23(A) by failing to present a written agreement to each consumer-buyer and by failing to obtain the buyer's signature to it.
52. Huber has committed unfair and deceptive acts or practices in violation of R.C. 1345.23(A) by failing to state on each written agreement the date on which the buyer actually signed.
53. Huber has committed unfair and deceptive acts or practices in violation of R.C. 1345.23(A) by failing to leave with each consumer-buyer a copy of the written agreement that had been signed by the seller and that complied with R.C. 1345.23(B).
54. Pursuant to R.C. 1345.28, these violations constitute deceptive acts and practices in connection with consumer transactions, in violation of R.C. 1345.02.
55. Such acts and practices have been determined by Ohio courts to violate the CSPA, R.C. 1345.02 et seq. Such acts and practices have also been declared deceptive by rule adopted by the Attorney General pursuant to R.C. 1345.05(B)(2). Huber committed these violations after the rule and court decisions were made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT II

FAILURE TO PROVIDE NOTICE OF RIGHT TO CANCEL

56. Plaintiff incorporates by reference the allegations set forth in paragraphs four through thirty-two of this Complaint.
57. Huber engaged in unfair and deceptive acts or practices in violation of R.C. 1345.23(B) by failing to provide consumers with a notice of right to cancel within three days of purchase that met the particular requirements of R.C. 1345.23(B)(1).

58. Huber engaged in unfair and deceptive acts or practices in violation of R.C. 1345.23(B) by failing to attach to the contract a “Notice of Cancellation” form that met the particular requirements of R.C. 1345.23(B)(2).
59. Huber engaged in unfair and deceptive acts or practices in violation of R.C. 1345.23(B) by failing to complete both copies of a “Notice of Cancellation” form that met the particular requirements of R.C. 1345.23(B)(3).
60. Pursuant to R.C. 1345.28, these violations constitute deceptive acts and practices in connection with a consumer transaction, in violation of R.C. 1345.02
61. Such acts and practices have been determined by Ohio courts to violate the CSPA, R.C. 1345.02 et seq. Such acts and practices have also been declared deceptive by rule adopted by the Attorney General pursuant to R.C. 1345.05(B)(2). Huber committed these violations after the rule and court decisions were made available for public inspection pursuant to R.C. 1345.05(A)(3).

REQUEST FOR RELIEF

Plaintiff, the State of Ohio, requests this Court:

- A. **ISSUE A DECLARATORY JUDGMENT**, pursuant to R.C. 1345.07(A)(1), declaring that the acts or practices described in paragraphs eight through thirty-two violate the CSPA in the manner set forth in this Complaint, and that the acts or practices described in paragraphs twenty through twenty-four violate the HSSA, and therefore the CSPA, in the manner set forth in this Complaint.
- B. **ISSUE PERMANENT INJUNCTIVE RELIEF**, pursuant to R.C. 1345.07, enjoining Defendant Thomas Huber Jr., under that name, “Huber Tree Care,” “Capital Tree Service,” “Tree Doctor,” or any others, and all persons acting on behalf of Huber directly

or indirectly, through any corporate or private device, partnership or association, jointly and severally, from engaging in the acts and practices described in this Complaint, and from further violating the HSSA and the CSPA.

- C. **ISSUE PERMANENT INJUNCTIVE RELIEF** enjoining Defendant, Thomas Huber Jr., from acting as a supplier and from soliciting or engaging in any consumer transactions in the State of Ohio as a supplier until the final ordered resolution of this matter is satisfied in its entirety.
- D. **HOLD HUBER LIABLE** to all consumer-buyers found to have been damaged by Huber's violations of the HSSA and the CSPA and **ORDER HUBER** to reimburse those consumer-buyers for their damages, including, but not limited to, restitution for money paid for services not delivered as promised by Mr. Huber.
- E. Pursuant to R.C. 1345.07(D), **ASSESS, FINE**, and **IMPOSE** upon Defendant, Thomas Huber Jr., a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each act or practice substantially similar to acts or practices previously declared by a Court or Rule to be unfair or deceptive.
- F. **ORDER HUBER**, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, to maintain in his possession and control for a period of five (5) years, and in a manner designed to secure the privacy of all consumers' personal information, all business records relating to Huber's solicitation, offer, and sale of landscaping and other home improvement services in the State of Ohio.
- G. **ORDER HUBER** to reimburse the Ohio Attorney General for all costs incurred in bringing this action.
- H. **ORDER HUBER** to pay all court costs associated with this action.

I. **GRANT** any other relief the Court deems just, equitable, and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Attorney General

/s/ Bradly M. Turner

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