

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO ex rel. ATTORNEY
GENERAL MICHAEL DeWINE
441 Vine Street, 1600 Carew Tower
Cincinnati, Ohio 45202

Case No. A 1 2 0 4 1 7 7

Plaintiff,

v.

THE BEACH AT MASON LIMITED
PARTNERSHIP
2590 Waterpark Drive
Mason, Ohio 45040

Judge

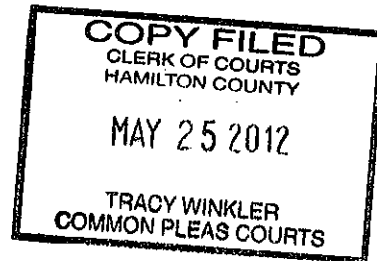
and

WATER PARKS, INC.
c/o Jonas J. Gruenberg
600 IBM Building
Dayton, Ohio 45402

COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF,
RESTITUTION AND CIVIL
PENALTIES

and

CABANA EQUITIES, INC.
c/o Jonas J. Gruenberg
600 IBM Building
Dayton, Ohio 45402



Defendants.

JURISDICTION AND PARTIES

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 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 Consumer Sales Practices Act, R.C. 1345.01 et seq.

2. Defendant The Beach at Mason Limited Partnership had a principal place of business at 2590 Waterpark Drive, Mason, Ohio 45040.
3. Defendant Water Parks, Inc. is a general partner of Defendant The Beach at Mason Limited Partnership.
4. Jonas J. Gruenberg, 600 IBM Building, Dayton, Ohio 45402 is the registered agent for Defendant Water Parks, Inc.
5. Defendant Water Parks, Inc. had a principal place of business at 2590 Waterpark Drive, Mason, Ohio 45040.
6. Defendant Cabana Equities, Inc. is a general partner of Defendant The Beach at Mason Limited Partnership.
7. Jonas J. Gruenberg, 600 IBM Building, Dayton, Ohio 45402 is the registered agent for Defendant Cabana Equities, Inc.
8. Defendant Cabana Equities, Inc. had a principal place of business at 2590 Waterpark Drive, Mason, Ohio 45040.
9. The actions of The Beach at Mason Limited Partnership, Water Parks, Inc. and Cabana Equities, Inc. (collectively "Defendants"), hereinafter described, have occurred in multiple counties in the State of Ohio, including Hamilton County, and as set forth below, are in violation of R.C. 1345.01 et. seq., and the Failure to Deliver Rule, O.A.C. 109:4-3-09(A).
10. Defendants are "suppliers," as that term is defined in R.C. 1345.01(C), as they engaged in the business of effecting "consumer transactions" by owning and operating a water amusement park and by soliciting consumers to attend their amusement park and to

purchase season passes to the amusement park for a fee, within the meaning of R.C.

1345.01(A).

11. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C.

1345.04 of the Consumer Sales Practices Act.

12. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) and (6).

STATEMENTS OF FACTS

13. Defendants owned and operated the Beach Waterpark in Mason, Ohio.

14. Defendants have accepted payments from consumers for the purchase of single day passes, season passes, and various pass upgrades, including parking and concession discounts for the 2012 season.

15. Defendants sold approximately 8,800 passes to the Beach Waterpark for the 2012 season.

16. On information and belief, the Defendants decided to close the Beach Waterpark on March 7, 2012.

17. On March 9, 2012, the Defendants announced to the public that they would not be opening the Beach Waterpark for the 2012 season.

18. On or around March 9, 2012, the Defendants also made it known that consumers will not be given refunds for purchases made for the 2012 season.

19. Defendants have failed to deliver purchased goods and services and have refused to refund consumers' deposits or payments.

20. Defendants have offered various discounts to other local attractions to consumers, but the discounts are neither similar goods or services of equal or greater value nor substantially similar to the goods or services ordered.

COUNT I - FAILURE TO DELIVER

21. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in preceding paragraphs.
22. Defendants have committed unfair or deceptive acts and practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09(A) and the Consumer Sales Practices Act, R.C. 1345.02(A) by accepting money from consumers for goods or services and then permitting eight weeks to elapse without making shipment or delivery of the goods or 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 if the consumer agrees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. **DECLARE** that each act or practice complained of herein violates the Consumer Sales Practices Act in the manner set forth in the complaint.
- B. **ISSUE** a Permanent Injunction enjoining the Defendants, their agents, servants, employees, successors or assigns, and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership, or other association, under these or any other names, from engaging in the acts and practices of which Plaintiff complains.
- C. **ORDER** Defendants to reimburse all consumers found to have been damaged by Defendants' unlawful actions.
- D. **ASSESS, FINE and IMPOSE** upon Defendants a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation of the Consumer Sales Practices Act described herein, pursuant to R.C. 1345.07(D).

- E. GRANT Plaintiff its costs incurred in bringing this action.
- F. ORDER Defendants to pay all court costs associated with this matter.
- G. GRANT such other relief as the court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Attorney General



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