

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
 TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

2005 MAY 12 PM 12:03
 RICHARD B. RUCKER, CLERK

STATE OF TENNESSEE, *ex rel.*)
 PAUL G. SUMMERS, ATTORNEY)
 GENERAL,)
)
 Plaintiff,)
)
 v.)
)
 CONSUMER DEPOT, LLC and MARTIN)
 RANDOLPH FIKE, individually and)
 collectively d/b/a AUCTION DEPOT,)
 BARGAIN DEPOT, CONSUMER DEPOT,)
 FACTORY DEALZ, SURPLUS DEALZ,)
 RETURN DEALZ, auctiondepot99,)
 auctiondepot-tn01, bargaindepot04,)
 bargaindepot05, bargainuniverse05,)
 factorydealz, returndealz04, returndealz05,)
 software-universe, surplusdealz04, ubid-it,)
 surplusdealz05, swdiscounters, techgraveyard,)
 youbid2003 and www.consumerdepot.com, and)
 mr-appliance.)
 Defendants.)

 D.C.
 No. _____

**PLAINTIFF, STATE OF TENNESSEE'S
 MOTION FOR TEMPORARY INJUNCTION AGAINST
 UNFAIR AND DECEPTIVE ACTS OR PRACTICES**

The State of Tennessee (“State”), by and through Attorney General Paul G. Summers (“Attorney General”), and on behalf of and at the request of the Division of Consumer Affairs of the Department of Commerce and Insurance, moves this Court pursuant to Section 47-18-108(a) of the Tennessee Consumer Protection Act of 1977¹ for a statutory injunction temporarily enjoining defendants Consumer Depot, LLC and Martin Fike, their officers, directors, employees,

¹ Tenn. Code Ann. §§ 47-18-101 *et seq.*

agents, successors and assigns, and other persons in active concert or participation with the Consumer Depot, LLC who receive actual notice of the this temporary injunction, from engaging, directly or indirectly, in any acts which are unfair or deceptive to consumers, including, but not limited to, the following:

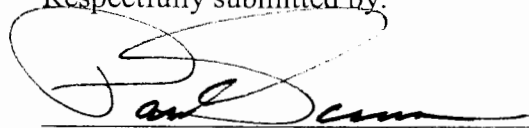
- (A) Advertising, directly and by implication, that a specific product was being offered for sale, but delivering a different product;
- (B). Advertising, directly and by implication, that items were being sold as “new,” but delivering items that are refurbished, used or damaged;
- (C). Advertising, directly and by implication, that products were “tested,” “inspected,” or otherwise checked by trained personnel, but delivering items that were broken, defective or incomplete;
- (D). Advertising, directly and by implication, that merchandise was functional, but delivering merchandise that Defendants knew, or should have known was defective;
- (E). Advertising, directly and by implication, that products were in good cosmetic shape, but delivering items that were broken, scratched, dirty, or that Defendants knew, or should have known, were empty;
- (F). Advertising, directly and by implication, that products “work great,” but delivering items that did not work or did not function properly;
- (G). Advertising, directly or by implication, that certain components or hardware was included with an item, but delivering those items without the advertised components or hardware;
- (H). Advertising or otherwise representing that products were covered by guarantees or manufacturer’s warranties, when, in fact, they were not;
- (I). Advertising software without disclosing that the software has already been opened and registered to someone else, and thus, not legally useable;
- (J) Obstructing and evading legitimate return attempts and failing to provide meaningful responses and/or customer service for legitimate consumer complaints, questions and returns; and
- (K). Retaliating against consumers who filed eBay complaints by, *inter alia*, posting negative feedback on eBay against such consumers.

For the purposes of this Motion: the terms “advertise” or “advertised” shall be deemed to include the terms “represent” or “represented,” “promote” or “promoted,” and “market” or “marketed;” and the terms “goods,” “products,” “product,” or “merchandise” shall mean tangible chattels, i.e. personal property, sold primarily to individuals for personal, family, or household purposes.

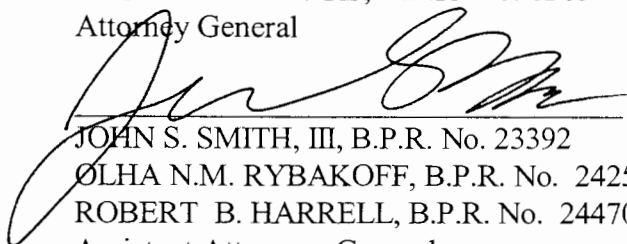
In support of this Motion, the State relies upon the contemporaneously filed Memorandum of Facts and Law in Support of Motion for Temporary Injunction, and Volumes 1 and 2 of the Exhibits to Memorandum of Facts and Law. As more fully set forth in the attached Exhibits and the Memorandum, defendants Consumer Depot, LLC and Martin Fike have engaged in unlawful commercial conduct by engaging in a course of deceptive advertisement at the expense of numerous consumers in Tennessee and throughout the country.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF FILED BY THE PLAINTIFF IN THIS CASE.

Respectfully submitted by:



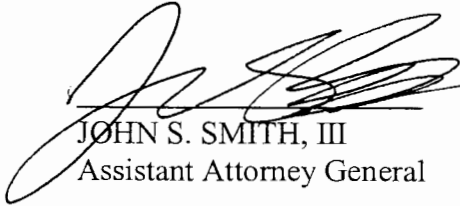
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Attorney General



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CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing document was included with the Complaint and other documents included in the original service of process and accompanied by the original summons on this the 5th day of May, 2006.


JOHN S. SMITH, III
Assistant Attorney General