

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

STATE OF OHIO, *ex rel.*  
MICHAEL DEWINE  
ATTORNEY GENERAL OF OHIO  
30 East Broad Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215

Plaintiff,

v.

NICHOLAS LAMB, Individually  
609 FRANSHERE COURT WEST  
COLUMBUS, OHIO 43228

Defendant.

CASE NO.

11 CVH 07 8393

JUDGE

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

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2011 JUL -8 AM 10:00  
CLERK OF COURT

**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 the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq.
2. The actions of Defendant Nicholas "Nicky" Lamb, hereinafter described, have occurred in Franklin County and the State of Ohio, and as set forth below are in violation of the Consumer Sales Practices Act, R.C. 1345.01 et seq. and its Substantive Rules.
3. Jurisdiction over the subject matter lies with this Court pursuant to the Consumer Sales Practices Act ("CSPA").
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Franklin County, Ohio.

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**DEFENDANT**

5. Defendant Nicholas Lamb (“Defendant”) is a natural person and whose residence at all times relevant herein was in Franklin County, at 609 Franshire Court West Columbus, Ohio 43228.
6. Defendant Lamb, individually, or in concert, or through agents, is engaged in the business of supplying, promoting, and selling consumer goods, whereby Defendant, individually, has allowed, directed, ratified, or otherwise caused the unlawful acts and practices enumerated in this Complaint to be conducted either by Defendant or by other agents of Defendant.
7. Defendant is a “supplier” as that term is defined in R.C. 1345.01(C) as Defendant has been, at all times relevant herein, engaged in the business of effecting consumer transactions by advertising, marketing and selling PlayStation 3 systems (“PS3”), PS3 games, Boost Mobile phones and phone cards via [www.craigslist.com](http://www.craigslist.com) to individuals in Franklin County and other counties in the State of Ohio and to consumers nationwide for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

**STATEMENT OF FACTS**

8. At all times relevant to this action, Defendant has advertised, offered for sale, and sold PS3 systems, PS3 games, Boost Mobile phones and phone cards via [www.craigslist.com](http://www.craigslist.com) to consumers nationwide and within the State of Ohio, including Franklin County.
9. Defendant solicits individual consumers to enter into consumer transactions, specifically for PS3 systems, PS3 games, Boost Mobile phones and phone cards.

10. Defendant, through his own and/or other individuals' "user ids" or other login names or IDs, offers for sale and sells PS3 systems, PS3 games, Boost Mobile phones and phone cards.
11. Defendant advertises or promises prompt delivery of the PS3 systems, PS3 games, Boost Mobile phones, and phone cards, accepts payments from consumers for the goods via Western Union and MoneyGram, fails to deliver the goods, and fails to make timely full refund payments to consumers.
12. Defendant enters into consumer transactions for the sale of the PS3 systems, PS3 games, Boost Mobile phones and phone cards knowing of the inability of consumers to receive a substantial benefit from the subject of the consumer transactions.
13. Defendant sells consumer goods, the PS3 systems, PS3 games, Boost Mobile phones, and phone cards without taking reasonable steps to acquire the goods.
14. Defendant advertises and sells the PS3 systems, PS3 games, Boost Mobile phones and phone cards sale without having ownership or possession of the goods and fails to disclose that the goods were not in the Defendant's possession.
15. The PS3's are usually priced from \$180 - \$250 and will include multiple games.
16. Defendant will say in his advertisement that the PS3 system was bought for his son but he didn't like it or that it was a gift from his girlfriend but she broke up with him so that's why he's selling the item.
17. Sometimes Defendant will mention that he's an employee with UPS so shipping the unit will not be an issue.

18. Defendant will also state that he used to live in whatever state he is posting the advertisement in so that potential buyers will know why his advertisement is listed there when he's an Ohio resident.
19. More often than not Defendant will include his phone number and encourage potential buyers to call or text him if interested.
20. Defendant's advertisement and sale of the Boost Mobile phones and phone cards are usually kept local.
21. Defendant will usually sell a phone card that had a certain amount of dollars on it or will sell the actual mobile phone.

**PLAINTIFF'S CAUSE OF ACTION:**

**VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT**

**COUNT I**

**FAILURE TO DELIVER**

22. Plaintiff incorporates, by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-One (1-21) of this Complaint.
23. Defendant has 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), in that he has accepted substantial down payments from consumers, promised a delivery date for PS3 systems, PS3 games, and Boost Mobile phones, failed to deliver the goods contracted and paid for, and failed to return down payments to the consumers.
24. 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).

**COUNT II**

**UNFAIR AND DECEPTIVE ACTS AND PRACTICES**

25. Plaintiff incorporates, by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-One (1-21) of this Complaint.
26. Defendant has committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(B)(4) by representing that the PS3 systems, PS3 games, and Boost Mobile phones are available to the consumer for a reason that does not exist.
27. Defendant has committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(B)(8), by representing that a specific price advantage exists, when it does not.
28. 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).

**COUNT III**

**SELLING WITHOUT TAKING REASONABLE STEPS TO ACQUIRE**

29. Plaintiff incorporates, by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-One (1-21) of this Complaint.
30. Defendant has committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by selling consumer goods or services without taking reasonable steps to acquire the goods or services.
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).

**COUNT IV**

**ADVERTISING AND SELLING WITHOUT POSSESSION AND FAILURE TO DISCLOSE THE LACK OF POSSESSION**

32. Plaintiff incorporates, by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-One (1-21) of this Complaint.
33. Defendant has committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by advertising and selling goods or services for sale without having ownership or possession of the goods and services and failing to disclose that the goods or services are not in the Defendant's possession.
34. 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).

**COUNT V**

**UNCONSCIONABLE ACTS OR PRACTICES**

35. Plaintiff incorporates, by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-One (1-21) of this Complaint.
36. Defendant has committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(3), by entering into consumer transactions when Defendant knew of the inability of the consumer to receive a substantial benefit from the subject of the consumer transaction
37. 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 prays that this Court:

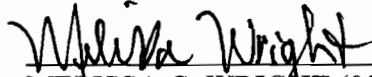
- A. ISSUE A DECLARATORY JUDGMENT declaring that each act or practice described in Paragraphs 8-21 of Plaintiff's Complaint violates the Ohio Consumer Sales Practices Act in the manner set forth in this Complaint.
- B. ISSUE PERMANENT INJUNCTIVE RELIEF, pursuant to R.C. 1345.07, enjoining Defendant under his own name or any other name, and all persons acting on behalf of Defendant directly or indirectly, through any corporate or private device, partnership or association, jointly and severally, from engaging in the acts or practices of which Plaintiff complains and from further violating the Consumer Sales Practices Act, R.C. 1345.01 et seq.
- C. ISSUE PERMANENT INJUNCTIVE RELIEF enjoining Defendant from engaging in any consumer transactions in the State of Ohio until the final ordered resolution of this matter is satisfied in its entirety.
- D. ORDER Defendant, pursuant to R.C. 1345.07(B), to pay restitution to all consumers who suffered injury due to Defendant's unlawful acts or practices.
- E. ASSESS, FINE AND IMPOSE upon Defendant 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).
- F. ORDER Defendant, 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 Defendant's advertisement and marketing of all items advertised for sale and/or sold on craigslist ([www.craigslist.com](http://www.craigslist.com)).

- G. ORDER Defendant to cooperate with the Ohio Attorney General or his representative by providing the Ohio Attorney General, upon his request and upon reasonable twenty-four (24) hour notice, copies of any and all records necessary to establish compliance with the law and any court order granted herein, or to permit the Ohio Attorney General or his representative to inspect and/or copy any and all such records.
- H. GRANT the Ohio Attorney General his costs in bringing this action.
- I. ORDER Defendant to pay all court costs.
- J. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DEWINE  
Attorney General



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