STATE OF INDIANA)
) SS:
COUNTY OF KNOX)

IN THE KNOX CIRCUIT COURT

CAUSE NO. 42C01-0708-PL-453

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
DARLENE LIGHTFOOT,)
)
Defendant.)

FILED
AUG 09 2007
Brenda L Hall
CLERK KNOX CIRCUIT COURT

COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, 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, the Defendant, Darlene Lightfoot, was an individual engaged in the sale of items via the Internet from her principal place of business in Knox County located at 14 Terrell Street, #B, Bicknell, Indiana.

FACTS

3. Since at least February 16, 2007, the Defendant has engaged in the sale of items, including laptop computers, to consumers via the Internet.

A. Allegations regarding Consumer Voundria N. Wood's Transaction.

4. On or around February 16, 2007, the Defendant entered into a contract with Voundria N. Woods ("Woods"), who is on active duty in the military, wherein the Defendant represented she would sell two (2) laptop computers to Woods for a total price of One Thousand Two Hundred and Twenty-One Dollars ($1,221.00), which Woods paid.

5. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale she would deliver the laptop computers within a reasonable period of time.

6. As of today, the Defendant has yet to either deliver the laptop computers, or to provide a refund to Woods.

B. Allegations regarding Consumer Catherine A. Myers' Transaction.

7. On or around February 22, 2007, the Defendant entered into a contract with Catherine A. Myers ("Myers") of New Iberia, Louisiana, wherein the Defendant represented she would sell a laptop computer to Myers for a total price of One Thousand and Sixty-Five Dollars ($1,065.00), which Myers paid.

8. On March 7, 2007, the Defendant sent Myers an E-mail message stating, "if you do not receive [the laptop] by Friday [March 9, 2007] let me know and I will check with [the post office] again and if we can not find the package I will refund your money on the condition if you do receive it after that you will repay for it or return it."

9. On March 8, 2007, the Defendant sent Myers an E-mail message stating, "if you do not have [the laptop] by [March 16th] I will issue you a full refund including your shipping cost."

10. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale she would deliver the laptop computer within a reasonable period of time.

11. As of today, the Defendant has yet to either deliver the laptop computer, or to provide a refund to Myers.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

12. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 11 above.

13. The transactions referred to in paragraphs 4 and 7 are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

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

15. By representing to consumers, including Woods and Myers, that the Defendant would sell items to consumers, when the Defendant knew or reasonably should have known the consumers would not receive the items as represented, or any other such benefit, as referenced in paragraphs 4 and 7, the Defendant violated the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

16. By representing to consumers, including Woods and Myers, that the items, including laptop computers, would be supplied in greater quantity than the Defendant intended or reasonably expected, as referenced in paragraphs 4 and 7, the Defendant violated the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(4).

17. By representing to consumers, including Myers, that the Defendant would issue a refund, when the representation was false and the Defendant knew or should reasonably have known that the representation was false, as referenced in paragraphs 8 and 9, the Defendant violated the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(8).

18. By representing to consumers, including Woods and Myers, the Defendant would be able to deliver the items or issue refunds, 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 she could not, as referenced in paragraphs 5, 8, 9, and 10, the Defendant violated the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

19. By representing to consumers, including Woods and Myers, that the consumers would be able to purchase the items as advertised by the Defendant, when the Defendant did not intend to sell the items, as referenced in paragraphs 4 and 7, 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

20. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 19 above.

21. The misrepresentations and deceptive acts set forth in paragraphs 4, 5, 7, 8, 9, and 10, 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, Darlene Lightfoot, 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, 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, the subject of a consumer transaction will be supplied to the public in greater quality than the Defendant intends or reasonably expects;

c. representing, expressly or by implication, the subject of a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the Defendant knows or should reasonably know that the representation is false;

d. representing, expressly or by implication, 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 she cannot; and

e. 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. cancellation of all of the Defendant's unlawful contracts with consumers, including but not limited to, Voundria N. Woods and Catherine A. Myers, pursuant to Ind. Code § 24-5-0.5-4(d);

b. 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, including but not limited to Voundria N. Woods and Catherine A. Myers, in an amount to be determined at trial;

c. 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;

d. 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;

e. 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

f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By: _____
Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Office of the Attorney General
Consumer Protection Division
302 West Washington St., IGCS 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3300