

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

)	CASE NO.
STATE OF OHIO, ex rel.)	
ATTORNEY GENERAL DAVE)	JUDGE
YOST)	
Cleveland Regional Office)	<u>COMPLAINT AND REQUEST FOR</u>
615 W. Superior Ave., 11th fl.)	<u>DECLARATORY AND INJUNCTIVE</u>
Cleveland, Ohio 44113-1899)	<u>RELIEF, CONSUMER DAMAGES, CIVIL</u>
Plaintiff,)	<u>PENALTIES, AND OTHER</u>
)	<u>APPROPRIATE RELIEF</u>
v.)	
)	
BURKE DÉCOR LLC)	
C/O Jerry Bryan, Statutory Agent)	
6 Federal Plaza Central, Suite 1300)	
Youngstown, Ohio 44503)	
and)	
)	
ERIN ELIZABETH BURKE)	
6411 Ivarene Avenue)	
Los Angeles, California 90068)	
Defendants.)	
)	
)	
)	

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through 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 the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq.
2. The actions of Defendants, hereinafter described, have occurred in Mahoning County as well as other counties around the State of Ohio, and are in violation of the Ohio Consumer

Sales Practices Act (“CSPA”), R.C. 1345.01 et seq., its Substantive Rules, Ohio Adm.Code 109:4-3-01 et seq.

3. This Court has jurisdiction over the subject matter of this action 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)(1)-(3) in that Defendants reside or have their principal place of business in Mahoning County, and some of the transactions complained of herein, and out of which this action arises, have occurred in Mahoning County, Ohio.

DEFENDANTS

5. Erin Burke is an individual residing at 6411 Ivarene Avenue, Los Angeles, California 90068.
6. Burke Décor LLC is an Ohio limited liability company licensed to do business in Ohio since January 30, 2008.
7. Burke Décor LLC sold their products out of an Ohio storefront at 7373 Market St. Youngstown, OH 44512.
8. Elizabeth Burke and Burke Décor LLC are “suppliers” as the term is defined in R.C. 1345.01(C) of the CSPA because, at all times relevant herein, they engaged in the business of effecting “consumer transactions,” by offering consumer goods and services to individuals for purposes that were primarily personal, family, or household as defined in R.C. 1345.01(A).

STATEMENT OF FACTS

9. Defendants offer consumer goods and services to consumers in Ohio: specifically, Defendants solicit, sell and deliver home furnishings and décor items for consumers’

personal, family, or household use.

10. Defendants operate a retail business establishment where home furnishings and décor items are exhibited for sale.
11. Defendants also solicits and sells their home furnishings and décor items to consumers in Ohio and nationwide by accepting orders placed on online storefronts, including www.burkedecor.com.
12. Often, Defendants accepted money from consumers for home furnishings and décor items and then allowed more than eight weeks to elapse without providing the home furnishings and décor items consumers ordered.
13. When Defendants failed to deliver the ordered home furnishings and décor items, they did not provide consumers with a full refund.
14. When Defendants failed to deliver the ordered home furnishings and décor items, they did not offer to furnish similar goods of equal or greater value.
15. When consumers contacted Defendants to inquire about the status of their order, Defendants gave inaccurate delivery dates to consumers regarding when their home furnishings and décor items would arrive.
16. Defendants routinely failed to deliver home furnishings and décor items in the timeframe provided to consumers without informing the consumers that their home furnishings and décor items would not be delivered, and Defendants did not provide consumers a refund.
17. When consumers requested refunds because of Defendants' failure to provide the ordered home furnishings and décor items, Defendants refused to provide the refunds in a timely manner.
18. Consumers were damaged by Defendants' conduct and many consumers filed complaints

with the Ohio Attorney General's Office because Defendants had not provided their home furnishings and décor items or a refund.

19. The Attorney General's Office continues to regularly receive consumer complaints regarding Defendants' practices.

PLAINTIFF'S CAUSE OF ACTION: VIOLATIONS OF THE CSPA

COUNT I
FAILURE TO DELIVER

20. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in each of the previous paragraphs of this Complaint.
21. Defendants have committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule, Ohio Adm.Code 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 more than eight weeks to elapse without making shipment or delivery of the goods or 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.
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 II
POOR CUSTOMER SERVICE

23. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in each of the previous paragraphs of this Complaint.
24. Defendants have committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by failing to properly respond to consumer complaints or provide

adequate customer service.

25. The acts and 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
MISREPRESENTATION

26. Plaintiff incorporates by reference, as if fully rewritten herein, the allegations set forth in each of the previous paragraphs of this Complaint.
27. Defendants committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by misrepresenting the status of consumers' refunds or representing to consumers that Defendants would provide refunds and then failing to do so.
28. 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 made available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. ISSUE A DECLARATORY JUDGMENT** declaring that each act or practice complained of herein violates the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, Ohio Adm.Code 109:4-3-01 et seq. in the manner set forth in the Complaint;
- B. ISSUE A PERMANENT INJUNCTION** enjoining Defendants, under these or any other names, their agents, representatives, salesmen, employees, successors and assigns and all persons acting in concert or participation with Defendants, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from any further

violations of the CSPA, R.C. 1345.01 et seq.;

- C. **IMPOSE** upon Defendants civil penalties in the amount of \$25,000.00 for each separate and appropriate violation described herein pursuant to R.C. 1345.07(D);
- D. **ORDER** Defendants to reimburse all consumers found to have been damaged by Defendants' unlawful actions in violation of the CSPA;
- E. **GRANT** Plaintiff his costs in bringing this action including, but not limited to, the costs of collecting any judgment awarded;
- F. **ORDER** Defendants to pay all court costs; and
- G. **GRANT** such further relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

DAVE YOST
OHIO ATTORNEY GENERAL

/s/ Drew Smith
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