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SEP 09 2008

Klickitat County Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KICKITAT

STATE OF WASHINGTON,

Plaintiff,

v.

SLADE KITCHENS and SHAWNA
KITCHENS, individually and on behalf of their
marital community, dba www.jeffscycles.com,
Jeff's Cycles, Hood River Cycles, Prospect Tel. &
Cycle, PTC Telecom, Cycle Parts 2007,
www.CycleParts2007.com and Denver Monahan
Parts,

Defendants.

NO. 08 * 2 00239 5

COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF UNDER THE
CONSUMER PROTECTION ACT

COMES NOW, the plaintiff, State of Washington by and through its attorneys Robert M. McKenna, Attorney General, and Mary C. Lobdell, Assistant Attorney General, and brings this action against the defendants named herein. The State alleges the following on information and belief:

I. JURISDICTION AND VENUE

1.1 This Complaint is filed and these proceedings are instituted under the provisions of the Unfair Business Practices – Consumer Protection Act, chapter 19.86 RCW.

1.2 The violations alleged in this Complaint have been committed in whole or in part in Klickitat County in the state of Washington by the defendants named herein.

1 1.3 The Attorney General is authorized to commence this action under RCW
2 19.86.080 and RCW 19.86.140.

3 **II. DEFENDANTS**

4 2.1 Defendant Slade Kitchens is an unlicensed sole proprietor in the state of
5 Washington doing business as www.jeffscycles.com, www.CycleParts2007.com. Jeff's Cycles,
6 Cycle Parts 2007, Hood River Cycles, Prospect Tel. & Cycle, Prospect Cycles, PTC Telecom
7 and Denver Monahan Parts. He resides at 1119 Prospect Street, Dallesport, Washington 98617.
8 Defendant sells motorcycle parts through the Internet website www.jeffscycles.com and
9 www.CycleParts2007.com. Defendant Slade Kitchens on information and belief is married to
10 Shawna Kitchens and together they constitute a marital community. All acts performed by
11 defendant Slade Kitchens as alleged in this Complaint were done for the benefit of his marital
12 community.

13 2.2 Defendant Shawna Kitchens is an unlicensed sole proprietor in the state of
14 Washington doing business as www.jeffscycles.com, www.CycleParts2007.com, Cycle Parts
15 2007, Jeff's Cycles, Hood River Cycles, Prospect Tel. & Cycle, Prospect Cycles, PTC Telecom,
16 and Denver Monahan Parts. She resides at 1119 Prospect Street, Dallesport, Washington 98617.
17 Defendant Shawna Kitchens participates in the selling or sells motorcycle parts over the Internet
18 through the website www.jeffscycles.com, www.CycleParts2007.com. Defendant, Shawna
19 Kitchens, on information and belief is married to Slade Kitchens and together they constitute a
20 marital community. All acts performed by defendant Shawna Kitchens as alleged in this
21 Complaint were done for the benefit of her marital community.

22 2.3 For purposes of this Complaint, the term "defendants" shall include Slade
23 Kitchens and Shawn Kitchens.

III. NATURE OF TRADE OR COMMERCE

3.1 The defendants now and at all times relevant to this action have offered to provide motorcycle parts to consumers located throughout the United States through their website, www.jeffscycles.com and www.CycleParts2007.com.

3.2 In the ordinary course of business, defendants have utilized oral and written representations to induce consumers to pay for motorcycle parts.

3.3 In a standard transaction, defendants represent orally and by writing that motorcycle parts are available for immediate delivery upon receipt of payment. Defendants request payment in advance of delivery and immediately cash checks, debit accounts or credit accounts provided by consumers. If the goods are not to specifications or damaged, consumers ship the product back to defendants and seek a refund.

3.4 Defendants were at all times material to this action in competition with others engaged in similar business activities within the state of Washington.

IV. FIRST CAUSE OF ACTION – FAILURE TO DELIVER

4.1 Plaintiff realleges paragraphs 1.1 through 3.4 and incorporates them herein as if set forth in full.

4.2 Between March 2006 to present, defendants accepted from consumers amounts varying between \$45 and \$474 for motorcycle parts and shipping costs. Defendants accepted payment by check, debit or credit card charge.

4.3 Although delivery was promised, defendants failed to deliver the requested motorcycle part(s) after accepting payment.

4.4 Defendants accepted payment and failed to deliver motorcycle parts to at least 44 consumers located throughout the United States.

4.5 The conduct described above constitutes an unfair or deceptive act or practice in violation of RCW 19.86.020.

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V. SECOND CAUSE OF ACTION - MISREPRESENTATION

5.1 Plaintiff realleges paragraphs 1.1 through 3.4 and incorporates them herein as if set forth in full.

5.2 In the ordinary course of business, defendants represented that the motorcycle part(s) sought by consumers were readily available for immediate shipment. Defendants further made representations as to the type and quality of the part available as well as stating that each part came with a 100% money back guarantee or "satisfaction guarantee."

5.3 Defendants misrepresented the availability of parts to consumers, including misrepresenting that the part had been shipped through DHL or other carrier when it in fact had not. Defendants also misrepresented the nature and quality of parts and the availability of a money back or satisfaction guarantee.

5.5 Defendants additionally provided consumers with the wrong part, a defective part or a damaged part as well as parts that did not conform to the purposes to which the defendants represented.

5.6 Defendants failed to provide consumers with the promised "money back" or "satisfaction" guarantee.

5.7 The conduct described above constitutes unfair or deceptive acts or practices in trade or commerce, and unfair methods of competition in violation of RCW 19.86.020.

VI. THIRD CAUSE OF ACTION - FAILURE TO REFUND

6.1 Plaintiff realleges paragraphs 1.1 through 3.4 and incorporates them herein as if set forth in full.

6.2 Defendants requested that consumers ship incorrect or damaged parts back to them. Defendants offered to provide consumers with refunds upon the return of motorcycle parts.

6.3 Defendants failed to refund monies to consumers who returned parts and refused to refund monies to consumers who received no parts at all.

1 6.4 The conduct described above constitutes unfair and deceptive acts or practices in
2 trade or commerce, and unfair methods of competition in violation of RCW 19.86.020.

3 **VII. FOURTH CAUSE OF ACTION – UNLICENSED VEHICLE WRECKER**

4 7.1 Plaintiff realleges paragraphs 1.1 through 3.4 and incorporates them herein as if
5 set forth in full.

6 7.2 Defendants operate a business that sells major component parts of wrecked
7 vehicles as that term is defined by RCW 46.04.670 and RCW 46.80.010(6) at an established
8 place of business located in Washington.

9 7.3 The major component parts sold by defendants include but are not limited to
10 engines, transmissions, seats and other parts.

11 7.4 Defendants ship to consumers and receive major component parts from a location
12 in Washington.

13 7.5 Defendants are operating as an unlicensed vehicle wrecker contrary to RCW
14 46.80.020(1).

15 7.6 The provisions of RCW 46.80 are to be liberally construed to prevent
16 irresponsible, unreliable or dishonest persons from engaging in the business of wrecking vehicles
17 or selling used vehicle parts in this state.

18 7.7 The conduct described above constitutes unfair and deceptive acts or practices in
19 trade or commerce, and unfair methods of competition in violation of RCW 19.86.020.

20 **VIII. PRAYER FOR RELIEF**

21 **WHEREFORE**, plaintiff, State of Washington, prays for relief as follows:

22 8.1 That the Court adjudge and decree that defendants have engaged in the conduct
23 complained of herein.

24 8.2 That the Court adjudge and decree that the conduct complained of herein
25 constitutes unfair or deceptive acts and practices and unfair methods of competition in violation
26 of the Consumer Protection Act, chapter 19.86 RCW.

1 8.3 That the Court issue a permanent injunction enjoining and restraining defendants,
2 and their representatives, successors, assigns, officers, agents, servants, employees, and all other
3 persons acting or claiming to act for, on behalf of, or in active concert or participation with
4 defendants, from continuing or engaging in the unlawful conduct complained of herein,
5 including but not limited to, permanently enjoining the Defendants from conducting any business
6 related to the buying, selling or marketing cycle parts and permanently enjoining Defendants
7 from advertising or conducting any business related to the buying, selling or marketing of parts
8 over the internet.

9 8.4 That the Court assess civil penalties, pursuant to RCW 19.86.140, of up to two
10 thousand dollars (\$2,000) per violation against defendants for each and every violation of RCW
11 19.86.020 caused by the conduct complained of herein.


12 8.5 That the Court make such orders pursuant to RCW 19.86.080 as may be necessary
13 to restore to any person the money or property acquired by the defendants as a result of the
14 conduct complained of herein.

15 8.6 That the Court make such orders pursuant to RCW 19.86.080 to provide that
16 plaintiff, State of Washington, have and recover from defendants the costs of this action,
17 including reasonable attorneys' fees.

18 8.7 That the Court order such other relief as it may deem just and proper to fully and
19 effectively dissipate the effects of the conduct complained of herein, or which may otherwise
20 seem proper to the Court.

21 DATED this 25th day of August, 2008.

22 ROBERT M. MCKENNA
23 Attorney General

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25 MARY C. LOBDELL, WSBA #17930
26 Assistant Attorney General
 Attorney for State of Washington