

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

FILED
LORAIN COUNTY

2014 OCT 17 P 2:54

CLERK OF COMMON PLEAS
RON NABAKOWSKI

STATE OF OHIO, *ex rel.*
MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

DARREN C. SIZEMORE

Defendant.

CASE NO. 13 CV 182069

JUDGE CHRISTOPHER R. ROTHGERY

CONSENT JUDGMENT
ENTRY AND FINAL ORDER

ENTERED
18

This matter came to be heard upon the filing of a complaint on November 26, 2013 by the Plaintiff, State of Ohio, by and through Attorney General Michael DeWine ("Attorney General"), charging Defendant Darren C. Sizemore with violations of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., its Substantive Rules, Ohio Adm. Code ("O.A.C.") 109:4-3-01 et seq., the Telephone Consumer Protection Act ("TCPA,") 47 United States Code ("U.S.C.") 227 and 47 Code of Federal Regulations ("C.F.R.") 64.1200 and R.C. 109.87(B)(1).

The parties have reached an agreement in this case. This Consent Judgment Entry and Order is intended to resolve the claims against Defendant. By signing this Entry, Defendant submits to the personal jurisdiction of this Court, and consents to the Entry of this Consent Judgment pursuant to R.C. 1345.07 and R.C. 109.87(D). The Defendant also consents to the Findings of Facts, the Conclusions of Law, the imposition of this Order, and the rights of Attorney General to enforce it.

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ATTORNEY GENERAL OF OHIO

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CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

FINDINGS OF FACT

1. Defendant Darren C. Sizemore is an individual and resident of the State of Ohio. He resides in Wellington, Ohio which is situated in Lorain County, Ohio. He conducted business from his residence.
2. Defendant used an automatic telephone dialing system to send text messages to telephone numbers assigned to cellular services, absent an emergency purpose or prior express consent from called parties.
3. Absent an emergency purpose or prior express consent from called parties, Defendant used an automatic telephone dialing system to send text messages to residential subscribers of cellular telephone numbers listed on the Federal Trade Commission's National Do Not Call Registry.
4. Absent an emergency purpose or prior express consent from called parties, Defendant used an automatic telephone dialing system to send text messages to cellular telephone numbers where the called parties were charged for the calls. At times, multiple text messages were sent to the same cellular telephone number.
5. Absent an emergency purpose or prior express consent from called parties, Defendant used an automatic telephone dialing system to send text messages to cellular telephone numbers which directed the called party to visit websites operated by the Defendant and other third parties to claim prizes won or to obtain free or discounted goods or services.
6. Defendant made misleading or false representations in text messages which included, but were not limited to:
 - A.) "Last month you entered to win an iPad3, you've won! To claim your iPad 3 simply visit [http://chronine.com/\[called party's telephone number deleted\]](http://chronine.com/[called party's telephone number deleted]) now. Claim within the next hour or forfeit."

- B.) "Your number has been randomly selected to receive a free gift from Appl. To pick your free gift visit <http://apple.ca.celloffer.net> & enter 3920 now."
- C.) "<subject: free msg> facebook has teamed up with some premium retailers to offer our users some great gifts! Your account has been randomly selected to receive free rewards. Your free reward is – 1 iPhone 4S. To claim your reward please visit <http://iPhone4S.chronine.com> and follow the instructions on the screen. MSG SENT 9:53:59pm – you have until midnight tonight to claim your reward."
- D.) From "facebook@rewardfacebook.com Subject: FREEMSG: Facebook has teamed up with some premium retailers to offer our users some great gifts! Your account has been randomly selected to receive free rewards. Your free reward is – 1 iPad2 ^\$GB. To claim your gift you must visit <http://iPad2.chronine.com> and follow the instructions on the screen. ****IMPORTANT**** In order to receive your iPad2 you must enter this Pin/Confirmation – 3129. The Pin/Confirmation is on page 3 after validating your email and address. MSG SENT 6:28:07 pm."

7. Absent an emergency purpose or prior express consent from called parties, Defendant used an automatic telephone dialing system to send text messages to cellular telephone numbers before the hour of 8:00 a.m. or after 9:00 p.m. local time at the called parties' locations.

CONCLUSIONS OF LAW

8. Attorney General DeWine is the proper party to bring this action, in the public interest and on behalf of the State of Ohio, under the authority vested in him by the CSPA, R.C. 1345.01 et seq.
9. Attorney General DeWine is the proper party to bring this action in state court, in the public interest and on behalf of the State of Ohio, for violations of the federal TCPA under the authority vested in him by R.C. 109.87(D)(1). The Ohio Attorney General is

authorized to bring an action for violations of the federal TCPA in an appropriate court of common pleas in this state against a seller or telemarketer who violates any provision of federal acts or rules as defined by R.C. 109.87(A)(1).

10. This Court has jurisdiction over the subject matter of this action pursuant to the CSPA, R.C. 1345.04 and R.C. 109.87(D)(1).
11. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1-3) in that Defendant Sizemore resides in and operates his principal place of business in Lorain County and conducted activity which gave rise to the claims for relief in Lorain County.
12. Defendant is a "supplier" as he was, at all times relevant herein, engaged in the business of effecting "consumer transactions" by offering awards by chance or soliciting the sale of goods or services to "consumers" in the State of Ohio and nationwide, for purposes that were primarily personal, family or household in nature, as those terms are defined in the CSPA, R.C. 1345.01(A), (C) and (D).
13. Defendant is a "seller" as that term is defined in C.F.R. 64.1200(f)(9) as Defendant is a person or entity on whose behalf telephone calls or messages were initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, which were transmitted to persons.
14. Defendant is a "telemarketer" as that term is defined in C.F.R. 64.1200(f)(11) as Defendant is a person or entity that initiated telephone calls or messages for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, which were transmitted to persons.
15. Defendant engaged in "telephone solicitations" as that term is defined in 47 U.S.C. 227(a)(4) and C.F.R. 64.1200(f)(14) as Defendant initiated telephone calls, including text

messages, for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, which were transmitted to persons.

16. Defendant violated the CSPA, R.C. 1345.02(A) and 1345.03(A) by using an automatic telephone dialing system to send text messages to telephone numbers assigned to cellular services, absent an emergency purpose or prior express consent from called parties.
17. Defendant violated the CSPA, R.C. 1345.02(A) and 1345.03(A) by engaging in patterns or practices of initiating telephone solicitations, including text messages, to residential telephone subscribers before the hour of 8:00 a.m. or after 9:00 p.m. local time at the called parties' locations.
18. Defendant violated the CSPA, R.C. 1345.02(A) and 1345.03(A) by engaging in patterns or practices of initiating telephone solicitations, including text messages, to residential telephone subscribers whose telephone numbers were listed on the National Do Not Call Registry.
19. Defendant violated the CSPA, R.C. 1345.02(B)(9) by representing that he had affiliations that he did not have.
20. Defendant violated the CSPA, R.C. 1345.02(B)(4) by representing that the subject of the consumer transactions was available to consumers for a reason that did not exist.
21. Defendant violated the CSPA, R.C. 1345.02(A) and O.A.C. 109:4-3-06(D)(1) by notifying consumers or prospective consumers that they won a prize or would receive something of value, when such was not the case.
22. Defendant violated the CSPA, R.C. 1345.02(A) and Ohio Adm. Code 109:4-3-06(D)(3) by notifying consumers or prospective consumers that they won a prize or would receive something of value without clearly and conspicuously disclosing any and all conditions necessary to win the prize or receive the thing of value.

23. Defendant violated R.C. 109.87(B)(1) by initiating telephone calls, by sending text messages, to telephone numbers assigned to cellular services using an automatic telephone dialing system, absent an emergency purpose or prior express consent from called parties. The conduct is prohibited by the TCPA, 47 U.S.C. 227(b)(1)(A)(iii) and 47 C.F.R. 64.1200(a)(1)(iii).
24. Defendant violated R.C. 109.87(B)(1) by initiating telephone solicitations, including text messages, to residential telephone subscribers before the hour of 8:00 a.m. or after 9:00 p.m. local time at the called parties' locations. The conduct is prohibited by the TCPA, 47 U.S.C. 227 and 47 C.F.R. 64.1200(c)(1).
25. Defendant violated R.C. 109.87(B)(1) by initiating telephone solicitations, including text messages, to residential telephone subscribers whose telephone numbers were listed on the National Do Not Call Registry. The conduct is prohibited by the TCPA, 47 U.S.C. 227 and 47 C.F.R. 64.1200(c)(2).

ORDER

THEREFORE, it is ORDERED, ADJUDGED AND DECREED that:

26. The acts and practices as set forth above in the Conclusions of Law are hereby DECLARED to violate the CSPA, R.C. 1345.01 et seq., its Substantive Rules, O.A.C. 109:4-3-01 et seq., and R.C. 109.87(B)(1) in the manner described.
27. Defendant, doing business under any real or fictitious entity name(s), his agents, partners, representatives, salespersons, employees, successors, independent contractors and assigns and all persons acting in concert and participation with him, directly or indirectly, through any corporate device, partnership or association, in connection with any consumer transaction, are hereby PERMANENTLY ENJOINED from directly or indirectly:

- A.) Making or initiating, or procuring the transmission of, or assisting others in the making or initiating, or procuring the transmission of, unauthorized or unsolicited commercial electronic text messages to mobile telephones or other wireless devices;
 - B.) Disclosing, selling, renting, leasing, transferring, using or benefitting from customer information, including name, address, birth date, telephone number, email address, social security number, or other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account) that Defendant obtained prior to the entry of this Order in connection with the marketing or advertising of a good or service offering free gifts or prizes; and
 - C.) Engaging in acts or practices that violate the CSPA, R.C. 1345.01 et seq., its Substantive Rules, O.A.C. 109:4-3-01 et seq., the TCPA, 47 U.S.C. 227 and 47 C.F.R. 64.1200 and R.C. 109.87 including, but not limited to, the specific acts described in the Conclusions of Law;
28. The judgment amount of Twenty-Seven Thousand Four-Hundred Dollars (\$27,400) is entered in favor of the Plaintiff, Attorney General Michael DeWine as equitable monetary relief.
29. Pursuant to R.C. 109.87(D)(1), Defendant is hereby liable to pay consumer damages for violations of the TCPA in the amount of Two-Thousand Four Hundred Dollars (\$2,400.00) which will be distributed at the sole discretion of Attorney General DeWine's Consumer Protection Section to consumers who have filed consumer complaints regarding Defendant's conduct.

30. Pursuant to R.C. 1345.07(D), Defendant is hereby assessed a civil penalty in the amount of Twenty-Five Thousand Dollars (\$25,000) for violations of the CSPA, R.C. 1345.01 et seq. and its Substantive Rules, O.A.C. 109:4-3-01 et seq.
31. Defendant agrees to pay Seven-Thousand Four-Hundred Dollars (\$7,400) to the Attorney General. He shall pay Three-Thousand Seven-Hundred Dollars (\$3,700) upon his signing of this Order. The remaining Three-Thousand Seven-Hundred Dollars (\$3,700) shall be paid Forty-Five days from the date of his signing of this Order. Upon full payment of these amounts, the remainder of the judgment will be suspended, subject to the provisions of the subsections below. The payments described in this Order shall be made by the Defendant, via certified check or money order, mailed or delivered to the address listed below:

Office of the Attorney General
Consumer Protection Section
Attn: Compliance Unit
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

32. The Attorney General's agreement to the suspension of part of the monetary judgment is expressly premised upon the truthfulness, accuracy and completeness of the Defendant's sworn Financial Statement of Individual Defendant Darren Sizemore signed on September 23, 2014, including all attachments thereto.
33. Upon motion by the Attorney General, the suspension of a portion of the monetary judgment will be lifted and the full monetary judgment becomes immediately due if the Defendant fails to pay the unsuspended portion of the judgment, fails to comply with the injunctive provisions of this Order or if the Court finds the Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial disclosures identified above.

34. Defendant agrees that the Findings of Fact shall be taken as true, without further proof, in any subsequent civil proceeding by the Attorney General of Ohio to enforce his rights with respect to this Order or to payment of the monetary judgment, including but not limited to, a non-dischargeability complaint in any bankruptcy case.
35. Defendant shall not represent, directly or indirectly, that the Ohio Attorney General sanctioned, condoned, or approved any part or aspect of the Defendant's business operation.
36. As a means of ensuring compliance with this Court's Order, and with the consumer protection laws of Ohio, Defendant shall maintain in his possession and control, for a period of three (3) years, all business records relating to Defendant's business. Defendant shall permit the Ohio Attorney General or his designated representative, upon reasonable Forty-Eight (48) hour notice, to inspect and/or copy any and all records.
37. This Order resolves and terminates any and all claims asserted in this case by the Attorney General, except that this Court retains jurisdiction to enforce the provisions of this Order, including the injunctive provisions set forth above.
38. Defendant shall pay all court costs associated with this matter.

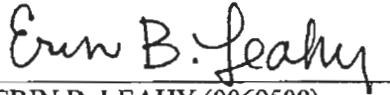
IT IS SO ORDERED THIS 17 DAY OF October, 2014.



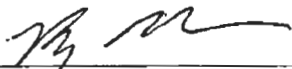
JUDGE CHRISTOPHER R. ROTHGERY

AGREED TO BY:

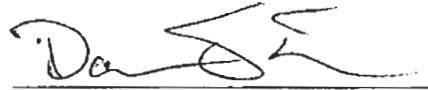
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