

2.4 Class Complaint for Altering FTC Used Car Sticker

IN MONTGOMERY COUNTY COMMON PLEAS COURT, OHIO

[CONSUMER],

Plaintiff,

v.

ODYSSEY CORPORATION
DBA TOY STORE
4905 SPRINGBORO PIKE
DAYTON, OH 45342

and

PREFERRED WARRANTIES, INC.
117 RT. 183 P.O. BOX 278
ORWIGSBURG, PA 17961,

Defendants.

Case No.

CLASS ACTION COMPLAINT & JURY DEMAND (ALLEGING VIOLATIONS OF THE OHIO CONSUMER SALES PRACTICES ACT & FEDERAL LAW)

1. IDENTIFICATION OF THE PARTIES

1. This case involves large-scale violations of the Ohio Consumer Sales Practices Act, Ohio Revised Code 1345.01 **et seq.**, by Defendant ODYSSEY CORPORATION dba TOY STORE [hereinafter “defendant car dealer”] and Defendant PREFERRED WARRANTIES, INC. [hereinafter “defendant service company”].

2. Named Plaintiff, [Consumer], [hereinafter “plaintiff”] and the class of persons she seeks to represent, are each “consumers” and each a purchaser of a used motor vehicle acquired from defendant car dealer during the previous four years in connection with “consumer transactions” as defined by the Consumer Sales Practices Act, R.C. 1345.01(A), and in each case engaged in a consumer transaction with subsequent to an unfair or deceptive act committed by defendant service company.

3. Plaintiffs believe and have reason to believe that the defendant car dealer and defendant service company each jointly and severally violated the laws cited below in the exact same manner with regard to other consumers in other consumer transactions involving the sale of used motor vehicles inasmuch as the violation consists of said defendants’ failure to include federally mandated language and its alteration of federally

mandated language in its forms used in consumer transactions involving the sale and marketing of used motor vehicles in Ohio.

4. Defendant service company does business in Ohio and has its place of business in Pennsylvania and is a supplier within the meaning of the Consumer Sales Practices Act.

5. Defendant car dealer does business and has its place of business in Montgomery County, Ohio and is a supplier within the meaning of the Consumer Sales Practices Act and a merchant within the meaning of the Ohio Commercial Code.

6. Defendant car dealer solicited, affected, effected, or otherwise engaged in a “consumer transaction” with plaintiff and/or the members of her class, by its actions and omissions stated elsewhere in this complaint.

7. Defendant service company solicited, affected, effected, or otherwise engaged in a “consumer transaction” with plaintiff and/or the members of her class and also solicited, affected, effected, or otherwise engaged in similar consumer transactions between other car dealers who were suppliers in Ohio and Ohio consumers, by its actions and omissions stated elsewhere in this complaint.

8. The defendants were, jointly and severally, at all times relevant to this case, engaged in the business of effecting or soliciting one or more consumer transactions in Ohio with plaintiff and other Ohio consumers between the present date and four years prior hereto, within the meaning of O.R.C. 1345.01(A).

2. FIRST CLAIM: CONSUMER ACT

9. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.

10. This claim is for violation of the Ohio Consumer Sales Practices Act by defendants.

11. Whenever in this complaint reference is made to any act, deed or transaction of any corporation, such allegation shall be deemed to mean that said corporation engaged in such act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were engaged in the management, direction, control or transaction of its business or affairs.

12. Defendant car dealer used a “Buyers Guide” window sticker form that was provided by defendant service company and which form violated the FTC Car Window Sticker Rule by failure to include mandatory language and by alteration of the mandatory language required by federal law.

13. The defendant car dealer committed one or more unfair and/or deceptive and/or unconscionable acts or practices in violation of the Ohio Consumer Sales Practices Act before, during and/or after one or more consumer transactions occurred in Ohio by, inter alia, its distribution, marketing, promotion, display and/or use of the “Buyers Guide” form in violation of the FTC Used Car Window Sticker Rule.

14. By its distribution of the violative form, intending and with knowledge that such distribution would ultimately take place before, during and/or after one or more consumer transactions in Ohio, the defendant service company committed one or more unfair and/or deceptive and/or unconscionable acts or practices in violation of the Ohio

Consumer Sales Practices Act before, during and/or after one or more consumer transactions occurred between Ohio consumers and suppliers.

3. CLASS ACTION ALLEGATIONS

15. Plaintiff is bringing this action on behalf of herself and other members of the class of persons, believed to number in excess of 500 persons in each subclass, and consisting of those persons who:

The ODYSSEY CORPORATION dba TOY STORE Subclass:

- a. entered into a sales transaction with defendant car dealer,
- b. involving the sale of a used motor vehicle,
- c. during the two years prior to the filing hereof,
- d. where the window sticker form used by the car dealer was that form identical to the form attached hereto as Exhibit 1;

The Service Company Subclass:

- a. entered into a consumer transaction with an Ohio car dealer
- b. involving the sale of a used motor vehicle
- c. during the two years prior to the filing hereof,
- d. where the window sticker form used by the car dealer was that form identical to the form attached hereto as Exhibit 1.

16. All provisions of this complaint which are framed as a class action are set forth and asserted under the provisions of Rule 23(A), Rule 23(B)(2), and Rule 23(B)(3), for damages, injunction, and relief consistent and subordinate thereto including costs, expenses of investigation and litigation, and attorney fees.

17. The exact number of each subclass, as above identified and described is unknown, but is estimated to be in excess of 500 persons; the class is so numerous that joinder of individual members is impracticable.

18. There are common questions of law and fact in the action that relate to and affect the rights of each member of the class and the relief sought is common to the entire class, mainly, inter alia:

- a. whether the subject “Buyers Guide” window sticker violates the FTC Used Car Window Sticker Rule;
- b. whether the violation of the FTC Used Car Window Sticker Rule constitutes a pattern and/or practice of unfair or deceptive acts prohibited by the Consumer Sales Practices Act;
- c. whether the violation of the FTC Used Car Window Sticker Rule is a per se unfair, deceptive and/or unconscionable act or practice in violation of the Ohio Consumer Sales Practices Act.

19. The claims of plaintiff are typical of the claims of the class, in that the claims of all members of the class.

20. There is no known conflict between plaintiff and other members of the class.

21. The named plaintiff is able to, and will, fairly and adequately protect the interests of the class.

22. Counsel for plaintiff is experienced and capable in litigation in the field of consumer Rights and Protection and has successfully represented claimants in other litigation of such a nature, against numerous car dealers and other suppliers, in class actions and individual cases.

23. This action is properly maintained as a class action in that the prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interest of the other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests.

24. This action is properly maintained as a class action in that the prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the defendants, who are expected to oppose the class.

25. This action is also properly maintained as a class action inasmuch as the defendants herein, who are expected to oppose the class have acted on grounds which are applicable to the class, and by reason of such conduct have made appropriate final injunctive relief or corresponding other relief with respect to the entire class, as sought in this action.

26. Furthermore, this action is properly maintained as a class action inasmuch as the questions of law and fact common to the class members predominate over any questions affecting only individual members, and a class action is superior to other methods available for the fair and efficient adjudication of the controversy.

27. The relief sought by all members of the class will be effective and appropriate for the entire class; all members of the class have a right to minimum statutory damages of \$200.00 each or other relief which may be readily computed in each case or otherwise determined readily.

28. The identity of each individual member of each of the subclasses can be ascertained from the books and records maintained by defendants

29. Appearance of the named plaintiff will fairly insure the adequate representation of all members of the class and protect their interests.

30. Because many of the persons with whom the defendants have dealt are not aware of their rights against the defendants, or are not in a financial position to assert such rights readily, and because relegation of their claims to individual actions would result in an unreasonable multiplicity of suits and a corresponding burden on this and other courts, a class action is far superior to all other methods for fairly and efficiently adjudicating this controversy.

WHEREFORE, judgment is demanded against each defendant as deemed proper and lawful by the Court, as set forth above and alternatively as follows:

CLASS ACTION CLAIMS' PRAYER FOR RELIEF

1. Plaintiff seeks a determination that this claims plead with class action allegations are appropriate for class action relief and deemed as such by an Order from this Court;

2. Relief deemed proper and legal in accord with the law, for each and every violation proven at trial;

3. Minimum statutory damages of \$200.00 for each member of the class;

4. An injunction prohibiting any defendant from any future violations of the laws set forth above;

5. Expenses of suit and litigation;

6. Reasonable attorney fees and Costs;

7. Any other legal and equitable relief deemed necessary and just.

Plaintiff demands trial by Jury on all issues and claims.

[Attorney for Plaintiff]