

JUN 17 2020

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

Candy S. F... CLERK
OF COMMON PLEAS COURT

STATE OF OHIO ex rel.)
ATTORNEY GENERAL)
DAVE YOST)
30 E. Broad St., 14th Floor)
Columbus, Ohio 43215)

Case No: 20CP0110

Plaintiff,

Judge: MCCARTHY

v.)

Marcus Fultz)
DBA Danielle's on 2nd)
20 Canterbury Dr.)
Athens, OH 45701)

and)

Ellen Fultz)
DBA Danielle's on 2nd)
20 Canterbury Dr.)
Athens, OH 45701)

Defendants.)

COMPLAINT AND REQUEST
FOR DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, CONSUMER
RESTITUTION, CIVIL PENALTIES, AND
OTHER APPROPRIATE RELIEF

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. Defendant Marcus Fultz and Defendant Ellen Fultz (collectively, “Defendants”) operated a store under the fictional name Danielle’s on 2nd, which had a principal place of business at 20 Canterbury Dr. Athens, OH 45701.
3. The actions of Defendants, hereinafter described, have occurred in Athens 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.*
4. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
5. This Court has venue to hear this case pursuant to Ohio Civ R. 3(C)(1) and (2), as Defendants reside in this county and have their primary place of business in this county.

DEFENDANTS

6. Defendant Marcus Fultz is an individual residing at 20 Canterbury Dr. Athens, OH 45701.
7. Defendant Ellen Fultz is an individual residing at 20 Canterbury Dr. Athens, OH 45701.
8. Defendants are “suppliers,” as that term is defined in R.C. 1345.01(C), as they engaged in the business of effecting “consumer transactions” by advertising and selling goods via e-commerce platforms to consumers in Ohio and across the United States that are primarily for personal, family, or household purposes, within the meaning specified in R.C. 1345.01(A) and (D).

STATEMENT OF FACTS

9. Defendants operate an online business called Danielle's on 2nd in which they acquire a variety of types of products and resell those products to the general public via the online platforms Amazon, eBay, and Etsy.
10. Early in 2020, COVID-19 virus, a highly communicable and dangerous contagion, arrived in the United States and began to spread.
11. On February 29, 2020 the United States reported the first death from COVID-19 in the state of Washington.
12. On March 2, 2020, the state of Washington was the first state to declare a state of emergency related to COVID-19.
13. On March 9, 2020, Governor DeWine issued Executive Order 2020-01D declaring a state of emergency in Ohio in light of confirmation that three (3) patients had tested positive for COVID-19 in the state, "creating a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio...."
14. In order to prevent and slow the disease in Ohio, in March and April 2020, Governor DeWine and Ohio Department of Health Director Amy Acton, M.D., issued over thirty orders aimed at slowing the spread of the COVID-19 virus, including those mandating the closure of non-essential businesses, limiting access to nursing homes and detention facilities, closing polling locations, and instituting a stay-at-home order for the general public.
15. Starting in early 2020, in the face of these developments and developments on a national level, Ohioans and people across the nation became increasingly frightened.

16. This fear prompted many citizens to bolster their personal supplies of products they believed might be needed and/or in short supply if the crisis continued to worsen. Those products included disinfecting wipes, hand sanitizers, respirator masks, and even toilet paper.
17. Upon information and belief, seeing an opportunity to profit from the increase in demand for these essential products, Defendants began to rapidly acquire a significant volume of certain products – specifically hand sanitizer - and sold the products via Amazon.
18. Hand sanitizer is a sought-after alternative to hand washing and an important product to stopping the spread of contagious diseases such as COVID-19, and can be used in homes and businesses.
19. Defendants' bulk acquisitions exacerbated the growing shortage of hand sanitizer available in the marketplace for purchase by those with health concerns and health care workers.
20. In February and March 2020, Defendants sold over 600 units of Purell brand hand sanitizer on Amazon.
21. Compared to the average sales price of the same products sold on Amazon as of January 19, 2020, Defendant raised the prices of their hand sanitizer products by between 241.8% and 1017.8%, for an average price mark up of 423.5%.
22. For example, the average sales price of a Purell Advanced Hand Sanitizer Refreshing Gel 8 oz package on January 19, 2020 was \$3.53. Defendants sold 382 units of this product in February and March for \$39.44 per package.

23. Our calculations estimate that Defendants sold their marked-up hand sanitizer products for a total of \$26,736.27 on Amazon.
24. Defendants' behavior contributed to a shortage of a highly desirable and useful item that harmed consumers and the public interest.

PLAINTIFF'S CAUSE OF ACTION: VIOLATIONS OF THE CSPA

COUNT I- UNFAIR AND DECEPTIVE ACTS AND PRACTICES

25. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-24 of this Complaint.
26. Defendants committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by substantially inflating the price of goods because of unforeseen events that caused an increased demand for the products during the time of a national health crisis.

COUNT II- UNCONSCIONABLE ACTS AND PRACTICES

27. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-26 of this Complaint.
28. Defendants committed unconscionable acts and practices in violation of the CSPA, R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(5), by requiring consumers to enter into consumer transactions on terms Defendants knew were substantially one-sided in their favor due to a national health crisis.
29. 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).

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 and its Substantive Rules in the manner set forth in the Complaint.
- B. **ISSUE A PERMANENT INJUNCTION** enjoining 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 the name Danielle's on 2nd 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.* and its Substantive Rules.
- C. **ORDER** Defendants, pursuant to R.C. 1345.07(B), jointly and severally liable to pay consumer restitution to all consumers injured by the conduct of Defendants.
- D. **ASSESS, FINE and IMPOSE** upon Defendants, jointly and severally, a civil penalty of up to \$25,000 for each separate and appropriate violation of the CSPA described herein pursuant to R.C. 1345.07(D).
- E. **GRANT** the Ohio Attorney General its costs incurred in bringing this action, including, but not limited to, the costs of collecting on any judgment awarded.
- F. **ORDER** Defendants to pay all court costs.
- G. **GRANT** such other relief as the court deems to be just, equitable, and appropriate.

Respectfully submitted,

DAVE YOST
Attorney General

A handwritten signature in black ink, appearing to read 'C. Ramdeen', with a long horizontal flourish extending to the right.

Christopher Ramdeen (0095623)
Assistant Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215-3400
Phone: (614) 995-1577
Christopher.Ramdeen@OhioAttorneyGeneral.gov
Counsel for Plaintiff, State of Ohio