

FILED
LUCAS COUNTY

2013 OCT 29 P 2:09

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

BERNIE GUILLET
CLERK OF COURTS

STATE OF OHIO ex rel.)
Ohio Attorney General Michael DeWine)
30 E. Broad Street, 14th Floor)
Columbus, Ohio 43215)
Plaintiff,)

CASE NO. **CI0201305042**

JUDGE *Assigned to Judge Franks*

v.)

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

MARCARIUS, MAX & DANIEL, LLC)
d/b/a Stanton Optical)
3801 S. Congress Avenue)
Palm Springs, FL 33461-4140)

and)

VISION VALUE, LLC)
d/b/a Stanton Optical)
4800 N. Federal Highway, Ste. 201B)
Boca Raton, FL 33431-3408)

Defendants.)

JURISDICTION AND VENUE

1. Michael DeWine, Attorney General of Ohio, 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. ("CSPA").
2. The actions of Defendants, hereinafter described, have occurred in the State of Ohio, Lucas County and as set forth below are in violation of the CSPA and the Ohio Administrative 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 some of the transactions complained of herein, and out of which this action arose, occurred in Lucas County.
5. The Ohio Attorney General is the proper party to commence these proceedings under the authority provided him under R.C. 1345.07.

DEFENDANTS

6. Defendant Marcarius, Max & Daniel, LLC is a Florida limited liability company that is registered with the Ohio Secretary of State as a for-profit foreign limited liability company under Registration No. 1868990.
7. Defendant Marcarius, Max & Daniel, LLC also does business as Stanton Optical.
8. Defendant Marcarius, Max & Daniel, LLC has Stanton Optical store locations in nine states, including Ohio.
9. Defendant Marcarius, Max & Daniel, LLC operates a Stanton Optical store in Toledo, Ohio.
10. Defendant Vision Value, LLC is a Florida limited liability company that is registered with the Ohio Secretary of State as a for-profit foreign limited liability company under Registration No. 1665826.
11. Defendant Vision Value, LLC also does business as Stanton Optical.
12. Defendant Vision Value, LLC has Stanton Optical store locations in nine states, including Ohio.
13. Defendant Vision Value, LLC owns and operates Stanton Optical stores in Beavercreek, Ohio and Miamisburg, Ohio.

14. Defendant Marcarius, Max & Daniel, LLC is a “supplier” as that term is defined in R.C. 1345.01(C) as Defendant was, at all times relevant herein, engaged in the business of effecting consumer transactions by offering optical goods and related services to consumers for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
15. Defendant Vision Value, LLC is a “supplier” as that term is defined in R.C. 1345.01(C) as Defendant was, at all times relevant herein, engaged in the business of effecting consumer transactions by offering optical goods and related services to consumers for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

STATEMENT OF FACTS

16. Defendant Marcarius, Max & Daniel, LLC and Defendant Vision Value, LLC, (hereinafter “Defendants”) are and have been at all relevant times engaged in the business of soliciting, advertising, offering for sale, or selling optical goods and related services, including eye exams, eyeglass frames, lenses, contact lenses, and related accessories, in the State of Ohio, including in Lucas County.
17. According to their website, www.stantonoptical.com, the Defendants describe themselves as “a \$200 million optical empire with over 100 locations nationwide.”
18. Defendants advertise their products and services on their website, including the following promotions listed under Special Offers: “2 FOR \$69 PLUS FREE EXAM,” “BUY 1 GET 1 FREE PLUS FREE EXAM,” “2 FOR \$78 PLUS FREE EXAM,” “FREE FRAME’S PROGRAM \$29,” “2 COMPLETE PAIRS OF LINED BIFOCALS FOR \$99,” and “2 COMPLETE PAIRS OF NO LINED BIFOCAL \$189.”

19. Defendants' website instructs the consumer to click on one of the listed deals and print out the related coupons.
20. Defendants do not clearly and conspicuously disclose exclusions, reservations, limitations, modifications or conditions in close proximity to the advertised offers or on their coupons, except for a listing of states in which the offer is valid.
21. Defendants make statements of exclusions, reservations, limitations, modifications or conditions which appear only in a footnote on their website page.
22. Defendants have advertised their products and services by means of print advertisements in *The Toledo Blade* newspaper, the *JB Dollar Stretcher*, and on local billboards in Toledo, Ohio.
23. Defendants advertised the following promotions in print advertisements: "2 PAIR FOR \$69 + A FREE EYE EXAM," "BUY ONE, GET ONE FREE PLUS A FREE EXAM," "1 PAIR FOR \$39," "TWO COMPLETE PAIRS OF EYEGLASSES FOR \$20.00," and "50% OFF LENSES."
24. Defendants did not clearly and conspicuously disclose exclusions, reservations, limitations, modifications or conditions in close proximity to the printed advertisements stating the offers.
25. Defendants have made statements of exclusions, reservations, limitations, modifications, or conditions which appear only in footnotes to the printed advertisements.
26. Defendants continuously advertised a "free eye exam" as part of its promotions.
27. Defendants used continuous or repeated "free" offers, which ultimately made such offers illusory and deceptive.

28. Defendants provided shoddy or unworkmanlike services to consumers by repeatedly making eyeglasses or contact lenses incorrectly and not to order.
29. Defendants represented that the subject of the consumer transaction was of a particular standard, quality, grade, style, prescription, or model, when it was not.
30. Defendants dispensed eyeglasses to consumers with incorrect prescription lenses.
31. Consumers who had orders made incorrectly were told to come back to the store days or weeks later to pick up their corrected orders. Many of these consumers had to make multiple trips back to the store because their orders were continually made incorrectly. Despite assurances that their orders would be ready, some consumers never received their corrected orders from the Defendants.
32. Defendants have provided consumers with inconsistent and inadequate information regarding goods ordered, alterations, delivery dates, and refunds.
33. Defendants have failed to return consumers' calls, failed to answer consumers' phone messages, placed consumers on hold for lengthy periods of time, and failed to follow-up with consumers as to when their orders will be ready.
34. Defendants failed to conspicuously post in their establishment a sign stating their refund policy.
35. Defendants printed their refund policy on store receipts, which consumers could view only after making payments and completing their transactions.
36. Instead of issuing refunds, Defendants have offered some consumers store credits, coupons, or free eye exams.
37. Defendants failed to deliver goods or services within the promised timeframe and failed to make full refunds.

38. Defendants often promised consumers that eyeglasses would be ready within days of purchase; however, it often took weeks or months for consumers' eyeglasses to be ready. Some consumers waited more than eight weeks for their orders to be ready.
39. After ordering eyeglasses based on the Defendants' "buy one get one free" promotion, some consumers never received their second pair of eyeglasses.
40. After paying in full, some consumers have only received a portion of their orders.
41. Defendants accepted payment from consumers for the purchase of eyeglasses or contact lenses, failed to deliver the goods for which consumers paid, and failed to refund the payments.

PLAINTIFF'S CAUSES OF ACTION

COUNT I **MATERIAL EXCLUSIONS AND LIMITATIONS RULE**

42. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Forty-One (1-41) of this Complaint.
43. Defendants have committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Ohio Adm. Code 109:4-3-02(A) and (C) by making offers in written or printed advertising or promotional literature without stating clearly and conspicuously in close proximity to the words stating the offer any material exclusions, reservations, limitations, modifications, or conditions.

COUNT II **UNFAIR OR DECEPTIVE ACTS OR PRACTICES**

44. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Forty-Three (1-43) of this Complaint.

45. Defendants have committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) by performing shoddy and unworkmanlike services in connection with consumer transactions.
46. Defendants have committed unfair or deceptive acts or practices in violation of R.C. 1345.02(A) and R.C. 1345.02(B)(2) by representing that the subject of a consumer transaction was of a particular standard, quality, grade, style, prescription, or model, when it was not.
47. 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).

COUNT III
UNCONSCIONABLE ACTS OR PRACTICES

48. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Forty-Seven (1-47) of this Complaint.
49. Defendants have committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(6) by making misleading statements of opinion on which consumers to relied upon to their detriment.
50. 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).

COUNT IV
UNCONSCIONABLE ACTS OR PRACTICES

51. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Fifty (1-50) of this Complaint.

52. Defendants have committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(7) by not conspicuously posting their refund policy and then failing to make a refund.

53. 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).

COUNT V
FAILURE TO DELIVER RULE

54. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Fifty-Three (1-53) of this Complaint.

55. Defendants have committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the Ohio Adm. Code 109:4-3-09(A)(1) and 109:4-3-09(A)(2), by promising prompt delivery of items and not taking reasonable action to insure it, and by accepting payments from consumers for items and then permitting eight weeks to elapse without making delivery of the goods or services ordered or making a full refund.

COUNT VI
USE OF THE WORD "FREE" RULE

56. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Fifty-Five (1-55) of this Complaint.

57. Defendants have committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and Ohio Adm. Code 109:4-3-04(C), by not disclosing all terms, conditions, and obligations clearly and conspicuously at the outset of the offer.

58. Defendants have committed deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and Ohio Adm. Code 109:4-3-04(H), by making continuous or repeated “free” offers in such a way as to become illusory and deceptive.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:


1. DECLARE that each act or practice complained of herein violates the CSPA and the Ohio Administrative Code in the manner set forth in the Complaint.
2. ISSUE PERMANENT INJUNCTIVE RELIEF, pursuant to R.C. 1345.07, enjoining Defendant Marcarius, Max & Daniel, LLC, Defendant Vision Value, LLC and their agents, servants, representatives, salespeople, employees, independent contractors, successors and assigns and all persons acting in concert or participating with them, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq.
3. GRANT A JUDGMENT against Defendants, to be owed jointly and severally by Defendants, in an amount sufficient to reimburse all consumers found to have been damaged by the Defendants’ unfair, deceptive and unconscionable acts and practices.
4. ASSESS, FINE, and IMPOSE upon EACH of the Defendants a civil penalty in the amount of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein pursuant to R.C. 1345.07(D).
5. ORDER Defendants, as a means of insuring compliance with this Court’s Order and with the consumer protection laws of Ohio, to maintain in their 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 Defendants' advertisement, solicitation and sale of optical goods and services in Ohio.

6. ORDER Defendants to cooperate with the Ohio Attorney General or his representative by providing the 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.
7. GRANT the Ohio Attorney General his costs in bringing this action.
8. ORDER Defendants to pay all court costs, to be owed jointly and severally by the Defendants.
9. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Attorney General of Ohio



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