

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

VT SUPERIOR COURT
WASHINGTON UNIT
CLERK OF COURT

2016 NOV 22 P 12:33

STATE OF VERMONT,)
Plaintiff)
)
v.)
)
ADRIAN MILLER, TRAVEL)
SUPPLIER OF AMERICA, INC.,)
START 2 FINISH TRAVEL)
MANAGEMENT, INC., and)
UNIVERSAL CONCEPTS, INC.)
Defendants)

CIVIL DIVISION

Docket No. 1089-11-16 Wncv

FILED

CONSUMER PROTECTION COMPLAINT

I. Introduction

1. The State of Vermont (“the State”), through its Attorney General, brings this suit under the Vermont Consumer Protection Act (“CPA” or “the Act”) in response to unfair and deceptive trade practices, which cost Vermont consumers over \$129,000, by Adrian Miller and his three companies, Travel Supplier of America, Inc., Start 2 Finish Travel Management, Inc., and Universal Concepts, Inc. The State seeks civil penalties, consumer relief, and injunctive relief for all Defendants’ unfair and deceptive trade practices; and reimbursement of fees and costs incurred in the investigation and litigation of this matter.

II. Parties, Jurisdiction and Related Matters

2. Travel Supplier of America, Inc. (“TSA”) is a corporation incorporated under the laws of Delaware with its principal place of business located at 4144 N. Central Expressway,

Suite 700, Dallas, Texas 75205. In the fall of 2013, from hotels in Burlington, Vermont, TSA sold memberships in discount travel clubs to Vermont consumers for thousands of dollars each.

3. Start 2 Finish Travel Management, Inc. (“Start 2 Finish”) is a corporation incorporated under the laws of Texas with its principal place of business located at 4144 North Central Expressway, Suite 700, Dallas, Texas 75205. Start 2 Finish facilitated TSA’s sales of memberships in discount travel clubs to Vermont consumers by paying for TSA’s marketing and presentation materials, and renting hotel space on behalf of TSA.

4. Universal Concepts, Inc. (“Universal Concepts”) is a corporation incorporated under the laws of Delaware with its principal place of business located at 4144 North Central Expressway, Suite 700, Dallas, Texas 75205. Universal Concepts charged the credit cards of Vermont consumers who purchased memberships in discount travel clubs sold by TSA.

5. Adrian Miller is a resident of Texas, with a last-known address of 4206 Buena Vista St., Apt B, Dallas, Texas 75205. Miller directed the business activities of TSA, Universal Concepts, and Start 2 Finish at all times relevant to this action.

6. On information and belief, Adrian Miller is personally liable for the conduct of TSA, Universal Concepts, and Start 2 Finish through his authority to control, his actual or constructive knowledge of, and his participation in, that conduct.

7. The Vermont Attorney General is authorized under the CPA, 9 V.S.A. § 2458, to sue to enforce the Act’s prohibitions on unfair and deceptive acts and practices in commerce.

8. This Court has personal jurisdiction over Defendants and is the proper venue for this action, based on their marketing of travel-related services in Vermont, including in Washington County.

9. This action is in the public interest.

III. Statutory Framework

10. The CPA, 9 V.S.A. § 2453(a), prohibits unfair and deceptive acts and practices in commerce.

11. It is a violation of the CPA, 9 V.S.A. § 2453(a), to:

- a. Misrepresent or omit material terms in a consumer solicitation (deception);
- b. Cause substantial injury to consumers that is not reasonably avoidable by consumers and where there are no countervailing benefits to consumers or competition (unfairness).
- c. Fail to comply with the Act's right-to-cancel requirements for transient (e.g., hotel-based) sales, including affording consumers a right to a full refund within three business days of the transaction, and providing oral notice of that right, as well as a "short-form" and "long-form" notice. 9 V.S.A. §§ 2451a(d) (defining "home solicitation sale") and 2454 (right to cancel).

12. In addition, part of the CPA, the Discount Membership Program Act ("DMPA"), 9 V.S.A. §§ 2470aa-2470hh¹, regulates the sale and offer of discount club memberships.

13. Among other things, the DMPA requires that persons who sell or offer such memberships:

- a. Clearly and conspicuously disclose all material terms of the transaction before billing consumers, including the amount, or a good faith estimate, of the typical discount on each category of goods and services; the rights to cancel and to terminate the program, and a toll-free telephone number and e-mail address that can be used to cancel the

¹ The Discount Membership Program Act was modified effective July 1, 2016, in ways that do not affect the substance of this action. The State's claims under the DMPA are based on the earlier version of the statute.

membership; the maximum length of membership; and the fact that periodic notices of the program billings will be mailed or emailed to the consumer (9 V.S.A. § 2470cc(a)(1));

b. Provide a 30-day right to cancel the membership (9 V.S.A. § 2470ee);

c. Obtain from the consumer whose credit or debit card, bank, or other account will be charged, the consumer's billing information, name, and address, and a means to contact the consumer (9 V.S.A. § 2470cc(a)(2));

d. Send out notices to consumers every three months from the date of initial enrollment, including a description of the program, the name of the program and the name and address of the seller, the cost of the program, the rights to cancel and to terminate the program, a toll-free telephone number and e-mail address that can be used to cancel the membership, and the maximum length of membership (9 V.S.A. § 2470dd(a)); and

e. Refrain from selling a discount membership program lasting longer than 18 months (9 V.S.A. § 2470ff).

14. The CPA is a remedial statute that is to be interpreted liberally to achieve its purpose of protecting consumers, and whose requirements on businesses are to be strictly construed to that end.

IV. Facts

Overview of the sales of travel club memberships

15. TSA and Adrian Miller worked in conjunction with Tony Armand and Henry Armand and their companies, Vacation Tours USA ("Vacation Tours"), Millennium Travel and Promotions, Inc. ("Millennium"), and Set Sail Vacations ("Set Sail") to sell memberships in discount travel clubs offered by Set Sail.

16. Vacation Tours and Millennium used advertisements and promotional offers to encourage Vermont consumers to attend TSA's sales presentations.

17. Vacation Tours and Millennium also shipped marketing and presentation materials to TSA in Vermont to assist with those sales presentations, and billed Start 2 Finish for those materials.

18. TSA sold to Vermont consumers memberships in a discount travel club provided by Set Sail.

19. 157 Vermont couples attended TSA's sales presentations in Vermont at Courtyard Burlington Harbor Hotel and Hotel Vermont in Burlington, Vermont, between October 9, 2013, and October 26, 2013.

20. Mr. Miller paid for the rentals of the Vermont hotels for these sales presentations using credit cards in his name, one of which was a Start 2 Finish corporate credit card, the other of which was a TSA corporate credit card.

21. Universal Concepts processed \$218,482.80 in charges by TSA to the credit card accounts of 56 Vermont consumers for memberships in Set Sail's discount travel club. Following some successful chargebacks and membership cancellations, 32 Vermont consumers ultimately paid \$129,479.86 to TSA for these memberships.

22. The Vermont Attorney General entered into an Assurance of Discontinuance with Vacation Tours, Millennium, Set Sail, and their principals Tony Armand and Henry Armand in October 2016 related to their role in the sale and marketing of discount travel club memberships in Vermont.

Deceptive sales statements and illusory discounts

23. TSA held sales presentations at which its presenters told Vermont consumers that the discount travel club memberships would allow them to receive substantial savings on travel arrangements, with demonstrations of deals available through the club that were purported to be for 50-70% cheaper than available to the general public.

24. TSA presenters gave Vermont consumers handouts at these sales presentations which identified two different versions of the travel club membership, a "Standard" membership and a "Platinum" membership. The Standard membership was singled out as a lesser version of the travel club, while the Platinum membership allowed members access to "4 Resort Weeks," "Unlimited Hot Weeks" and a number of other benefits such as a "Price Match Guarantee," access to tours and special events, and ability to pass the membership along to third parties through the consumers' will, or by transferring it to another party, or even by selling it.

25. In reality, Set Sail only offered one type of membership to Vermont consumers. Regardless of whether a consumer paid \$9,000 for a "Platinum" membership, or \$2,000 for a "Standard" membership, they were entitled to identical benefits.

26. Despite claims that the discount travel club would let members access rates that were significantly better than those available to the general public, members often found that rates offered by the travel club were comparable to or worse than those available to any consumer through popular online travel sites like Expedia and Travelocity.

27. Even the limited discounts available to members through Set Sail were often conditioned on members paying the full list price for travel and later submitting a request for a rebate to Set Sail that would create the "discount."

28. The Attorney General's investigation determined that Set Sail provided a total of less than \$3,000 in discounts off of generally available prices to all Vermont members. Those \$3,000 in discounts cost Vermont consumers nearly \$130,000 in fees paid to TSA.

Right to Cancel Violations

29. Contract materials provided to consumers by TSA did not contain an adequate notice of consumers' right to cancel the contract under Vermont law.

30. TSA representatives gave Vermont consumers a "MEMBERS' RIGHT TO CANCEL" document. It advised consumers that they may cancel their purchase within three business days, but stated that cancelling members would be still responsible for a non-refundable "Membership Processing Fee of \$399.00" and "a 15% cancellation of Membership Price fee."

31. The "MEMBERS' RIGHT TO CANCEL" provided by TSA is not consistent with the disclosures required by Vermont law. When a business sells goods or services to a Vermont consumer from a temporary business location such as a hotel room, they are obligated to disclose to consumers that any purchase made may be canceled within three business days of the transaction without penalty or obligation. This disclosure must be made in "short form" on the consumer's contract or receipt, in "long form" as a detachable notice of cancellation that can be returned to the business to receive a refund without penalty, and in an oral disclosure to the consumer at the time of purchase. 9 V.S.A. § 2454(b). TSA did not make any of these required disclosures.

Discount Membership Program Act Violations

32. TSA did not comply with many of the requirements of the DMPA, including disclosing all material terms of the transaction before billing, such as the amount, or a good

faith estimate, of the typical discount on each category of goods and services, the maximum length of membership, and the fact that periodic notices of the program billings would be mailed or emailed to the consumer; offering a 30-day right to cancel; sending out quarterly notices to consumers with specified disclosures; and limiting the length of memberships to 18 months.

V. First Cause of Action: False and Misleading Sales Presentations

33. As described above, Defendant TSA engaged in unfair and deceptive trade practices in commerce, in violation of the Vermont Consumer Protection Act, 9 V.S.A. § 2453(a), by misleadingly describing the value of benefits available to Vermont consumer who purchased travel club membership, and by falsely offering for sale different tiers of membership when, in reality, there were no different tiers of membership. Defendant Adrian Miller had authority to control this conduct, had actual or constructive knowledge of this conduct, and participated in this conduct.

34. As described above, Defendant Start 2 Finish facilitated the misleading sales presentations and thus violated the CPA. Defendant Adrian Miller had authority to control this conduct, had actual or constructive knowledge of this conduct, and participated in this conduct.

35. As described above, Defendant Universal Concepts facilitated the charges imposed on Vermont consumers by TSA and thus violated the CPA. Defendant Adrian Miller had authority to control this conduct, had actual or constructive knowledge of this conduct, and participated in this conduct.

36. Defendants' misrepresentations were likely to mislead consumers and affect their decisions to purchase travel club memberships from Defendants and caused Vermont

consumers to suffer substantial injury, not outweighed by any countervailing benefit, that consumers could not have reasonably avoided.

37. All of these actions constituted unfair and deceptive trade practices in violation of the CPA, 9 V.S.A. § 2453(a).

VI. Second Cause of Action: Improper Notice of Right to Cancel

38. As described above, Defendants TSA and Adrian Miller engaged in unfair acts in commerce, in violation of the Vermont Consumer Protection Act, 9 V.S.A. §§ 2453(a) and 2454, by failing to provide Vermont consumers with oral and written notice of their right to cancel their travel club membership purchases without penalty within three business days.

VII. Third Cause of Action: Failure to Comply with Discount Membership Programs Act

39. As described above, Defendants TSA and Adrian Miller engaged in unfair and deceptive trade practices in commerce, in violation of the Vermont Consumer Protection Act, 9 V.S.A. §§ 2453(a) and 2470aa – 2470hh, by failing to comply with the requirements of the DMPA, including failing to provide required disclosures about the travel club, failing to provide periodic notices about the travel club, failing to offer a right to cancel their purchase within 30 days and receive a full refund, and failure to limit the term of the membership to 18 months.

WHEREFORE Plaintiff State of Vermont requests judgment in its favor and:

1. A permanent injunction prohibiting Defendants from engaging in any business activity in, into, or from Vermont that violates the Vermont law.
2. Full restitution to all Vermont consumers who paid money to Defendants.
3. Civil penalties of up to \$10,000.00 for each unfair or deceptive act by Defendants.
4. The award of investigative and litigation costs and fees to the State of Vermont.

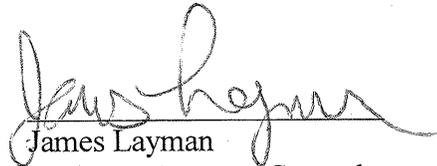
5. Such other relief as the Court deems appropriate.

Dated: 10/3/16

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by:



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WAIVER OF SERVICE OF SUMMONS

To: Adrian Miller
c/o David Bond, Esq.
Strouse & Bond PLLC
2 Church Street, Ste 3A
Burlington, VT 05401
Also via email: david@strouse-bond.com

On behalf of Adrian Miller, I agree not to require that Adrian Miller be served with judicial process in the manner required by Rule 4 of the Vermont Rules of Civil Procedure.

Adrian Miller will retain all defenses or objections to the lawsuit or to the jurisdiction or the venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against Adrian Miller if an answer or motion under Rule 12 of the Vermont Rules of Civil Procedure is not served upon you by December 1, 2016.

Dated

11/14/16

David Bond
Signature

David Bond
Printed/Typed Name

attorney for Adrian Miller
Title

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To: Universal Concepts, Inc.
c/o David Bond, Esq.
Strouse & Bond PLLC
2 Church Street, Ste 3A
Burlington, VT 05401
Also via email: david@strouse-bond.com

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Dated 11/14/16

David Bond
Signature

David Bond
Printed/Typed Name

attorney for Universal Concepts
Title

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c/o David Bond, Esq.
Strouse & Bond PLLC
2 Church Street, Ste 3A
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Also via email: david@strouse-bond.com

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Dated

11/14/16

David Bond
Signature

David Bond
Printed/Typed Name

attorney for Start 2 Finish
Title