

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

Wilfred Muiche
6558 Buckner street
Canal Winchester, OH 43110

Plaintiff,

v.

Morris Furniture Co. Inc.
c/o Edward M. Kress statutory agent
1 South Main Street Suite 1300
Dayton, OH 45402

Defendant.

Case No.:

Judge:

JURY DEMAND ENDORSED HEREIN

COMPLAINT FOR MONEY DAMAGES AND OTHER RELIEF

The following allegations are based upon Plaintiff Wilfrid Muiche’s (“Plaintiff”) personal knowledge, the investigation of counsel, and information and belief. Plaintiff, through counsel, alleges as follows:

I. INTRODUCTION/BACKGROUND

1. In October and November 2016, Morris Furniture Co. Inc. (“Morris” or “Defendant”) ran an advertising campaign that promised eligible customers free furniture if 69% of Ohio’s registered voters voted in the 2016 presidential election.
2. This special promotion was known as Morris’s “Vote for Free Furniture Promotion”.
3. Morris enticed Plaintiff to make qualifying purchases of thousands of dollars’ worth of furniture through its use of an aggressive advertising campaign.
4. The Vote for Free Furniture Promotions ran in mid-October through early November 2016.

5. Morris trained many of its salespeople to show customers historical averages of registered voter participation rates recorded by Ohio's Secretary of State to entice customers to purchase furniture as a part of the Vote for Free Furniture Promotion.
6. The 69% registered voter participation rate was chosen because Morris was celebrating its 69th Anniversary in 2016.
7. Some of the Vote for Free Furniture video advertising is still available online via Morris's YouTube Channel at <https://www.youtube.com/watch?v=ZMAue-Fo3TU>.
8. Attached as Exhibit A are other ads that were taken out and distributed by Morris in an effort to get customers to participate in the Vote for Free Furniture Promotion.
9. All of the advertisements explicitly referenced the 69% voter participation rate required to obtain free furniture.
10. On November 8, 2016 and according to the Ohio Secretary of State's office greater than 69% of Ohio's registered voters turned out for the November 8, 2016 Presidential Election. (*See Exhibit B*).
11. Despite the conditions being met for Morris's Vote for Free Furniture Promotion, Morris announced that participants in the Vote for Free Furniture Promotion would not receive free furniture because it believed based on its calculations that 69% of voters did not turn out.
12. Morris manufactured a reason not to honor its Vote for Free Furniture Promotion.
13. The real reason Morris did not honor the promotion is because it learned that the insurance policy it took out for this promotion would not cover the cost of the free furniture because the policy had different terms than those advertised by Morris.

14. To this day thousands of people have been tricked and deceived by Morris in relation to its Vote for Free Furniture Promotion, yet Morris has retained all of the ill-gotten profits it earned off of its false advertisements.

15. Morris never refunded Plaintiff for the purchases he made pursuant to Morris's Vote for Free Furniture Promotion.

II. JURISDICTION AND VENUE

16. The Court has jurisdiction over this action pursuant to R.C. 1345.04.

17. Defendant contracted to supply goods and services to Plaintiff at Defendant's place of business in Franklin County, Ohio.

18. Venue is proper in Franklin County, Ohio, pursuant to Civ. R. 3(B).

III. PARTIES

19. Plaintiff is an individual person currently residing in Franklin County, Ohio.

20. At all relevant times, Plaintiff was and is a person within the meaning of Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01(B).

21. At all relevant times, Plaintiff engaged in a consumer transaction with Defendant when he contracted for the purchase of goods and services for purposes that are primarily personal, family, or household, to wit: purchase and delivery of home furniture.

22. At all relevant times, Plaintiff was and is a consumer within the meaning of the CSPA, R.C. 1345.01(D).

23. Defendant Morris is an Ohio Corporation for Profit with its principal place of business located in Montgomery County in the city of Dayton, Ohio.

24. At all relevant times, Defendant was engaged directly or indirectly in the business of effecting consumer transactions by selling goods and services to persons in the State of Ohio that were primarily for personal, family, or household purposes.

25. At all relevant times, Defendant was and is a supplier within the meaning of the CSPA, R.C. 1345.01(C).

IV. FACTUAL ALLEGATIONS

26. Prior to Lt. Muiche's purchase of furniture at a Morris location he saw several advertisements regarding Morris's Vote for Free Furniture Promotion and also a store flyer with the 69% representation. (Exhibit A).

27. On November 5, 2016. Lt. Muiche visited a Morris Furniture Home store location at 3622 Dublin Granville Rd. Columbus, Ohio to look at furniture for his primary residence.

28. During the November 5, 2016 visit Lt. Muiche discussed the promotion with Morris sales people and also picked up a flyer (Exhibit A) regarding the Vote for Free Furniture Promotion.

29. The Morris salespeople explicitly represented to Lt. Muiche that if 69% of Ohio's registered voters turned out for the 2016 presidential election his purchase would be free.

30. The Morris salespeople went as far as to direct Lt. Muiche to historical registered voter turnout as reported by the Ohio Secretary of State (Ex B).

31. Following Lt. Muiche's conversations with Defendant and its agents, Lt. Muiche purchased furniture for his personal residence in the amount of \$12,619.21 including tax and delivery.

32. Attached as Exhibit C is a copy of Lt Muiche's furniture purchase contract.

33. Greater than sixty-nine percent (69%) of registered Ohio voters turned out to vote in the 2016 presidential election.

34. Defendant denied Lt. Muiche the free furniture he was owed because it stated that 69% of “eligible” voters needed to come out to vote in order to win the free furniture instead of the 69% of registered voters it had promised.

35. Morris never refunded Lt. Muiche the purchase of furniture he made pursuant to the Vote for Free Furniture Promotion.

36. As a result of their dealings with Defendant, Lt. Muiche was deprived of the free furniture or “rebate” he was owed for the purchased furniture and he suffered emotional distress, including frustration, anger, and stress related to his dealings with Defendant.

COUNT ONE – CSPA VIOLATIONS

37. Plaintiff incorporates all other paragraphs in this Complaint by reference as though fully written here.

38. Defendant was and is subject to Ohio’s Consumer Sales Practices Act, O.R.C. § 1345.01, *et seq.* (“CSPA”) at all times relevant to these transactions.

39. Defendant is and was a Supplier under the meaning of R.C. § 1345.01(C) at all times relevant to these transactions.

40. Plaintiff is and was a Consumer under the meaning of R.C. § 1345.01(D) at all times relevant to these transactions.

41. Plaintiff’s transaction with Defendant was and is a Consumer Transaction under the meaning of R.C. § 1345.01(A) at all times relevant to the transaction.

42. Defendant's failure in the sale or offering for sale of goods or services, to make any offer in written or printed advertising or promotional literature without stating clearly and conspicuously in close proximity to the words stating the offer any material exclusions, reservations, limitations, modifications, or conditions is a *per se* violation of the CSPA, Ohio Adm. Code 109:4-3-02(A)(1).
43. Defendant's failure to make its sale or offering of sale disclosure of terms easily legible to anyone reading the advertising or promotional literature and failure to make the disclosure sufficiently specific so as to leave no reasonable probability that the terms of the offer might be misunderstood is a *per se* violation of the CSPA, Ohio Adm. Code 109:4-3-02(A)(1).
44. Defendant's failure to state a minimum amount of furniture that must be purchased for the advertisement to apply in some of its advertisements made to Plaintiff is a *per se* violation of the CSPA, Ohio Adm. Code 109:4-3-02(A)(2)(g)
45. Defendant's offer made on the internet without stating clearly and conspicuously, in close proximity to the words stating the offer, any material exclusions, reservations, limitations, modifications, or conditions is a *per se* violation of the CSPA, at Ohio Adm. Code 109:4-3-02 (D).
46. Defendant's actions described in the Introduction, Factual Allegations, Counts One, Two, and the General Allegations of these Counts are unfair, deceptive, and unconscionable acts and practices in violation of Ohio's Consumer Sales Practices Act, R.C. § 1345.01, *et seq.* ("CSPA") including at R.C. § 1345.02 and R.C. 1345.03. Said practices include, but are not limited to:

- a. That the subject transaction has performance characteristics, or benefits that it does not have.
- b. That the subject of the consumer transaction is a particular standard, quality, grade, style, which it was not.
- c. That the consumer transaction has been supplied in accordance with a previous representation when it has not.
- d. The Defendant/supplier knowingly made a misleading statement of opinion on which the consumer was likely to rely to his or her detriment.
- e. Failure to provide a refund in a timely manner.

47. In connection with said transaction, Defendant committed acts and practices that have been determined by the courts of this state to violate R.C. §1345.02 or R.C. §1345.03. Said acts and practices were committed after such decisions were made available for public inspection under R.C. §1345.05(A)(3) and include, but are not limited to the following:

- a. Defendant's acts and practices of offering a gift, rebate, or award to consumers, without stating clearly and conspicuously in close proximity to the words of the offer any material exclusions, reservations, or limitations has been found to violate the CSPA at R.C. 1345.02(A) and OAC 19:4-3-02(A)(1) *State ex rel Celebrezze v Venture Out Resorts, Inc*, Nos. 87-C-210 & 43-14146 (CP, Holmes, 2-24-88). (PIF No. 10000632).
- b. Defendant's use of printed advertisements, fliers, and other printed promotional literature which failed to state material reservations, limitations, and other conditions of the offer precluded the Plaintiffs from receiving the bargained for benefit and such conduct had been found to violate the CSPA and the Ohio Adm. Code at 109:4-3-01(C)(5) and 109:4-3-02(A)(1). *Lewis v. DR Sawmill Sales, Inc.*, 10th Dist. Franklin No. 04AP-1096 (PIF No. 10002445).
- c. That the Defendant failed to include all material statements in the written contract. *Montgomery v. Automotive Warranty Corp.*, case No. 02 CVH 07-8386 (PIF No. 10001860).
- d. That Defendant made misleading statements or statements of opinion to Plaintiff at the time each Plaintiff signed the contract, which Defendant knew that Plaintiff would rely to his or her detriment. *Montgomery v. Marcum*, case No. 01 CVH 04-03650 (PIF No. 10002049).

48. As a result of Defendant's actions, Plaintiff suffered economic damages to the extent of the purchase price of his individual furniture purchase transactions and non-economic damages in an amount to be determined by the trier of fact up to \$5,000.
49. Plaintiff is entitled to three times the amount of his actual damages pursuant to R.C. § 1345.09(B) for Defendants violation of the O.A.C and Defendant's violations of the CSPA where such acts were committed after the availability of the above referenced Public Inspection File numbers.
50. Defendant committed each of the above violations of the CSPA knowingly such that Plaintiff is entitled to recover his attorney fees.
51. Defendant is liable to Plaintiff for non-economic damages in an amount not exceeding \$5,000 pursuant to R.C. 1345.09(A) and (B), attorney fees including pursuant to 1345.09(F), and the costs of this action.

COUNT TWO – BREACH OF CONTRACT

52. Plaintiff incorporates all other paragraphs in this Complaint by reference as though fully written here.
53. The agreement evidenced in Exhibit C constitutes a valid contract between Plaintiff and Defendant.
54. Plaintiff purchased his furniture pursuant to his contract and the representations and terms that were expressed by Defendant.
55. Defendant did not perform under the contract as required.

56. Specifically, Defendant failed to perform when it did not honor the incorporated terms of the contract requiring a rebate in the event 69% of Ohio's registered voters voted in the 2016 Presidential election.
57. Defendant breached by its conduct described in the factual allegations.
58. Defendant did not reimburse Plaintiff pursuant to the terms of the contracts when Ohio reported that greater than 69% of registered voters voted in the 2016 presidential election.
59. Defendant refused to provide the promised purchase price rebates to Plaintiff upon request.
60. Due to Defendant's breach of the contract, Plaintiff has been damaged to the extent of his purchase price listed in the contract (Exhibit C).
61. Due to Defendant's breach of the contract, Plaintiff has been damaged in an amount to be determined at trial plus interest and cost.

WHEREFORE, Plaintiff prays the Court grant them the following against Defendant:

- a. Under Count One, award Plaintiff actual economic damages in an amount to be determined by multiplying the price of each of his furniture purchase times three (3), plus non-economic damages up to \$5,000 to be determined by a jury, and reasonable attorney fees and costs related to bringing this action as outlined below:
 - i. Lieutenant Wilfred Muiche is entitled to actual economic damages in the amount of \$12,619.21 trebled equaling \$37,857.63 pursuant to R.C. §1345.09(B), plus up to \$5,000 in non-economic damages, plus costs and reasonable attorney fees pursuant to R.C. §1345.09(F)(2)

- b. Pursuant to Count Two, award Plaintiff damages based on Plaintiff's purchase price, plus any incidental and consequential damages in an amount to be determined at trial plus interest and costs;
- c. Award Plaintiff the maximum economic, non-economic, actual, emotional, general, other, and statutory damages sought under each Count;
- d. All other relief the Court deems fair and equitable.

Dated: June 1, 2018.

Respectfully Submitted,
DOUCET & ASSOCIATES, CO., L.P.A.

/s/ Timothy J. Cook
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JURY TRIAL DEMANDED

The Plaintiffs respectfully request a jury trial on all triable issues.

/s/ Timothy J. Cook
Timothy J. Cook (0093538)