

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

HARLEY EXTERIORS, INC., a
Washington corporation,

Defendant.

NO. 10-2-17794-9 SEA

CIVIL COMPLAINT

Plaintiff State of Washington, by and through its attorneys Robert M. McKenna, Attorney General, and Jack G. Zurlini, Jr., Assistant Attorney General, brings this action against Defendant named herein and alleges as follows:

1. JURISDICTION

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

1.2. The Attorney General is authorized to commence this action pursuant to RCW 19.86.080.

1.3. Jurisdiction over the Defendant is vested in this court pursuant to RCW 19.86.160 and RCW 19.86.140 because Defendant engaged in conduct violating chapter 19.86 RCW and such conduct impacted consumers and businesses in the state of Washington.

1 Jurisdiction over the subject matter of this Complaint is conferred by the above-referenced
2 statutes.

3 1.4. Venue is properly set in this court pursuant to RCW 19.86.140 in that the
4 violations alleged herein have been and are being committed in whole or in part in King
5 County, State of Washington, and other counties in the state of Washington by Defendant.
6

7 2. DEFENDANT

8 2.1. Defendant Harley Exteriors, Inc., is a Washington corporation. Its principal
9 place of business is located in Bothell, Washington. Defendant has done business in
10 Washington State and is referred to as "Defendant," "Harley Exteriors" or "Harley"
11 throughout this Complaint.
12

13 3. NATURE OF TRADE OR COMMERCE

14 3.1. At all times relevant to this lawsuit, Defendant has been engaged in a for-
15 profit business that involves the marketing and sale of residential replacement windows to
16 consumers located in Washington State and elsewhere. Defendant is therefore engaged in
17 trade or commerce within the state of Washington and in competition with others engaged in
18 similar business activities in Washington for purposes of applying the Consumer Protection
19 Act, chapter 19.86 RCW.
20

21 4. FACTS

22 4.1. Defendant Harley Exteriors sells residential replacement windows to
23 consumers at scheduled in-home presentations conducted by its sales representatives. Harley
24 sells its windows to consumers in Washington using a variety of unfair and deceptive acts or
25 practices that have the capacity to mislead a substantial number of consumers, including but
26 not limited to the following: soliciting customers by misrepresentations; misrepresenting the

1 price and qualities of its products and services; misrepresenting, by omission or otherwise,
2 the material terms of certain offers or guarantees; failing to possess a reasonable basis to
3 substantiate its advertising claims at the time it made the claims; making false advertising
4 claims; and failing to provide consumers with the required notice of their cancellation rights.

5 **4.2. Soliciting Customers by Misrepresentations.** To set up its sales
6 presentation appointments, Harley first collects sales leads using door-to-door canvassers;
7 demonstrators at home improvement shows and retail stores; telemarketers; print
8 advertisements, and Internet advertisements, among other methods. Once an appointment is
9 made, Harley representatives telephone prospective customers to confirm the appointment.
10 And once Harley has confirmed an in-home appointment, it assigns one of its sales
11 representatives to visit the consumer's home.

12 **4.3.** During this lead collection and confirmation process, Harley makes
13 misrepresentations to collect the leads. For example, one script Harley's canvassers are
14 trained to use makes the following misrepresentations: "The reason I'm stopping by is that
15 we just replaced the windows in your neighbor's house. I noticed you have the same
16 windows they used to have." In fact, no neighbor's windows have recently been replaced by
17 Harley. Another canvassers' script Harley employees use to collect sales leads misrepresents
18 that Harley uses its own "certified installer" employees to install the new replacement
19 windows when in fact Harley uses subcontractors to do the installation work.

20 **4.4. False and Unsubstantiated Energy Savings Claims.** Harley makes false
21 and unsubstantiated advertising claims that its customers can expect to realize savings of 40%
22 or more on their energy bills, both in terms of energy consumption and energy costs. These
23 energy savings claims are material representations with respect to a consumer's decision
24 about whether to purchase windows from Harley. These false and unsubstantiated energy
25 savings claims include but are not limited to the following:
26

- 1 • Harley's Internet website invites homeowners to find out "How Much You Would Save
2 By Switching To Olympic Series Windows?" by entering their estimated monthly
3 heating and cooling bill and clicking on the "Calculate Savings" button that's found on
4 Harley's website. When homeowners enter their heating and cooling bill amount and
5 click the button their estimated savings for a month, 1, 5, 10, and 30 years appear under
6 the caption "YOU WOULD SAVE" and invariably equal 40% of the estimated
7 monthly energy bill that the homeowners previously entered.
- 8 • Harley's employees are trained to use scripts to set sales presentation appointments that
9 state the following: "This is just a demonstration of a window that's guaranteed to save
10 you 40% of your heating and cooling costs."
- 11 • Harley's presentation book contains a letter dated May 29, 2008, purportedly from 1st
12 Security Bank that states: "Use Harley Exteriors as your next Home Improvement
13 contractor and you will be a satisfied customer with more money in your pocket as a
14 result of your energy savings!"
- 15 • Harley's presentation book contains charts from Cardinal Glass Industries that
16 represent homeowners can save 42% to 53% on annual energy costs by replacing single
17 pane windows with double pane windows.
- 18 • Harley's sales representatives are trained to tell homeowners during the sales
19 presentation the following: "Well. If you replace your windows with energy efficient
20 windows you'll save up to 50% off your energy bills. How much are you folks
21 spending on average every month? Wow, that's a lot, now a days, for a house this size.
22 At (their avg. energy bill) a month you could save up to (50% of avg. energy bill).
23 That's going to add up quick!"
- 24 • Harley's sales representatives are also trained to and in fact do attempt to convince
25 homeowners about the affordability of Harley's windows by repeatedly representing
26 during the sales presentation that Harley's windows will pay for themselves because of

1 the resulting energy savings. Harley also trains its sales representatives to use a figure
2 equal to 40% of homeowners' energy costs over ten years as an offset against the cost
3 of new windows. Sales representatives are also trained to and in fact do present the
4 cost saving amounts to justify homeowners spending thousands or tens of thousands of
5 dollars on replacement windows. Sales representatives present the costs savings as if
6 homeowners were in fact going to enjoy that magnitude of cost savings after installing
7 Harley's windows.

8 4.5. In addition, at the time Harley made these energy savings claims, Harley
9 represented, directly or by implication, that it possessed and relied upon a reasonable basis that
10 substantiated the claims. But in fact Harley did not possess and rely upon any such reasonable
11 basis at the time it made these claims.

12 4.6. **Harley's Fuel Savings Pledge.** Harley's "40% Fuel Savings Pledge", which is
13 also referred to throughout Harley's advertising as a fuel or energy savings guarantee, is
14 subject to a number of material conditions. The material conditions include a requirement that
15 "the entire house must be done" with new windows; that the Pledge is based on energy (fuel)
16 consumption, not energy cost; that the Pledge covers only the first year of energy usage after
17 the windows are installed; and that the maximum payment under the Pledge is up to but no
18 more than \$500 in total.

19 4.7. But Harley's advertisements for the Pledge do not disclose all its material terms
20 and otherwise misrepresent the terms of the Pledge. For example, Harley's advertisements for
21 the Pledge fail to disclose material terms of the guarantee, i.e., that the guarantee is limited to a
22 maximum \$500 payment. In addition, Harley's sales representatives do not disclose all the
23 material terms of the Pledge; they are trained to tell homeowners the following during their in-
24 home presentations: "While the top performing windows can save you as much as 40%. (*sic*)
25 We have a window that we carry exclusively that I'll show you. It's not the cheapest but we're
26 talking about the best there is in the market. With that window, we guarantee, not up to but at

1 least 40% energy savings or we'll pay the difference." They are also trained to tell
2 homeowners the following during presentations: "We will guarantee you will save 40% or
3 we'll pay the difference. I haven't seen the company have to pay that out one time!"

4 4.8. In addition, the Pledge itself falsely implies that all Harley customers who
5 replace all their windows can expect to achieve at least 40% savings on their energy bills. On
6 the contrary, the potential energy savings for such customers will vary due to the many
7 variables that affect home energy consumption, such as the type of windows being replaced,
8 size and location of the windows, how well insulated the home is, the particular climate of the
9 home's location, and the type and condition of the home's heating and cooling systems.

10 4.9. Furthermore, at the time Harley offered its Pledge, Harley represented, directly
11 or by implication, that it possessed and relied upon a reasonable basis that substantiated the
12 implication that all Harley customers who replace all their windows can expect to achieve at
13 least 40% savings on their energy bills. But, in fact, Harley did not possess and rely upon any
14 such reasonable basis at that time.

15 4.10. **Misrepresenting Installation Services.** Harley represents to homeowners
16 in its advertising and marketing materials that its employees install the new windows for
17 Harley customers. For example, Harley trains its sales representatives to tell homeowners the
18 following during their in-home presentations: "We're a full service company. We handle
19 everything for you from beginning to end. We don't just sell you the windows and walk away.
20 We install them ourselves. We don't subcontract the work out." On the contrary, Harley
21 subcontracts out 100% of its installation work.

22 4.11. **Misrepresenting Prices.** Harley misrepresents the prices of its products.
23 For example, Harley trains its sales representatives to present the price they calculate for the
24 total project as the "retail price." Harley's use of the term "retail price" in this context falsely
25 implies that the price is one at which its products and services are commonly sold. But Harley
26 seldom if ever sells its products and services at this "retail price." Further, Harley takes

1 automatic discounts off of its “retail price” to imply that the discounted price is below the price
2 at which its products and services are commonly sold. Harley’s act of labeling its initial price
3 as a “retail price” and then taking automatic discounts off of its “retail price” falsely implies
4 that consumers are purchasing at a price substantially discounted from the price at which
5 Harley commonly sells its products and services.

6 4.12. In addition, Harley trains its sales representatives to tell homeowners that the
7 discounted prices it offers at the in-home demonstration are of limited availability when in fact
8 they are not. For example, Harley offers discounted prices that it represents are available to
9 homeowners only if they accept the offer the same day of the in-home presentation. On the
10 contrary, Harley offers homeowners the same prices at subsequent “rehash” sales
11 presentations. Harley’s employees are trained to tell homeowners the following when they call
12 homeowners and attempt to set rehash sales presentations: “if price is the issue, than (*sic*) what
13 if I could send my boss out to take a look at your project and have him sharpen his pencil for
14 you?”

15 4.13. **Homeowners’ Right to Cancel.** If homeowners purchase windows during in-
16 home presentations, Harley is required to notify homeowners of their cancellation rights
17 pursuant to 16 C.F.R. § 429.1. This regulation provides homeowners with a right to cancel
18 within three business days from the date of sale. In addition, if homeowners cancel their
19 contracts within that time period, the regulation requires businesses to refund homeowners’
20 payments within 10 business days. Harley fails to provide homeowners with a duplicate copy
21 of the notice of cancellation form required by statute.

22 23 **5. CAUSES OF ACTION**

24 **VIOLATION OF RCW 19.86.020**

25 5.1. Plaintiff realleges paragraphs 1.1 through 4.13 and incorporates them herein by
26 this reference.

5.2. In the context of conducting its business, Defendant engaged in the conduct alleged herein. Such conduct constitutes unfair or deceptive acts or practices in trade or commerce that have the capacity to mislead a substantial number of consumers, and/or unfair methods of competition in violation of RCW 19.86.020.

6. PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Washington prays for relief as follows:

6.1. That the Court adjudge and decree that Defendant has engaged in the conduct complained of herein.

6.2. That the Court adjudge and decree that the conduct complained of in paragraphs 1.1 through 5.2 constitutes unfair or deceptive acts or practices and unfair methods of competition in violation of the Consumer Protection Act, Chapter 19.86 RCW.

6.3. That the Court assess civil penalties pursuant to RCW 19.86.140 of up to \$2,000 per violation against Defendant for each and every violation of RCW 19.86.020 caused by the conduct complained of herein.

6.4. That the Court issue a permanent injunction pursuant to RCW 19.86.080 enjoining and restraining Defendant, and its owners, officers, directors, employees, servants, transferees, successors, assigns and all other persons acting or claiming to act for, on behalf of, or in active concert or participation with Defendant, from continuing or engaging in the unlawful conduct complained of herein.

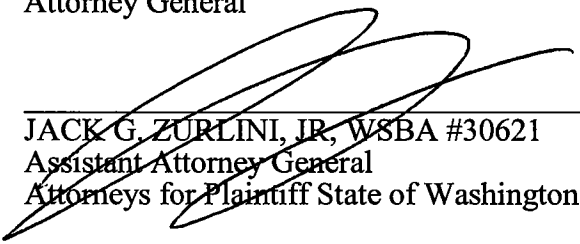
6.5. That the Court make such orders pursuant to RCW 19.86.080 as it deems appropriate against Defendant to provide for restitution to consumers of money or property acquired by Defendant as a result of the unlawful conduct complained of herein.

6.6. That the Court make such orders pursuant to RCW 19.86.080 to provide that Plaintiff State of Washington have and recover from Defendant the costs of this action, including reasonable attorneys' fees.

1 6.7. That the Court make such other orders that it deems just and proper.

2 DATED this 18th day of May, 2010.

3 ROBERT M. MCKENNA
4 Attorney General

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6 JACK G. ZURLINI, JR., WSBA #30621
7 Assistant Attorney General
8 Attorneys for Plaintiff State of Washington