STATE OF INDIANA)
) SS:
COUNTY OF MARSHALL)

IN THE MARSHALL SUPERIOR/CIRCUIT COURT

CAUSE NO. 50C01-0903-PL-11

STATE OF INDIANA,

Plaintiff,

v.

RALPH HOWARD,
individually and doing business as
BUCKEYE AVIATION, INC.

Defendant.

FILED
IN CLERK'S OFFICE
MAR 10 2009
JULIE A. FOX
CLERK OF CIRCUIT / SUPERIOR
MARSHALL COUNTY, STATE OF INDIANA

COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES

The Plaintiff, State of Indiana, by Attorney General Gregory F. Zoeller and Deputy Attorney General Thomas Irons, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. At all times relevant to this complaint, Ralph Howard individually and doing business as Buckeye Aviation, Inc. (hereinafter "Defendant"), was an individual engaged in the solicitation and/or sale of aviation related products to consumers from his principal place of business in Marshall County located at or about 16095 Linden Road, Argos, In 46501. Upon information and belief, Defendant currently resides in Marshall County at 16179 Linden Road, Argos, IN 46501.

FACTS

3. The Indiana Secretary of State's Office has no record of any filings by or on behalf of any entity named Buckeye Aviation, Inc.

4. Since at least February 2007, Defendant has engaged in the solicitation and/or sale of powered parachutes and other aviation products to consumers via the Internet, among other means.

5. At all times relevant to this Complaint, Defendant retained and utilized the business domain URL of www.buckeyeaviation.com, to make various representations and solicitations and through which consumers they are encouraged to phone the Defendant to discuss pricing and delivery terms.

6. Over the past several years, the Office of the Indiana Attorney General has received a number of consumer complaints against Defendant.

7. In at least one applicable instance, Defendant accepted a payment-in-full for a powered parachute from a consumer but then subsequently failed to deliver the powered parachute in a timely manner or provide the consumer with a refund.

8. Plaintiff will amend its Complaint to add additional consumers and/or name additional defendants as appropriate.

9. When, in this Complaint, reference is made to any act of Defendant, such allegations shall be deemed to mean that the principals, agents, representatives, or employees of Defendant did or authorized such acts to be done while actively engaged in the management, direction, or control of the affairs of Defendant and while acting within the scope of their duties, employment, or agency.

Allegations regarding Consumer Lyle Haverland's Transaction.

10. On or around May 22, 2007 Defendant solicited and entered into a sale of a powered parachute with consumer Lyle Haverland ("Haverland"), wherein Defendant represented he would

sell the parachute to Haverland for a total price of Nine Thousand Four Hundred and Ninety Five Dollars ($9,495.00).

11. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), Defendant is presumed to have represented at the time of the sale he would deliver all parts for the parachute within a reasonable period of time. Defendant expressly represented to Haverland he would have his order sent by June 13, 2007.

12. After extended delays, on or about October 1, 2007, Defendant sent Haverland a box of nuts and bolts, one seat, three flat tires, and a few pieces of pipe. There was no motor, no parachute, and no instructions on how to assemble the aircraft.

13. On or about October 20, 2007, Haverland, incurring the additional costs of brokerage fees and freight in the amount of Four Hundred Thirty Dollars and Forty-Eight Cents ($430.48), returned Defendant's box and demanded a refund.

14. As of the date of filing this Complaint, Defendant has not delivered the complete parachute or provided a refund to Haverland despite repeated assurances from Defendant.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

15. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 14 above.

16. The transaction referred to in paragraph 10-14 above is a "consumer transaction" as defined by Ind. Code § 24-5-0.5-2(a)(1).

17. The Defendant is a "supplier" as defined by Ind. Code § 24-5-0.5-2(a)(3).

18. By representing to consumers that Defendant would sell items, specifically the powered parachute referred to above, when the Defendant knew or reasonably should have known the consumers would not receive the items as represented, or any other such represented characteristic or benefit, including but not limited to the consumer transaction referenced in

paragraphs 10 to 14 above, the Defendant violated the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

19. By representing to consumers that the subject of a consumer transaction was of a particular standard, quality, grade, style or model, when the Defendant knew or reasonably should have known that it was not, including but not limited to the consumer transaction referenced in paragraphs 10 to 14 above, the Defendant violated the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(2).

20. By representing to consumers that the Defendant would be able to deliver items to consumers, specifically including the powered parachute referred to above, and/or otherwise complete the subject of the consumer transaction within a stated or reasonable period of time, when the Defendant knew or reasonably should have known he could not, specifically including but not limited to the consumer transaction referenced in paragraphs 10 to 14 above, the Defendant violated the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

21. By representing to consumers that they would be able to purchase the subject of a consumer transaction as advertised by the supplier, if the supplier does not intend to sell it, specifically including but not limited to the consumer transaction referenced in paragraphs 10 to 14 above, the Defendant violated the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

22. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 21 above.

23. The misrepresentations and deceptive acts set forth in paragraphs 10 to 14 above, were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Ralph Howard, individually and doing business as Buckeye Aviation, Inc., and issue a permanent injunction, pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendant from the following:

a. representing, expressly or by implication, that the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should have known it does not have;

b. representing, expressly or by implication, that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and Defendant knows or reasonably should know that it is not;

c. representing, expressly or by implication, that the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he cannot; and

d. representing, expressly or by implication, that consumers will be able to purchase the subject of a consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

a. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers to the Defendant, and all associated transfer fees, in an amount to be determined at trial;

b. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

c. civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars ($5,000.00) per violation, payable to the State of Indiana;

d. civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars ($500.00) per violation, payable to the State of Indiana; and

e. all other just and proper relief.

Respectfully submitted,

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By: _____
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