

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

STATE OF OHIO, ex rel.)
ATTORNEY GENERAL)
MICHAEL DEWINE)
30 East Broad Street, 14th Floor)
Columbus, Ohio 43215)

Case No:

PLAINTIFF,)

Judge:

v.)

Thomas Huber Jr.)
d/b/a Emerson and Melanie Landscaping)
3364 Calimero Drive)
Columbus, Ohio 43224)

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

DEFENDANT.)

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through counsel, the Attorney General of Ohio, Michael DeWine, 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. 1345.07.
2. The actions of Defendant, Thomas Huber Jr., have occurred 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., and the Home Solicitation Sales Act (“HSSA”), R.C. 1345.21 et seq.
3. Jurisdiction over the subject matter lies with this Court pursuant to the CSPA, R.C. 1345.04.

4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), as Defendants conducted activity in this county that gives rise to the claims for relief.

DEFENDANT

5. Defendant, Thomas Huber Jr. (“Huber”), is a resident of the State of Ohio and Franklin County.
6. Defendant does business using the name “Emerson and Melanie Landscaping.”
7. Defendant is a “supplier” as defined in R.C. 1345.01(C) because Defendant was, at all times relevant hereto, engaged in the business of effecting consumer transactions either directly or indirectly by soliciting and selling goods or services to consumers 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).
8. Huber is a “seller” engaged in “home solicitation sales,” as those terms are defined in the HSSA, R.C. 1345.21(A) and (C), because Defendant engaged in personal solicitations at the residences of consumers, including solicitations in response to or following invitations by consumers.

STATEMENT OF FACTS

9. In and prior to 2013, Defendant Huber operated a tree care and landscaping business as a solo proprietorship. Defendant did business using various unregistered business names, including “Huber’s Tree Care,” “Capital Tree Service,” and “Tree Doctor.”

10. On November 21, 2013 the Attorney General's office brought a civil lawsuit against Defendant Huber alleging that Defendant had violated the CSPA and HSSA in connection with his business. Franklin County Case No. 13-CV-12762.
11. On June 17, 2014, the Court in Case No. 13-CV-12762, entered a default judgment against Defendant Huber. The judgment contained an injunction enjoining Defendant Huber from further violating the CSPA and HSSA, and enjoined Defendant Huber from engaging in consumer transactions in Ohio until he had paid all penalties and restitution awarded by the judgment.
12. Defendant Huber has not paid all penalties and restitution awarded by the judgment in Case No. 13-CV-12762.
13. Starting in or around 2016, Defendant Huber again began soliciting consumers for tree care services.
14. Defendant Huber approached consumers at the consumers' homes and solicited the consumers for tree care and landscaping services. Sometimes the in-person solicitation at the consumer's home was in response to the consumer calling Defendant Huber.
15. Defendant Huber did business using the unregistered business name "Emerson and Melanie Landscaping."
16. Defendant Huber agreed to perform tree care and landscaping services for the consumers. The services agreed to often included extended maintenance and ongoing tree care services, for up to a year after the initial service.
17. Defendant Huber sometimes provided brief contracts for the consumers to sign. In other instances, the services were agreed to orally.

18. Defendant Huber did not provide the 3-day right-to-cancel notice required by the HSSA, R.C. 1345.21 et seq.
19. For some consumers, Defendant Huber did not provide any services.
20. For some consumers, Defendant Huber provided some services but did not provide the agreed to maintenance and ongoing care services.
21. For some consumers, Defendant Huber provided shoddy or unworkmanlike services.
22. The Attorney General's Office has received consumer complaints regarding Defendant Huber and his practices. To date, the Attorney General has received 6 complaints since 2016 against Defendant Huber, for an aggregate disputed amount of approximately \$2,400.

PLAINTIFF'S FIRST CAUSE OF ACTION: VIOLATIONS OF THE CSPA

COUNT I- FAILURE TO DELIVER

23. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-22 of this Complaint.
24. Defendant Huber committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule, O.A.C. 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 eight weeks to elapse without making shipment or delivery of the goods and services ordered, making a full refund, advising the consumer 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.

25. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant Huber committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT II - SHODDY AND SUBSTANDARD WORK

26. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-25 of this Complaint.
27. Defendant Huber committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by performing shoddy and substandard work and then failing to correct such work.
28. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.02. Defendant Huber committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PLAINTIFF'S SECOND CAUSE OF ACTION: VIOLATIONS OF THE HSSA

COUNT I – FAILURE TO PROVIDE PROPER NOTICE OF THREE DAY RIGHT OF RECISSION.

29. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs 1-28 of this Complaint.
30. Defendant Huber violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by failing to give the proper notice to consumers of their right to cancel their contract by a specific date.

31. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant 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:

1. **ISSUE A DECLARATORY JUDGMENT**, pursuant to R.C. 1345.07(A)(1) declaring that each act or practice described above violates the CSPA, R.C. 1345.01 et seq. in the manner set forth therein.
2. **ISSUE A PERMANENT INJUNCTION**, pursuant to R.C. 1345.07(A)(2), enjoining Defendant Thomas Huber, his agents, servants, representatives, salespeople, employees, successors or assigns and all persons acting in concert or participating with him, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains, from further violation of the CSPA, R.C. 1345.01 et seq. and from engaging in further consumer transactions until all consumer restitution awarded under this action has been paid.
3. **ISSUE A PERMANENT INJUNCTION**, pursuant to R.C. 1345.07(A)(2), enjoining Defendant Thomas Huber Jr., individually or in concert with other persons, directly or indirectly, from engaging in consumer transactions as a supplier in the State of Ohio.
4. **ORDER** Defendant Thomas Huber Jr., pursuant to R.C. 1345.07(B) and R.C. 1345.07(B), to reimburse all consumers damaged by his unfair and deceptive acts or practices, including non-economic damages.

5. **ASSESS, FINE, AND IMPOSE** upon Thomas Huber Jr., a civil penalty of Twenty Five Thousand Dollars (\$25,000) for each appropriate violation described herein pursuant to R.C. 1345.07(D).
6. **ORDER**, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, that Defendant Thomas Huber Jr. maintain in his possession and control for a period of five (5) years all business records relating to Emerson and Melanie Landscaping and any other landscaping or tree care business he operates, and to permit the Ohio Attorney General, or his representative, upon reasonable twenty-four (24) hour notice to inspect and/or copy any and all such records.
7. **GRANT** the Ohio Attorney General its costs in bringing this action.
8. **ORDER** Defendant Thomas Huber Jr. to pay all court costs.
9. **GRANT** such other relief as the Court deems to be just, equitable, and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General

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