

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

COMMON PLEAS COURT

16 JAN -6 AM 8:56

STATE OF OHIO, ex rel.)
ATTORNEY GENERAL)
MICHAEL DEWINE)
Attorney General of Ohio)
30 E. Broad St., 14th Floor)
Columbus, Ohio 43215)

CASE NO.

16 CIV 0008

FILED
PAUL B. WARD WORTH
JUDGE
CLERK OF COURTS

JUDGE

JOYCE V. KIMBLER, JUDGE

Plaintiff,

v.

THRIFTY PROPANE, INC.)
c/o Patricia Adkins Baker,)
Registered Agent)
740 Fair St.)
Berea, Ohio 44047)

PLAINTIFF'S COMPLAINT
FOR DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, RESTITUTION,
AND CIVIL PENALTIES

And

THRIFTY PROPANE)
NORTHERN OHIO, INC.)
c/o Angela Maloof)
Owner and Registered Agent)
PO Box 2018)
Medina, Ohio 44258)

And

THRIFTY PROPANE)
COLUMBUS OHIO, INC.)
c/o Angela Maloof)
Owner and Registered Agent)
PO Box 2018)
Medina, Ohio 44258)

Defendants.

JURISDICTION AND VENUE

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 Defendants, hereinafter described, have occurred in the State of Ohio and Medina County and other counties and, as set forth below, are in violation of the Consumer Sales Practices Act, R.C. 1345.01 et seq. ("CSPA") and its Substantive Rules, Ohio Admin. Code 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.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) in that the Defendants conducted activity which gave rise to the claims for relief in Medina County in the State of Ohio.

DEFENDANTS

5. Defendant Thrifty Propane, Inc. is an Ohio propane supplier, which does business in Medina County and other counties, in the State of Ohio.
6. Defendant Thrifty Propane Northern Ohio, Inc. is an Ohio propane supplier, which does business in Medina County and other counties, in the State of Ohio.
7. Defendant Thrifty Propane Columbus Ohio, Inc. is an Ohio propane supplier, which does business in Medina County and other counties, in the State of Ohio.
8. Defendants are "suppliers" as that term is defined in R.C. 1345.01(C), since Defendants, at all relevant times hereto, were engaging in the business of effecting consumer transactions by

soliciting and selling propane to consumers in Ohio for purposes that are primarily personal, family, or household, within the meaning specific in R.C. 1345.01(A).

STATEMENT OF FACTS

9. Defendants operate a business which solicits for sales and sells liquid petroleum gas, commonly known as propane, and related products and services throughout the State of Ohio, including Medina County.
10. Defendants regularly advertise their propane product throughout Ohio via the internet, at www.thriftypropane.com and through other marketing and advertising channels, including direct solicitations, for the purpose of inducing consumers to purchase their propane and related products and services.
11. Defendants represent on their website that "...Thrifty Propane has paid attention to the market every year and has carefully planned its supply every winter...When you purchase your propane from Thrifty Propane you benefit from our constant vigilance that keeps supplies steady and propane prices down. Win the heating game with the dealer that always delivers – Thrifty Propane!"
12. Defendants are not providing consumers with the service promised on their website.
13. Defendants rent and sell propane tanks to consumers.
14. Consumers have paid Defendants to purchase propane tanks and propane, and Defendants have failed to deliver purchased propane tanks and propane.
15. Consumers have paid Defendants to rent propane tanks and purchase propane, and Defendants have failed to deliver the rented propane tanks and purchased propane.

16. Defendants have failed to provide refunds to the consumers that have rented or purchased propane tanks without the involvement of the Attorney General via the Attorney General's informal complaint resolution process.
17. Defendants sell propane to consumers via multiple programs.
18. Defendants' Will-Call customers typically own their own propane tanks and pay the price per gallon of propane quoted at the time the order is placed.
19. Will-Call customers do not have a standing contract with Defendants.
20. Defendants' Price Cap customers pay a flat fee and lock in at a per gallon rate during the summer for all winter deliveries.
21. Auto-Fill customers have Defendants' fill their tanks automatically when tanks reach a certain level and pay the daily price per gallon of propane on the day of delivery.
22. Defendants' Pre-buy customers purchase and pay for a fixed amount of propane at a fixed price for future delivery.
23. Defendants instruct consumers to call for propane when their tank is at or above 30%.
24. At the time of order, Defendants tell customers that propane will be delivered within 10 business days.
25. Defendants failed to fill consumers' propane tanks within 10 business days from the date of order, causing some consumers to run out of fuel and be unable to heat their homes.
26. Defendants have failed to timely provide propane to consumers who have entered into Pre-buy contracts with Defendants.
27. As a result of Defendants' actions, some Pre-buy customers have been unable to purchase propane elsewhere because they have already paid Defendants for the propane Defendants did not deliver.

28. As a result of Defendants' actions, some Pre-buy customers paid money to other propane suppliers to purchase propane at an additional price per gallon, above and beyond what they already paid Defendants for the propane Defendants did not deliver.
29. As a result of Defendants' actions, some Pre-buy customers had to pay additional emergency fill or tank check fees to other propane suppliers, above and beyond what they already paid Defendants for the propane Defendants did not deliver.
30. Defendants failed to timely respond to telephone calls from consumers when they are low on propane, causing some consumers to run out of fuel and be unable to heat their homes.
31. Many consumers who have reached out to Defendants via phone regarding their outstanding purchases are unable to get through to Defendants or do not receive promised calls back.
32. As a result of Defendants' action, some customers have had to contact the Attorney General and the Better Business Bureau in an effort to get their propane tanks and/or propane delivered and/or receive refunds.

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

COUNT ONE
UNFAIR AND DECEPTIVE CONSUMER SALES PRACTICES

33. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-two (1-32) of this Complaint.
34. Defendants committed unfair and deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(B)(1), by representing their propane sales and services have performance characteristics, accessories, uses, or benefits that they do not have.

35. Defendants committed unfair and deceptive acts or practices in connection with consumer transactions in violation of the CSPA, R.C. 1345.02(B)(2), by representing that their propane sales and services are of a particular standard, quality, grade, style, prescription, or model, when they were not.
36. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by engaging in inadequate and unfair customer services.
37. Such acts and practices 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 TWO
FAILURE TO DELIVER

38. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Thirty-seven (1-37) of this Complaint.
39. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Ohio Admin. Code 109:4-3-09(A), by accepting payments from consumers for propane and propane tanks and failing to deliver the propane and propane tanks contracted and paid for, and failing to return the payments to the consumers.
40. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Ohio Admin. Code 109:4-3-09(A), by accepting payments from consumers for propane and propane tanks and failing to deliver the propane and propane tanks to consumers in the promised time-frame, causing consumers to be unable to heat their homes.

41. Such acts or practices 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, R.C. 1345.01 et seq. and its Substantive Rules, Ohio Admin. Code 109:4-3-01 et seq. in the manner set forth in the Complaint;
- B. ISSUE PERMANENT INJUNCTIVE RELIEF, pursuant to R.C. 1345.07, enjoining Defendants Thrifty Propane, Inc., Thrifty Propane Northern Ohio, Inc., and Thrifty Propane Columbus Ohio, Inc., doing business under these names, or any other name(s), their agents, partners, servants, representatives, salespersons, employees, successors and assigns and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership or association, in connection with any consumer transaction, from:
 - (1) Engaging in business as a supplier in any consumer transaction in the State of Ohio until all sums due under all judgments are paid in full, whether those judgments are issued by this Court or any other court against Defendants in favor of consumers who were harmed as a result of the Defendants' CSPA violations and
 - (2) Engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, Ohio Admin. Code 109:4-3-01 et seq., including, but not limited to, violating the specific statutes and rules alleged to have been violated herein;

- C. ASSESS, FINE and IMPOSE upon Defendants 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 Defendants liable, pursuant to R.C. 1345.07(B), for reimbursement to all consumers found to have been damaged by Defendants' unfair and deceptive acts and practices, including, but not limited to, making restitution to consumers who paid money to Defendants but never received the goods or services for which they paid;
- E. As a means of ensuring compliance with this Court's Order and with the consumer protection laws of Ohio, ORDER Defendants, their successors or assigns, under these or any other names, to maintain in their possession and control for a period of five years all business records relating to Defendants' solicitation or effectuation of business in Ohio and to permit the Ohio Attorney General or his representative, upon reasonable twenty-four hour notice, to inspect and/or copy any and all of said records, however stored, and further ORDER that copies of such records be provided at Defendants' expense to the Ohio Attorney General upon request of the Ohio Attorney General or his representatives;
- F. GRANT Plaintiff its costs in bringing this action;
- G. ORDER Defendants to pay all court costs associated with this matter;
- H. GRANT such other relief as the court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General


TERESA A. HEFFERNAN (0080732)
Senior Assistant Attorney General
Office of the Ohio Attorney General

30 E. Broad St., 14th Floor
Columbus, Ohio 43215
(614) 644-9618
(866) 521-9921 – Fax
teresa.heffernan@ohioattorneygeneral.gov
Counsel for Plaintiff State of Ohio