STATE OF INDIANA) IN THE LAKE SUPERIOR COURT
) SS:
COUNTY OF LAKE) CAUSE NO. 45C010609PL00425

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THOMAS A. ELLIOT
CLERK LAKE CIRCUIT COURT

STATE OF INDIANA,

Plaintiff,

v.

CARL GASAWAY, ALPHA DISTRIBUTING, INC., INDIANA MANAGEMENT, INC., and GREAT LAKES FINANCE, INC.

Defendants.

COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Matt Light, petitions the Court pursuant to the Indiana Promotional Gifts and Contests Act, Ind. Code § 24-8-1-1 *et seq.,* and Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*, for injunctive relief, restitution, civil penalties, investigative costs, 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) and Ind. Code § 24-8-6-3.

2. The Defendant, Carl Gasaway (hereinafter "Gasaway"), at all times relevant to this complaint was an individual engaged in business as a commercial seller of vacuum cleaners and other products at 2091 West 141st Avenue, Crown Point, Indiana 46307; 13114 Delaware

Street, Crown Point, Indiana 46307; 8004 Tyler Street, Merrillville, Indiana 46410; 8010 Tyler Street, Merrillville, Indiana 46410; 7870 Broadway, Merrillville, Indiana 46410; 207 Hoosier Drive, Suite 6, Angola, Indiana, 46073; or 411 Airport North Office Park, Fort Wayne, Indiana 46825.

3. The Defendant, Alpha Distributing, Inc. (hereinafter "Alpha"), at all times relevant to this complaint was a domestic corporation engaged in business as a retail seller of vacuum cleaners with business locations at 411 Airport North Office Park, Fort Wayne, Indiana 46825; 7870 Broadway, Merrillville, Indiana 46410; and 207 Hoosier Drive, Suite 6, Angola, Indiana, 46073.

4. The Defendant, Indiana Management, Inc. (hereinafter "Indiana Management"), at all times relevant to this complaint was a domestic corporation engaged in business as a commercial distributor of vacuum cleaners and at 8010 Tyler Street, Merrillville, Indiana 46410.

5. The Defendant, Great Lakes Finance, Inc., (hereinafter "Great Lakes") was a domestic corporation engaged in business as a commercial financing company at 8010 Tyler Street, Merrillville, Indiana 46410, until it was administratively dissolved by the Secretary of State on September 1, 2005.

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

FACTS

A. General Allegations

7. Gasaway is a shareholder and principal officer of Defendants Alpha, Indiana Management, and Great Lakes, and is active in the management and operations of each corporation. As an owner and principal officer, Gasaway has controlled and directed the affairs of Defendants Alpha, Indiana Management, and Great Lakes, including the Defendant corporations' marketing practices, and has used the Defendant corporations for the purpose of misleading and deceiving Indiana consumers as set forth herein.

8. Indiana Management is the state-wide distributor of Tri Star vacuum cleaners.

9. Gasaway has created or directed other persons to create numerous corporations and/or unincorporated businesses throughout Indiana to act as local distributors of Tri Star vacuums.

10. Indiana Management has entered into independent distribution contracts with local distributors and pursuant to these contracts Indiana Management supplies vacuums to the local distributors for final distribution to consumers. Also pursuant to the contracts, Indiana Management provides training services and technical support to each of the local distributors.

11. Gasaway has caused, encouraged, or permitted the local distributors to stay in business for short periods of time and subsequently re-organize under new names, in new locations, or under different ownership or management.

12. The deliberate pattern of behavior referenced in paragraph eleven (11) has been committed by Gasaway in order to permit Gasaway and the local distributors to avoid honoring warranties and other obligations concerning vacuum cleaners they sell.

13. Gasaway, through Indiana Management, has purchased large quantities of bingo and poker promotion cards and has sold or otherwise transferred the cards to local distributors throughout Indiana, including Alpha.

14. Gasaway, through Indiana Management, sold or otherwise transferred prize promotion materials to local distributors, including Alpha, for use in generating consumer interest although he knew or reasonably should have known that the local distributors frequently fail to honor the prize notifications sent to Indiana residents.

15. Pursuant to Ind. Code § 23-1-26-3, a shareholder may become personally liable by reason of the shareholder's own acts or conduct.

16. Gasaway has ignored, controlled, and manipulated the corporate form of Alpha, Indiana Management, and Great Lakes in an attempt to mislead and deceive consumers transacting with the corporations.

17. Piercing the corporate veil to hold Gasaway personally responsible for the actions of the corporations he controls is necessary to prevent misuse of the corporate form and to prevent injustice to consumers.

B. Allegations Regarding Ana Gaidar's Transaction.

18. At least since February 25, 2006, Alpha has sold vacuum cleaners to Indiana residents and has assisted consumers in obtaining financing from third parties for the purchase of vacuum cleaners.

19. On or about February 25, 2006, Alpha entered into a "Retail Installment Agreement" with Ana T. Gaidar (hereinafter "Gaidar") of Merrillville, Indiana, for the purchase

of a Tri-Star vacuum cleaner. A true and correct copy of Alpha's contract with Gaidar is attached and incorporated by reference as Exhibit "A".

20. The contract referred to in paragraph nineteen (19) provided that Gaidar would make thirty-six (36) payments of Seventy-Five Dollars and Forty-Eight Cents ($75.48), for a total contract price of Two Thousand Seven Hundred Seventeen Dollars and Twenty-Eight Cents ($2,717.28), for the purchase of the vacuum cleaner.

21. The contract referred to in paragraph nineteen (19) provided that Gaidar could cancel the transaction "at any time prior to midnight of the third business day after the date of this transaction."

22. Alpha's representative stated to Gaidar that she could cancel the contract referred to in paragraph nineteen (19) at any time within thirty (30) days of the date of the transaction.

23. Alpha arranged financing through Beneficial Credit Services, Inc., for Gaidar to allow her to purchase the vacuum cleaner under the contract referred to in paragraph nineteen (19).

24. On or about March 15, 2006, Gaidar sent a "Notice of Cancellation" to the Alpha via certified mail to cancel the contract referred to in paragraph nineteen (19).

25. Alpha refused to cancel Gaidar's purchase agreement.

26. Gaidar shipped the Tri-Star vacuum cleaner referred to in paragraph nineteen (19) to Alpha on or about May 20, 2006.

27. On or about May 23, 2006, Gasaway, on behalf of Alpha, signed for and accepted return of the vacuum cleaner referenced in paragraph nineteen (19).

28. Ind. Code § 24-4.5-5-103(2) and 750 Ind. Admin. Code § 1-1-1 provide that a seller who accepts return of collateral waives any claim to the unpaid balance if the balance does not exceed Three Thousand Three Hundred Dollars ($3,300.00).

29. At the time Alpha accepted return of the vacuum cleaner, the unpaid balance under the contract referenced in paragraph nineteen (19) was less than Three Thousand Three Hundred Dollars ($3,300.00).

30. At some date subsequent to March 15, 2006, Beneficial Credit Services, Inc. assigned its rights under the contract referenced in paragraph nineteen (19) to Alpha.

31. At some date subsequent to March 15, 2006, Alpha assigned its rights under the contract referred to paragraph nineteen (19) to Great Lakes.

32. Great Lakes retained attorney Robert L. Meinzer, Jr., to attempt to collect an alleged debt arising out of the contract referred to in paragraph nineteen (19).

33. Robert L. Meinzer, Jr., on behalf of Great Lakes, wrote to Gaidar on June 14, 2006, and on June 27, 2006, representing that Gaidar was indebted to Great Lakes in the amount of Two Thousand Three Dollars and Forty Cents ($2,003.40) and further representing that Great Lakes would commence litigation if the alleged debt was not paid.

C. Allegations Regarding Dale Gierhart's Transaction.

34. On or about March 1, 2006, Dale R. Gierhart (hereinafter "Gierhart") of Auburn, Indiana, received a promotional mailing from Alpha.

35. The promotional mailing referred to paragraph thirty-four (34) contained a scratch-off "bingo" card stating that the recipient had won one (1) of the five (5) listed prizes.

36. After receiving the promotional mailing from Alpha, Gierhart scratched the bingo card to reveal his winning code number. Gierhart telephoned Alpha and scheduled a time for Alpha to come to Gierhart's home to deliver the prize and to demonstrate one of Alpha's products.

37. On or about March 1, 2006, Josh Lewis and Shawn Gritten, representatives of Alpha, came to Gierhart's home to demonstrate and attempt to sell a vacuum. Before beginning the sales demonstration, Alpha's representatives failed to inform Gierhart of the prize he had won.

38. After the in-home demonstration referred to in paragraph thirty-seven (37), the representatives of Alpha stated to Gierhart that they did not have Gierhart's prize. Alpha's representatives told Gierhart that the prize would be mailed to him.

39. Pursuant to Ind. Code § 24-5-0.5-3(10), Alpha is presumed to have represented at the time of a consumer transaction that delivery would take place within a reasonable amount of time.

40. Alpha failed to mail a prize to Gierhart.

COUNT I: VIOLATIONS OF THE PROMOTIONAL GIFTS AND CONTESTS ACT

41. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through forty (40) above.

42. By directly or indirectly sending written notices to Indiana residents offering property or a chance to obtain property based on a representation that the person has been awarded or may have been awarded a prize, Gasaway, Indiana Management, and Alpha conducted a "promotion" as defined by Ind. Code § 24-8-2-5.

43. By directly or indirectly conducting a "promotion" as defined by Ind. Code § 24-8-2-5, Gasaway, Indiana Management, and Alpha acted as "promoters" as defined by Ind. Code § 24-8-2-4.

44. By directly or indirectly failing to inform Gierhart of the prize he would receive before beginning a demonstration, seminar, or sales presentation, Gasaway, Indiana Management, and Alpha violated the Promotional Gifts and Contests Act, Ind. Code § 24-8-4-1.

45. By directly or indirectly failing to offer to Gierhart the option of choosing one (1) of the following – (1) a prize of equal or greater value; (2) the verified retail value of the prize in cash or by a valid check; or (3) a voucher, certificate, or other evidence of obligation stating that the prize will be shipped within thirty (30) days at no cost – Gasaway, Indiana Management, and Alpha violated the Promotional Gifts and Contests Act, Ind. Code § 24-8-5-1.

COUNT II: VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

46. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through forty-five (45) above.

47. The transactions referred to in paragraphs nineteen (19) and thirty-four (34) and the proposed transaction referred to in paragraph thirty-seven (37) are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

48. The Defendants are "suppliers" as defined by Indiana Code § 24-5-0.5-2(a)(3).

49. The violations of the Indiana Promotional Gifts and Contests Act referred to in paragraphs forty-four (44) and forty-five (45) constitute deceptive acts pursuant to Ind. Code § 24-8-6-3.

50. By representing to Gaidar that she could cancel the contract referred to in paragraph nineteen (19) at any time within thirty (30) days of the contract's execution, Alpha misrepresented the characteristics of the consumer transaction in violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

51. By representing to Gierhart that it would mail a prize to Gierhart, when it knew or reasonably should have known that no prize would be mailed, Alpha misrepresented the characteristics of the consumer transaction in violation of Ind. Code § 24-5-0.5-3(a)(1).

52. By representing to Gierhart that it would deliver the prize or otherwise complete the subject matter of the consumer transaction within a stated period of time or within a reasonable period of time, as set forth in paragraphs thirty-eight (38) and thirty-nine (39) above, when Alpha knew or reasonably should have known it would not be so completed, Alpha violated Ind. Code § 24-5-0.5-3(a)(10).

53. By representing to Gaidar, through an attorney, that Gaidar remained liable for the account balance, as set forth in paragraph thirty-three (33) above, when it knew or reasonably should have known that Gaidar was no longer liable under the contract pursuant to Ind. Code § 24-4.5-5-103(2) and the regulations promulgated thereunder, Great Lakes misrepresented the characteristics and benefits of the consumer transaction in violation of Ind. Code § 24-5-0.5-3(a)(1) and misrepresented the obligations of the consumer transaction in violation of Ind. Code § 24-5-0.5-3(a)(8).

COUNT III: KNOWING AND INTENTIONAL VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

54. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through fifty-three (53) above.

55. The misrepresentations and deceptive acts set forth 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 Defendants, enjoining the Defendants from the following:

a. in the course of conducting promotions in Indiana, failing to include all of the items required by Ind. Code §§ 24-8-2-3 through 24-8-3-8 in the promotional notice sent to consumers;

b. in the course of conducting promotions in Indiana, failing to inform the consumer of the prize, if any, the person will receive before beginning a demonstration, seminar, or sales presentation;

c. in the course of conducting promotions in Indiana, failing to offer to the consumer a substitute prize pursuant to the terms of Ind. Code § 24-8-5-1(a) if the prize the consumer won is not available;

d. representing expressly or by implication that a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the Defendants know or should reasonably know it does not have;

e. representing that 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 supplier knows or should reasonably know that the representation is false; and

f. representing expressly or by implication that the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time or a reasonable period of time, when the supplier knows or should reasonably know it cannot be so completed.

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

a. Piercing the corporate veil of Alpha, Indiana Management, and Great Lakes to hold Defendant, Carl Gasaway, personally liable for the acts of the corporations;

b. cancellation of the Defendants' unlawful contracts with consumers, including but not limited to Ana Gaidar, pursuant to Ind. Code § 24-5-0.5-4(d);

c. costs pursuant to Indiana 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. restitution on behalf of Dale R. Gierhart in an amount equal to or greater than the prize he won in Alpha's promotion;

e. on Count III of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendants' 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;

f. on Count III of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendants' 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

g. all other just and proper relief.

Respectfully submitted,

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