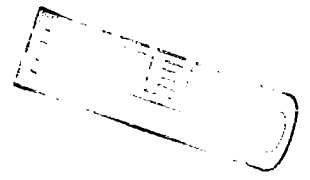


IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO



2013 OCT 26 A 9:03

13CV 182069

STATE OF OHIO, *ex rel.*)
MICHAEL DEWINE)
ATTORNEY GENERAL OF OHIO)
30 East Broad Street, 14th Floor)
Columbus, Ohio 43215-3428)

CASE NO.

JUDGE

JUDGE CHRISTOPHER R. ROTHGERY

Plaintiff,

DARREN C. SIZEMORE, Individually)
And Doing Business As:)
Sizemore Investments, LLC.)
46262 State Route 303)
Wellington, Ohio 44090)

**COMPLAINT, REQUEST
FOR DECLARATORY AND
INJUNCTIVE RELIEF,
DAMAGES AND CIVIL
PENALTIES**

Defendant.

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through Attorney General Michael DeWine, having reasonable cause to believe that violations of Ohio's consumer laws occurred, brings this action in the public interest pursuant to the authority vested in him by the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq.
2. Plaintiff, State of Ohio, by and through Attorney General Michael DeWine, having reasonable cause to believe that violations of the Telephone Consumer Protection Act ("TCPA," 47 United States Code ("U.S.C.") 227 and 47 Code of Federal Regulations ("C.F.R.") 64.1200 have occurred, brings this action in the public interest pursuant to the authority vested in him by R.C. 109.87(D)(1). The Ohio Attorney General is authorized to bring an action for violations of the federal TCPA in an appropriate court of common pleas in the state against a seller or telemarketer who violates any provision of federal acts or rules as defined by R.C. 109.87(A)(1).

3. This Court has jurisdiction over the subject matter of this action pursuant to the CSPA, R.C. 1345.04 and R.C. 109.87(D)(1).
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1-3) in that Defendant Sizemore resides in and operates his principal place of business in Lorain County and conducted activity which gave rise to the claims for relief in Lorain County.
5. The actions of the Defendant Sizemore, as set forth below, are in violation of the CSPA, R.C. 1345.01 et seq., its Substantive Rules, Ohio Adm. Code (“O.A.C.”) 109:4-3-01 et seq., the TCPA, 47 U.S.C. 227, 47 C.F.R. 64.1200 and R.C. 109.87(B)(1).

STATEMENTS OF FACT

6. Defendant Darren C. Sizemore is an individual and resident of the State of Ohio. He resides in Wellington, Ohio which is situated in Lorain County, Ohio. He conducted business from his residence using the fictitious name, Sizemore Investments, LLC., which is registered with the Ohio Secretary of State’s office but not affiliated with Defendant Darren C. Sizemore.
7. Defendant is a “supplier” as he was, at all times relevant herein, engaged in the business of effecting “consumer transactions” by offering awards by chance or soliciting the sale of goods or services to “consumers” in the State of Ohio and nationwide, for purposes that were primarily personal, family or household in nature, as those terms are defined in the CSPA, R.C. 1345.01(A), (C) and (D).
8. Defendant is a “seller” as that term is defined in C.F.R. 64.1200(f)(9) as Defendant is a person or entity on whose behalf telephone calls or messages were initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, which were transmitted to persons.

9. Defendant is a “telemarketer” as that term is defined in C.F.R. 64.1200(f)(11) as Defendant is a person or entity that initiated telephone calls or messages for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, which were transmitted to persons.
10. Defendant engaged in “telephone solicitations” as that term is defined in 47 U.S.C. 227(a)(4) and C.F.R. 64.1200(f)(14) as Defendant initiated telephone calls for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, which were transmitted to persons.
11. Defendant used an automatic telephone dialing system to send text messages to telephone numbers assigned to cellular services, absent an emergency purpose or prior express consent from called parties.
12. Absent an emergency purpose or prior express consent from called parties, Defendant used an automatic telephone dialing system to send text messages to residential subscribers of cellular telephone numbers listed on the Federal Trade Commission’s National Do Not Call Registry.
13. Absent an emergency purpose or prior express consent from called parties, Defendant used an automatic telephone dialing system to send text messages to cellular telephone numbers where the called parties were charged for the calls. At times, multiple text messages were sent to the same cellular telephone number.
14. Absent an emergency purpose or prior express consent from called parties, Defendant used an automatic telephone dialing system to send text messages to cellular telephone numbers which directed the called party to visit websites operated by the Defendant and other third parties to claim prizes won or to obtain free or discounted goods or services.

15. Defendant made misleading or false representations in text messages which included, but were not limited to:

- a) "Last month you entered to win an iPad3, you've won! To claim your iPad 3 simply visit [http://chronine.com/\[called party's telephone number deleted\]](http://chronine.com/[called_party's_telephone_number_deleted]) now. Claim within the next hour or forfeit."
- b) "Your number has been randomly selected to receive a free gift from Appl. To pick your free gift visit <http://apple.ca.celloffer.net> & enter 3920 now."
- c) "<subject: free msg> facebook has teamed up with some premium retailers to offer our users some great gifts! Your account has been randomly selected to receive free rewards. Your free reward is – 1 iPhone 4S. To claim your reward please visit <http://iPhone4S.chronine.com> and follow the instructions on the screen. MSG SENT 9:53:59pm – you have until midnight tonight to claim your reward."
- d) From "facebook@rewardfacebook.com Subject: FREEMSG: Facebook has teamed up with some premium retailers to offer our users some great gifts! Your account has been randomly selected to receive free rewards. Your free reward is – 1 iPad2 ^\$GB. To claim your gift you must visit <http://iPad2.chronine.com> and follow the instructions on the screen. ****IMPORTANT**** In order to receive your iPad2 you must enter this Pin/Confirmation – 3129. The Pin/Confirmation is on page 3 after validating your email and address. MSG SENT 6:28:07 pm."

16. Absent an emergency purpose or prior express consent from called parties, Defendant used an automatic telephone dialing system to send text messages to cellular telephone numbers before the hour of 8:00 a.m. or after 9:00 p.m. local time at the called parties' locations.

PLAINTIFF'S CAUSES OF ACTION

COUNT ONE:
VIOLATIONS OF THE CSPA
UNSOLICITED TEXT MESSAGING

17. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of the Complaint.
18. Defendant violated the CSPA, R.C. 1345.02(A) and 1345.03(A) by using an automatic telephone dialing system to send text messages to telephone numbers assigned to cellular services, absent an emergency purpose or prior express consent from called parties.

COUNT TWO:
VIOLATIONS OF THE CSPA
SOLICITATIONS BEFORE 8 A.M. OR AFTER 9 P.M.

19. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of the Complaint.
20. Defendant violated the CSPA, R.C. 1345.02(A) and 1345.03(A) by engaging in patterns or practices of initiating telephone solicitations, including text messages, to residential telephone subscribers before the hour of 8:00 a.m. or after 9:00 p.m. local time at the called parties' locations.

COUNT THREE:
VIOLATIONS OF THE CSPA
SOLICITATIONS TO TELEPHONE NUMBERS
ON NATIONAL DO NOT CALL REGISTRY

21. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of the Complaint.
22. Defendant violated the CSPA, R.C. 1345.02(A) and 1345.03(A) by engaging in patterns or practices of initiating telephone solicitations, including text messages, to residential telephone subscribers whose telephone numbers were listed on the National Do Not Call Registry.

23. The acts or practices of the Defendant as described herein have been previously determined by an Ohio court to violate R.C. 1345.01 et seq. Defendant committed said violations after the decision was available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT FOUR:
VIOLATIONS OF THE CSPA
MISREPRESENTATION OF AFFILIATION

24. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of the Complaint.

25. Defendant violated the CSPA, R.C. 1345.02(B)(9) by representing that he had affiliations that he did not have.

26. The acts or practices of the Defendant as described herein have been previously determined by an Ohio court to violate R.C. 1345.01 et seq. Defendant committed said violations after the decision was available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT FIVE:
VIOLATIONS OF THE CSPA
MISREPRESENTATION OF REASON FOR OFFER

27. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of the Complaint.

28. Defendant violated the CSPA, R.C. 1345.02(B)(4) by representing that the subject of the consumer transactions was available to consumers for a reason that did not exist.

29. The acts or practices of the Defendant as described herein have been previously determined by an Ohio court to violate R.C. 1345.01 et seq. Defendant committed said violations after the decision was available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT SIX:
VIOLATIONS OF THE CSPA
PRIZE RULE VIOLATIONS

30. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of the Complaint.
31. Defendant violated the CSPA, R.C. 1345.02(A) and O.A.C. 109:4-3-06(D)(1) by notifying consumers or prospective consumers that they won a prize or would receive something of value, when such was not the case.
32. Defendant violated the CSPA, R.C. 1345.02(A) and O.A.C. 109:4-3-06(D)(3) by notifying consumers or prospective consumers that they won a prize or would receive something of value without clearly and conspicuously disclosing any and all conditions necessary to win the prize or receive the thing of value.

COUNT SEVEN:
VIOLATIONS OF THE TCPA AND R.C. 109.87
UNSOLICITED TEXT MESSAGING

33. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of the Complaint.
34. Defendant violated R.C. 109.87(B)(1) by initiating telephone calls by sending text messages to telephone numbers assigned to cellular services using an automatic telephone dialing system, absent an emergency purpose or prior express consent from called parties.
35. Defendant's conduct is prohibited by the TCPA, 47 U.S.C. 227(b)(1)(A)(iii) and 47 C.F.R. 64.1200(a)(1)(iii).

COUNT EIGHT:
VIOLATIONS OF THE TCPA AND R.C. 109.87
SOLICITATIONS BEFORE 8 A.M. OR AFTER 9 P.M.

36. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of the Complaint.
37. Defendant violated R.C. 109.87(B)(1) by initiating telephone solicitations, including text messages, to residential telephone subscribers before the hour of 8:00 a.m. or after 9:00 p.m. local time at the called parties' locations.
38. Defendant's conduct is prohibited by the TCPA, 47 U.S.C. 227 and 47 C.F.R. 64.1200(c)(1).

COUNT NINE:
VIOLATIONS OF THE TCPA AND R.C. 109.87
SOLICITATIONS TO TELEPHONE NUMBERS
ON NATIONAL DO NOT CALL REGISTRY

39. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Sixteen (1-16) of the Complaint.
40. Defendant violated R.C. 109.87(B)(1) by initiating telephone solicitations, including text messages, to residential telephone subscribers whose telephone numbers were listed on the National Do Not Call Registry.
41. Defendant's conduct is prohibited by the TCPA, 47 U.S.C. 227 and 47 C.F.R. 64.1200(c)(2).

PRAYER FOR RELIEF

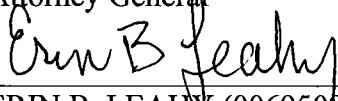
WHEREFORE, Plaintiff requests that this Court:

- A. ISSUE an order declaring that the Defendant's acts and practices, as described herein, violated the CSPA, R.C. 1345.01 et seq., its Substantive Rules, O.A.C. 109:4-3-01 et seq., and R.C. 109.87.

- B. ISSUE a permanent injunction enjoining Defendant, his agents, servants, employees, successors or assigns, and all persons acting in concert and participation with him, directly or indirectly, through any corporate device, partnership, or other association, under these or any other names, from engaging in acts and practices which violate the CSPA, R.C. 1345.01 et seq., its Substantive Rules, O.A.C. 109:4-3-01 et seq., and R.C. 109.87.
- C. AWARD DAMAGES to each person who received a telephone solicitation from the Defendant in violation of R.C. 109.87(B)(1) as described herein, pursuant to 47 U.S.C. 227(g)(1), or three times that amount if the Court finds that Defendant's actions were committed willfully and knowingly. Plaintiff may recover these damages on behalf of consumers pursuant to R.C. 109.87(D)(1).
- D. ASSESS, FINE and IMPOSE upon Defendant civil penalties as provided by R.C. 1345.07 for violations of the CSPA described herein.
- E. GRANT Plaintiff its costs incurred in bringing this action.
- F. GRANT such other relief as the court deems to be just, equitable and appropriate.
- G. ORDER Defendant to pay all court costs associated with this matter.

Respectfully submitted,

MICHAEL DEWINE
Attorney General


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