

FILED
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS
02/16/2024 10:00 AM
CV 2022 11 1851

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO, ex rel.
ATTORNEY GENERAL
DAVE YOST

Plaintiff,

v.

FAMILY DOLLAR STORES OF
OHIO, LLC d/b/a FAMILY DOLLAR
Et al.

Defendants.

CASE NO. CV 2022 11 1851

JUDGE SPAETH

AGREED CONSENT JUDGMENT
ENTRY AND FINAL
APPEALABLE ORDER

PREAMBLE

On November 7, 2022, the Attorney General of Ohio (hereinafter “State” or “Plaintiff”) filed a complaint alleging that Family Dollar Stores of Ohio, LLC (hereinafter “Defendant”) violated Ohio’s Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 et seq. and its Substantive Rules, O.A.C. 109:4-3-01 et seq. Plaintiff and Defendant have agreed to settle and resolve the allegations and file this Agreed Consent Judgment Entry and Final Order (hereinafter “Consent Judgment”) to terminate the litigation against Defendant. By signing this Consent Judgment, Defendant submits to the personal jurisdiction of this Court, to the imposition of this Consent Judgment pursuant to R.C. 1345.07(F), and to the rights of Plaintiff to enforce this Consent Judgment.

FINDINGS OF FACT

1. Defendant Family Dollar Stores of Ohio, LLC is a Virginia company that engages in the business of selling consumer goods in the State of Ohio, including in Butler County.
2. Defendant operates in the State of Ohio using the name “Family Dollar.”

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CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

3. In selling goods to individuals for personal, family, or household use, Defendant engages in consumer transactions.
4. Defendant sells consumer goods at store locations throughout Ohio and marks prices on their shelves to display the price of goods.
5. Plaintiff alleges that in some instances, when goods were scanned at the register, the price charged at the point-of-sale did not match the price advertised by the Shelf Tag Price.
6. Plaintiff alleges, in some instances, when goods were scanned at the register, consumers paid higher prices than the Shelf Tag Price.

CONCLUSIONS OF LAW AND ADDITIONAL ALLEGATIONS

7. The alleged actions of Defendant have occurred in the State of Ohio, in Butler County and other counties.
8. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
9. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(3) in that Defendant allegedly conducted activity which gave rise to the claims for relief in Butler County in the State of Ohio.
10. The Ohio Attorney General is the proper party to commence these proceedings under the authority provided under R.C. 1345.07.
11. Defendant is a "supplier," since Defendant, at all relevant times hereto, engaged in the business of effecting "consumer transactions" by soliciting and selling household goods to "consumers" in Ohio for purposes that are primarily personal, family, or household, within the meaning specific in R.C. 1345.01(A), (C) and (D).

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COMMUNICATIONS SECTION
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12. Plaintiff alleges Defendant has committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(8), by representing that a specific price advantage exists if it does not.
13. Plaintiff alleges Defendant has committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) and the Bait Advertising Rule, O.A.C. 109:4-3-03, by making offers of sales of good when such offers are not a bona fide effort to sell such a good.
14. Defendant denies that it has violated the foregoing provision of the Ohio Revised Code and Ohio Administrative Code and denies liability, but wishes to resolve this matter and enter into this Agreed Consent Judgment and Final Order with the State of Ohio

DEFINITIONS

15. "Charged Price" shall mean the final price that displays at the point-of-sale for which the consumer is to be charged upon payment.
16. "Effective Date" shall mean the date on which this agreement is signed by the Court.
17. "Price Adjustment" shall mean changing the Charged Price to the Shelf Tag Price.
18. "Price Check" shall mean a comparison as between the Shelf Tag Prices and the Charged Prices.
19. "Shelf Tag" shall mean the label on the shelf either immediately above or below the item that is reflective of the product being sold; listed on the item itself; or indicated on a box in which the item is intentionally placed.
20. "Shelf Tag Price" shall mean the price displaying on the Shelf Tag. If there are two prices displayed for the same item, the lower price is the Shelf Tag Price.
21. "Updated Shelf Tag" shall mean a Shelf Tag that is newly created based on the change of price of an item, whether temporary or permanent.

COMPLIANCE PROVISIONS

22. Unless notated otherwise in Compliance Paragraphs 23 or 24, for all Family Dollar stores located within the state of Ohio, Defendant shall comply with the following:

- A. When manual entry of a price is required at the corporate level to input a new item or to change an item's price, no less than two people shall check that the intended Shelf Tag Price matches the intended Charged Price.
- B. Defendant shall provide sufficient coverage for employees to update Shelf Tags, which may include, but is not limited to, printing and applying Updated Shelf Tags.
- C. Defendant shall create and maintain records sufficient to show for each week that Defendant's retail locations received electronically Updated Shelf Tags, that each of Defendant's retail locations in Ohio (a) received electronically the Updated Shelf Tags; (b) printed the Updated Shelf Tags; and (c) an employee at the Defendant's retail location used reasonable efforts to complete the application of the Updated Shelf Tags in the appropriate locations. Defendant shall make reasonable efforts to apply the Updated Shelf Tag before pricing changes are made as reflected at the point-of-sale.
- D. If a consumer alleges to an employee that the Charged Price is higher than the Shelf Tag Price for an item the consumer purchased or is attempting to purchase, the employee must:
 - i. Adjust the price to the amount reflected on the Shelf Tag Price upon Price Check by an employee; or.
 - ii. No action is required upon seeing proof that the Shelf Tag Price is the same as or more than the Charged Price.

- E. Defendant shall create and implement a policy reflecting that in any instance in which Compliance Paragraph 22(D) results in a Price Adjustment, Defendant shall make reasonable efforts to ensure the Shelf Tag Price matches the Charged Price immediately.
- F. Defendant shall implement training regarding Compliance Paragraphs 22(D) and (E) above as part of training for each new and each existing employee whose job duties include working at a cash register in which the following must be communicated:
- i. What is to occur when a pricing discrepancy exists pursuant to Compliance Paragraph 22(D); and
 - ii. What is to occur after a pricing discrepancy has been found to exist pursuant to Compliance Paragraph 22(E).
- G. Within thirty days of an employee becoming a cashier, Defendant shall obtain written or electronic confirmation from such employee evidencing that they have been trained pursuant to Compliance Paragraph 22(F).
- H. Defendant shall clearly and conspicuously post a sign(s) communicating the policy in above Compliance Paragraph 22(D) in each of Defendant's store locations either on the main front door where consumers enter the store or at each register.
- I. Defendant shall implement a policy that no less than once per month, a manager must conduct a Price Check for a minimum of 50 randomly selected items. If Defendant conducts "sales" in which the price of specific items are offered for sale at less than the normal Shelf Tag Price for a specific period of time, at least five of these items subject to the Price Check must be "sale" items.

- i. If more than five items demonstrate incongruence between the Shelf Tag Price and the Charged Price, the store manager shall inform the district manager of the incongruence(s).
 - ii. If more than ten items demonstrate incongruence between the Shelf Tag Price and the Charged Price, the store manager shall inform the district manager of the incongruence(s), and the district manager shall inform the appropriate corporate designee of the incongruence(s).
 - iii. For any item(s) identified in which the Shelf Tag Price and the Charged Price do not match, Defendant shall make reasonable efforts to bring the Shelf Tag Price into congruence with the Charged Price within four business hours.
- J. Defendant shall implement a policy that once every eight weeks, the district manager, or its equivalent, must conduct a Price Check for a minimum of 25 randomly selected items. If Defendant conducts “sales” in which the prices of specific items are offered for sale at less than the normal Shelf Tag Price for a specific period of time, at least five of these items subject to the Price Check must be “sale” items.
 - i. If more than two items demonstrate incongruence, the district manager shall discuss the issue with the store manager.
 - ii. If more than five items demonstrate incongruence, the district manager, shall inform the appropriate corporate designee of the incongruence(s).
 - iii. For any item(s) identified in which the Shelf Tag Price and the Charged Price do not match, Family Dollar shall make reasonable efforts to bring the Shelf Tag Price into congruence with the Charged Price within four business hours.

- K. Defendant shall create and implement a policy that upon receipt of a paper or electronic County [of Ohio] Auditor's Price Verification Report that indicates a "fail rate" of above two percent, that report must be submitted to Defendant's designated corporate designee within two business days of receipt of the report.
- L. Unless otherwise noted, all obligations under Compliance Paragraph 22 must be implemented within 30 days after the Effective Date.
23. For any Family Dollar store located within the state of Ohio that has consecutively received two paper or electronic County [of Ohio] Auditor's Price Verification Reports, for which there is evidence of receipt of the report by an employee of Family Dollar, within six months of one another indicating a "fail rate" of above two percent, Defendant shall comply with the following:
- A. Defendant shall fully comply with Compliance Paragraph 22 except for Compliance Paragraphs 22(I) and (J).
- B. Defendant shall implement a policy that no less than one time per four weeks, a district manager, or its equivalent, must conduct a Price Check for a minimum of 50 randomly selected items. If Defendant conducts "sales" in which the prices of specific items are offered for sale at less than the normal Shelf Tag Price for a specific period of time, at least five of these items subject to the Price Check must be "sale" items:
- i. If more than two items demonstrate incongruence, the district manager shall discuss the issue with the store manager.
 - ii. If more than five items demonstrate incongruence between the Shelf Tag Price and the Charged Price, the district manager shall inform the regional director of the incongruence(s).

- iii. For any item(s) identified in which the Shelf Tag Price and the Charged Price do not match, Defendant shall make reasonable efforts to bring the Shelf Tag Price into congruence with the Charged Price within four business hours.
- C. Defendant shall create and implement a policy that no less than one time per week a store manager or his/her appointee must conduct a Price Check for a minimum of 50 randomly selected items. If Defendant conducts “sales” in which the prices of specific items are less than the normal Shelf Tag Price for a specific period of time, at least five of these items subject to the Price Check must be “sale” items.
- i. If more than two items demonstrate incongruence, the store manager or his/her appointee shall inform the district manager of the incongruence(s).
 - ii. If more than five items demonstrate incongruence, the store manager or his/her appointee, shall inform the district manager of the incongruence(s), and the district manager shall inform his/her corporate representative of the incongruences(s).
 - iii. For any item(s) identified in which the Shelf Tag Price and the Charged Price do not match, Defendant shall make reasonable efforts to bring the Shelf Tag Price into congruence with the Charged Price within four business hours.
- D. Upon receiving a paper or electronic County [of Ohio] Auditor’s Price Verification Report indicating a “pass rate” of ninety-eight percent or higher, or after Defendant finds zero discrepancies in the Price Checks performed pursuant to Compliance Paragraphs 23(B) and 23(C) for a period of four months, whichever occurs earlier, that specific Family Dollar location may operate pursuant to Compliance Paragraph 22.

24. For any Family Dollar store located within the state of Ohio that has consecutively received three paper or electronic County [of Ohio] Auditor's Price Verification Reports indicating a "fail rate" of above two percent, Defendant shall comply with the following:
- A. Defendant shall fully comply with Compliance Paragraph 23 immediately above.
 - B. No later than seven days after receiving a third consecutive paper or electronic County [of Ohio] Auditor's Price Verification Report indicating a "fail rate" of above two percent, that specific retail location shall complete a full-store assessment in which every Shelf Tag Price must undergo a Price Check. For any Shelf Tag Price that is higher than the Charged Price, either the Shelf Tag Price or the Charged Price must, within those seven days, be brought into congruence with one another and accurately reflected on the Shelf Tag.
 - C. Prior to or while actively working towards the completion of Compliance Paragraph 24(B), the specific retail location at issue may continue to operate. If the store does not complete the review within seven days, the store may close until such review is completed and not be in violation of this agreement.

ORDER

For the purpose of effecting this Consent Judgment, it is therefore ORDERED, ADJUDGED, and DECREED that:

25. Plaintiff's request for a Declaratory Judgment is GRANTED and it is therefore DECLARED that acts and practices enumerated herein violate the CSPA, R.C. 1345.01 *et seq.* and its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*
26. For three years from the date of this Order, Defendant will comply with the Compliance Provisions of this Consent Judgment.

27. Defendant and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership, or association, in connection with any consumer transaction are PERMANENTLY ENJOINED from committing any unfair, deceptive, or unconscionable acts or practices in violation of the CSPA, R.C. 1345.01 *et seq.* and its Substantive Rules, O.A.C. 109:4-3-01 *et. seq.*
28. For three years from the date of this Order, Defendant, upon request of the Ohio Attorney General, agrees to produce any and all records created pursuant to this Consent Judgment and will do so, within 21 days from the date of request, at Defendant's expense.¹ It is further ORDERED that for any record created pursuant to this Consent Judgment, the record must be maintained by Defendant for a minimum of one year from the date of creation.
29. Recognizing that the facts alleged in Plaintiff's Complaint, if taken as true, could have negatively and financially impacted consumers, while also recognizing that it would be nearly impossible to identify all or even most such consumers, and pursuant to Plaintiff's ability to secure relief in a *parens patriae* capacity, Defendant shall pay \$250,000 to the Ohio Attorney General's Office. Said payment shall be distributed by the Attorney General's Office to Ohio foodbanks or other similar charitable organizations in Ohio to be used solely for the purchase and distribution of food or personal care items.
30. Defendant shall pay an additional sum of \$50,000 which shall constitute a civil penalty to the Ohio Attorney General's Office pursuant to R.C. 1345.07(D); Defendant also agrees to reimburse Plaintiff for investigative fees and costs in the amount of \$100,000.

¹ To the extent that the Ohio Attorney General's request would require Defendant to produce privileged documents, Defendant reserves the right to claim such privilege at the time of production.

31. The payment amounts ordered under Paragraphs 29-30 are due within 30 days of the Effective Date and shall be made by certified check or money order made payable to the "Ohio Attorney General's Office" and delivered to:

Financial Specialist
Consumer Protection Section
Office of the Attorney General
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215

32. Defendant is ORDERED to keep the Office of the Attorney General apprised of any changes in ownership, address, or telephone number by notifying the Consumer Protection Section at the address listed below, within thirty days of such change.

33. It is further ORDERED that nothing in this Consent Judgment is or shall be construed to limit any of the powers of or remedies afforded to, collectively or individually, the Ohio Department of Agriculture or any county or city auditor located within Ohio. Similarly, nothing in this Consent Judgment is or shall be construed to limit Defendant's ability to contest any alleged noncompliance/violations or the amount of any remedies/penalties sought by Plaintiff.

34. This Agreed Consent Judgment Entry and Final Order is not an admission of liability on the part of Defendant or that a discrepancy exists between Shelf Label Prices and Charged Prices in any particular instance. Nor is this Agreed Consent Judgment Entry and Final Order an admission that Defendant acted or failed to act. Nothing herein restricts Defendant's ability to argue that an Auditor's Price Verification Report was not performed correctly pursuant to applicable standards or that an undercharge should not count as a price discrepancy for purposes of CSPA.

35. The Provisions of this Agreed Consent Judgment Entry and Final Order do not apply to Ohio Family Dollar stores that are closed for remodeling or temporarily closed for some other reason.

Such stores, as well as any new Ohio Family Dollar stores that open in the future, shall have twenty-one days from re-opening in order to comply with the provisions of this Agreed Consent Judgment Entry and Final Order.

36. It is further ORDERED that in the event that the Ohio Attorney General must initiate legal action or incur any costs to compel Defendant to abide by this Consent Judgment, Defendant agrees that the Court of Common Pleas in Butler County, Ohio shall have jurisdiction over that matter.

37. It is further ORDERED that Defendant shall not represent, directly or indirectly, that the Court or the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of the Defendant's business operations.

38. It is further ORDERED that Defendant pay all court costs associated with this matter.

IT IS SO ORDERED.



JUDGE SPAETH

APPROVED AND AGREED TO BY:

PLAINTIFF
DAVE YOST
Ohio Attorney General

/s/ Lisa M. Treleven
Counsel for Plaintiff

DEFENDANT
FAMILY DOLLAR STORES OF OHIO, LLC

/s/ Jon Leikin
Corp Rep.

As to form:

/s/ Daniel A. Richards
Counsel for Defendant

