

THIS IS A FINAL APPEALABLE ORDER

FILED
LUCAS COUNTY

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

2015 MAY 14 A 10:30

STATE OF OHIO, ex rel.)
Ohio Attorney General Michael DeWine)
Plaintiff,)
v.)
Marcarius, Max & Daniel, LLC)
d/b/a Stanton Optical, et al.)
Defendants.)

Case No. CI0201305042
Judge Ruth Ann Franks

COMMON PLEAS COURT
BERNIE GUILTER
CLERK OF COURTS

**CONSENT JUDGMENT
AND AGREED FINAL ENTRY
AND ORDER**

PREAMBLE

Plaintiff, State of Ohio, acting by and through Attorney General Michael DeWine, has brought this action against Defendants Marcarius, Max & Daniel, LLC and Vision Value, LLC (collectively, "Defendants") pursuant to various provisions of Ohio's Consumer Sales Practices Act, R.C. 1345.01 *et seq* (the "CSPA"). The parties have consented to entry of this Consent Judgment and Agreed Final Entry and Order ("Consent Judgment") for the purposes of settlement only, without any admission by Defendants of wrongdoing or liability, and without trial of any issue of fact or law. By signing this Consent Judgment, Defendants submit to the personal jurisdiction of this Court, consent to the Court's finding of the following findings of fact and conclusions of law, consent to the imposition of this Consent Judgment pursuant to R.C. 1345.07(F), consent to the rights of Plaintiff to enforce this Consent Judgment, and waive any and all appeal rights they may have. By signing this Consent Judgment, Defendants expressly reserve all rights and defenses, and expressly deny that they have committed any

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violation of state law. Further, this Consent Judgment does not contain a finding that the Defendants violated the CSPA or its Substantive Rules.

FACTS ALLEGED BY THE ATTORNEY GENERAL

1. Defendant Marcarius, Max & Daniel, LLC is a Florida limited liability company that is registered with the Ohio Secretary of State as a for-profit foreign limited liability company under Registration No. 1868990.
2. Defendant Vision Value, LLC is a Florida limited liability company that is registered with the Ohio Secretary of State as a for-profit foreign limited liability company under Registration No. 1665826.
3. Defendants Marcarius, Max & Daniel, LLC and Vision Value, LLC both do business in Ohio as Stanton Optical.
4. Defendants have made statements of exclusions, reservations, limitations, modifications, or conditions which appear in footnotes to the printed advertisements and on their website.
5. Plaintiff has received complaints from consumers who have purchased products from Defendants alleging that Defendants:
 - a. made eyeglasses or contact lenses incorrectly and not to order;
 - b. consumers who had orders made incorrectly had to come back to the store to pick up their corrected orders and in some instances had to make multiple trips back to the store;
 - c. failed to conspicuously post in their establishment a sign stating their refund policy so consumers could view it before making a purchase;

- d. printed their refund policy on store receipts, which consumers could view only after making payments and completing their transactions; and
- e. at the time of their complaints, some consumers requested refunds but did not receive them.

CONCLUSIONS OF LAW

- 6. The Attorney General is the proper party to commence these proceedings under the authority of the CSPA, R.C. 1345.07, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of Ohio.
- 7. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Lucas County.
- 8. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
- 9. Provisions of the CSPA, R.C. 1345.01 et seq. govern the business practices of Defendants.
- 10. Defendants are “suppliers” as that term is defined in R.C. 1345.01(C) as Defendants were, at all times relevant herein, engaged in the business of effecting consumer transactions for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D), from individuals in the State of Ohio, including Lucas County.
- 11. A supplier commits unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the O.A.C. 109:4-3-02(A) and (C) by making 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. A statement of exclusions, reservations, limitations, modifications, or conditions which appears in a footnote to an advertisement to which reference is made in the advertisement by an asterisk or other symbol placed next to the offer being limited is not in close proximity to the words stating the offer.

12. A supplier commits unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) by performing services in a shoddy, substandard, and unworkmanlike manner.
13. A supplier commits unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(7) by not conspicuously posting their refund policy and then failing to make a refund.
14. A supplier commits unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and the O.A.C. 109:4-3-09(A)(2)(a) and 109:4-3-09(A)(2)(b), by accepting payments from consumers for items and then permitting eight weeks to elapse without making delivery of the goods or services ordered or making full refunds.

COMPLIANCE PROVISIONS

15. Defendants shall conspicuously post its refund and return policies in its Ohio stores. For purposes of this provision, "conspicuously" shall mean continuing to post a sign by the dispensing area, while posting a second sign by the main sales desk at each store. The sign shall be easily legible to anyone reading it.

16. Defendants shall comply with Ohio Administrative Code §109:4-3-02(A) with respect to exclusions and limitations in advertisements and clearly and conspicuously disclose any and all disclaimers included in its advertisements within the State of Ohio.

RELEASE

17. By execution of this Order, the State of Ohio releases and forever discharges Defendants and all of its past and present officers, directors, shareholders, employees, agents, parents, subsidiaries, divisions, predecessors, successors, assignees, and transferees (collectively, the "Released Parties"), from the following: all civil claims, causes of action, damages, restitution, fines, costs, attorneys' fees, remedies and/or penalties that were or could have been asserted against the Released Parties by the Ohio Attorney General under the CSPA, or any amendments thereto, or by any common law claims arising from the acts and practices described herein, or arising out of the Covered Conduct, up to and including the acceptance of this Order by the Court.

ORDER

For purposes of affecting this Consent Judgment Entry and Order, it is therefore

ORDERED, ADJUDGED AND DECREED that:

18. Plaintiff is hereby GRANTED a declaratory judgment and it therefore DECLARED that the acts and practices enumerated in the Conclusions of Law set forth above in Paragraphs Eleven (11) through Fourteen (14), if committed by a supplier, violate the CSPA, R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder, in the manner set forth therein.

19. Nothing herein contains a finding that Defendants violated the CSPA or its Substantive Rules.
20. It is further ORDERED that Defendants shall comply with Paragraphs 15 and 16 of this Consent Judgment.
21. Defendants, jointly and severally, shall make a payment to the Plaintiff in an amount totaling Six Thousand Five Hundred Eighty-Eight Dollars and 69/100 Cents (\$6,588.69) which shall be used to pay restitution to consumers of Defendants as determined in the sole discretion of the Ohio Attorney General.
22. Defendants, jointly and severally, shall make a payment to the Plaintiff in an amount totaling Six Thousand Five Hundred Eighty-Eight Dollars and 69/100 Cents (\$6,588.69) which shall be placed in the Consumer Protection Enforcement Fund.
23. Payments herein shall be made within seven (7) days following the acceptance of this Order by the Court by delivering a certified check or money order, payable to the "Ohio Attorney General's Office," directed to:

**Compliance Officer
Consumer Protection Section
Office of the Ohio Attorney General
30 E. Broad Street, 14th Floor
Columbus, OH 43215**

1. To the extent that the provisions of this Consent Judgment conflict with any Ohio, local or federal law that now exists, or is later enacted or amended, such law and not this Consent Judgment shall apply where such conflict exists. For the purposes of this Consent Judgment, a conflict exists if conduct prohibited by this Consent Judgment is required or expressly permitted by such Ohio, local or

federal law, or if conduct required by this Consent Judgment is prohibited or not required by such Ohio, local or federal law.

2. It is the intent of the Parties that this Consent Judgment shall not be admissible or binding in any other matter, including, but not limited to, any investigation or litigation, other than in connection with the enforcement of this Consent Judgment. No part of this Consent Judgment shall create a private cause of action or convert any right to any third party for violation of any federal or state law, except that the Ohio Attorney General may file an action to enforce the terms of this Consent Judgment.
3. This Consent Judgment does not create a waive or limit Defendants' legal rights, remedies, or defenses in any other action by the Ohio Attorney General, and does not waive or limit Defendants right to defend itself from, or make arguments in, any other matter, claim, or suit, including, but not limited to, any investigation or litigation relating to the existence, subject matter, or terms of this Consent Judgment. Nothing in this Consent Judgment shall waive, release, or otherwise affect any claims, defenses, or other positions Defendants may assert in connection with any investigations, claims, or other matters the Ohio Attorney General is not releasing hereunder.
4. This Consent Judgment does not constitute an approval by the Ohio Attorney General of Defendants' business practices, and Defendants shall make no representation or claim to the contrary.
5. This Consent Judgment sets forth the entire agreement between the Parties and supersedes all prior agreements or understandings, whether written or oral,

between the Parties and/or their respective counsel, with respect to the Covered Conduct.

6. This Court retains jurisdiction over this Order and the Parties hereto for the purpose of enforcing and modifying this Order and for the purpose of granting such additional relief as may be necessary and appropriate. Defendants shall pay the court costs of this action.
7. Plaintiff acknowledges by its execution hereof that this Order terminates its investigation into Defendants' compliance with the CSPA up to the present time.

IT IS SO ORDERED.

05/12/15 
DATE JUDGE RUTH ANN FRANKS

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

FOR PLAINTIFF, STATE OF OHIO
Michael DeWine
Attorney General for the State of Ohio



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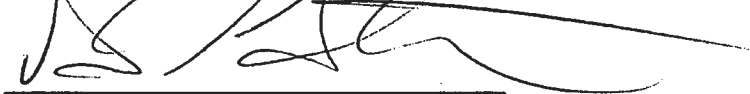
FOR DEFENDANTS:

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VISION VALUE, LLC



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