

CIVIL CASE INFORMATION STATEMENT
CIVIL CASES

FILED

2015 MAY 21 3 32 PM
COPY

In the Circuit Court, Cabell County, West Virginia

I. CASE STYLE:

J.E. HOOD
CIRCUIT CLERK
CABELL CO., WV

Plaintiff/Petitioners,

Case # 15-C-383

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL,

Judge /s/ F. JANE HUSTEAD

v.

Defendants/Respondents.

Days to
Answer

Type of Service

TRIO ALARM L.L.C.

30

Sec. of State

TYLER IGNATOWSKI, individually and
in his official capacity as sole member
and manager of Trio Alarm L.L.C.

30

Sec of State

PLAINTIFF: STATE OF WEST VIRGINIA ex rel. PATRICK MORRISEY, ATTORNEY GENERAL DEFENDANTS: TRIO ALARM, L.L.C., et al.	CASE NUMBER:
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II. TYPE OF CASE:

TORTS	OTHER CIVIL

Asbestos	Adoption	Appeal from Magistrate Court
Professional Malpractice	Contract	Petition for Modification of Magistrate Sentence
Personal Injury	Real Property	Miscellaneous Civil
Product Liability	Mental Health	X Other
Other Tort	Appeal of Administrative Agency	

III. JURY DEMAND: Yes No X

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): N/A

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?

YES NO X

IF YES, PLEASE SPECIFY:

Wheelchair accessible hearing room and other facilities
 Interpreter or other auxiliary aid for the hearing impaired
 Reader or other auxiliary aid for the visually impaired
 Spokesperson or other auxiliary aid for the speech impaired
 Other: _____

Attorney Name: R. Stephen Jarrell, Assistant Attorney General
 (State Bar No. 6787)

Firm: State of West Virginia, Attorney General's Office

Address: Post Office Box 1789, Charleston, WV 25326-1789

Telephone: (304)558-8986

Representing:

Plaintiff Defendant

Cross-Complainant Cross-Defendant

Dated: 5/27/15

R. St. Jarrell
 Signature

Pro Se

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY, ATTORNEY GENERAL,

Plaintiff/Petitioner,

v.

Civil Action No. 15-C-383

Judge /s/ F. JANE HUSTEAD

TRIO ALARM L.L.C., a Wisconsin limited liability
corporation; and, TYLER IGNATOWSKI, individually
and in his official capacity as sole member and manager of
Trio Alarm L.L.C.,

Defendants/Respondents.

COMPLAINT FOR INJUNCTION, CONSUMER
RESTITUTION, DISGORGEMENT, CIVIL PENALTIES,
AND OTHER APPROPRIATE RELIEF

Plaintiff, the State of West Virginia ex rel. Patrick Morrissey, Attorney General ("the State" or "Attorney General"), files this Complaint asking the court to temporarily and permanently enjoin the above-named Defendants, Trio Alarm L.L.C. and Tyler Ignatowski, from violating the West Virginia Consumer Credit and Protection Act ("WVCCPA"), W. Va. Code § 46A-1-101 *et seq.*, and other applicable consumer protection laws and regulations, and to enter a final order awarding the State all other appropriate relief as authorized by W. Va. Code § 46A-7-108.

I. PARTIES

The Plaintiff

1. Plaintiff Patrick Morrissey is the Attorney General of the State of West Virginia and is empowered to enforce the provisions of the WVCCPA, W. Va. Code § 46A-1-101 *et seq.*, including the provisions that govern the sale and financing of consumer goods and services.

The Defendants

2. Defendant Trio Alarm LLC (hereinafter “Trio”) is a foreign corporation registered with the West Virginia Secretary of State as having its principal place of business at 7027 Oak Road, Vesper, Wisconsin 54489. The address registered with the West Virginia Secretary of State for notice of process is 110 James Street, Hinton, West Virginia, 25951.

3. Tyler Ignatowski is and was sole member and manager of Trio at all times pertinent hereto. Upon information and belief, he runs the day-to-day operations of the company.

4. Ignatowski is a resident of Wisconsin, specifically 7027 Oak Road, Vesper, Wisconsin 54489.

5. As manager of Trio, Ignatowski has the authority and duty to set policies and practices for that corporation.

6. Ignatowski has managed and controlled the day-to-day business operations of Trio during the relevant time period.

7. Ignatowski participated in, approved of, sanctioned, or ratified the marketing, sales, and financing practices of Trio.

8. To adhere to the fiction of a separate corporate existence between the defendants Ignatowski and Trio would sanction fraud and promote injustice. Accordingly, Trio and Ignatowski will hereinafter be referred to collectively as “Trio.”

Jurisdiction and Venue

9. This court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution, W. Va. Code § 51-2-2, and W. Va. Code § 53-5-3.

10. Venue is proper in this court pursuant to W. Va. Code § 46A-7-114 and W. Va. Code § 56-1-1(a)(6).

II. PROCEDURAL FACTS

11. Trio is in the business of selling home security systems and monitoring services.

12. Although Trio registered with the West Virginia Secretary of State, the address it listed as its “principal office location” – 7072 Oak Road, Vesper, Wisconsin – is, in fact, a mail drop.

13. In November 2014, the Attorney General’s office and the City of Huntington began receiving calls and complaints from consumers regarding the business practices of Trio.

14. Consumers complained of Trio’s unfair or deceptive acts or practices while selling and attempting to sell home security systems door-to-door.

15. Trio’s agents targeted consumers whose homes displayed signs or stickers representing that home security systems were already in place.

16. Trio’s agents represented to consumers that the company with which they currently had a service agreement was going out of business and that Trio was taking over its clients or the entire business.

17. As a result of Trio's representations, consumers signed documents they believed would merely transfer their current service to Trio because their current security company was going out of business or being taken over by Trio.

18. Trio's agents represented to consumers that they were agents of the consumers' current security company and Trio's agents were there to "upgrade" the consumers' security system.

19. As a result of these representations, consumers' signed documents they believed merely authorized the upgrade of their current systems.

20. The documents Trio had consumers sign were actually agreements whereby the consumers agreed to pay Trio for the installation of a new security system and monitoring.

21. At the time consumers signed documents with Trio, they were also charged an installation fee and/or an initial service fee.

22. The agreement was generally for a period of five (5) years and provided that consumers would pay an early termination fee if they cancelled prior to the end of the five (5) year term.

23. Consumers were not aware they had entered into new agreements until they received monthly statements from both their former security provider and Trio.

24. Consumers who had entered into contracts with Trio and effectively terminated their agreements with their former provider were charged early termination fees by their former provider.

25. Trio caused some consumers' contracts with their previous provider to be cancelled. This caused consumers to incur early termination fees under those previous contracts.

26. Trio sent consumers monthly statements and would not allow consumers to rescind their contracts without paying an early termination fee.

27. A specific example of Trio's business practices includes a complaint filed by one West Virginia consumer who stated that the Trio agent told him that the agent was there to upgrade his current ADT system. Trio's agent told the consumer that, if performed by Trio, the upgrade would be free. Trio's agent had the consumer sign documents that the agent represented were necessary to authorize the free upgrade. Trio removed the consumer's ADT system and replaced it with Trio's system. When the consumer's wife came home, she reviewed the contract he had signed and found that it terminated the ADT contract and agreed to purchase service from Trio. When she tried to cancel the contract, she discovered that Trio had removed her ADT system, installed its own and charged her and her husband for the change. The consumers were able to eventually cancel the contract with Trio, but had to pay ADT to reinstall its equipment.

28. Trio is not licensed in the state of West Virginia to install systems within the state.

Background and Applicable Law

29. Trio engaged in the sale and financing of home security systems to West Virginia Consumers at all times pertinent hereto. As such, Trio's business practices are subject to the provisions set forth in the WVCCPA, which is regulated by the Attorney General pursuant to W. Va. Code § 46A-7-101.

30. Trio is and was a "merchant" as that term is defined by W. Va. Code § 46-2-104(i) of the Uniform Commercial Code and as that term is used generally throughout the WVCCPA.

31. Trio engages in the extension of "credit" to West Virginia Consumers as defined by the WVCCPA, W. Va. Code § 46A-1-102(17)

32. Trio is a "creditor" as defined by the Federal Truth in Lending Act ("TILA") and Regulation Z, 15 U.S.C. § 1638 and 12 C.F.R. § 1026.17-18, respectively. As such, Trio is also subject to the provisions set forth therein.

33. Trio engaged in "door-to-door sales" as defined by the Federal Trade Commission Rule Concerning Cooling-Off Period For Sales Made At Homes Or At Certain Other Locations ("FTC Rule"), 16 C.F.R. § 429.0(a).

34. The FTC Rule requires that the seller in a door-to-door sale furnish to each buyer at the time of sale a completed form in duplicate, captioned with "NOTICE OF RIGHT TO CANCEL" or "NOTICE OF CANCELLATION."

35. The sales that Trio enters into with consumers at their homes also meet the definition of a "home solicitation sale" as defined by the WVCCPA, W. Va. Code § 46A-1-2(22). As such, Trio must comply with the protections afforded by the WVCCPA in addition to the requirements of the FTC Rule stated above.

36. As is the case in door-to-door sales covered by the FTC Rule, the WVCCPA similarly provides that the seller must provide the buyer in every home solicitation sale in this state a written agreement or offer to purchase which designates as the date of the transaction the day in which the buyer has signed it and which contains a statement of the buyer's rights under the conspicuous caption, "BUYER'S RIGHT TO CANCEL." *See* W. Va. Code § 46A-2-133.

37. The WVCCPA provides an additional protection: "No such agreement or offer to purchase shall be effective until after it has been signed by the buyer and he has written

the date of such signature in his own handwriting." See W. Va. Code § 46A-2-133 (emphasis added).

38. The FTC Rule requires sellers to return any payments made, cancel any security interests arising from the transaction in the event of a cancellation, and prohibits the seller from waiving or misrepresenting in any manner the buyer's right to cancel. See FTC Rule 16 C.F.R. § 429.1(b), (d), and (f).

39. The WVCCPA similarly provides that any provision permitting the seller to keep all or part of any payment, note or other evidence of indebtedness in a home solicitation sale constitutes a violation of the buyer's right to cancel and is unenforceable. See W. Va. Code § 46A-2-134.

40. The WVCCPA further provides that the seller is not entitled to any compensation for services that were performed prior to cancellation or prior to giving proper notice of the consumer's buyer's right to cancel in a home solicitation sale. See W. Va. Code § 46A-2-135.

41. In addition to an unconditional three-day right to cancel a home solicitation sale, the Uniform Commercial Code affords consumers the right to reject before delivery or revoke acceptance after delivery goods that are not "merchantable" as defined by W. Va. Code § 46A-6-102(c). See *general* W. Va. Code § 46-2-6-1 *et seq.*

42. The WVCCPA provides: "Unfair methods of competition and unfair or deceptive act or practices in the conduct of any trade or commerce are hereby declared unlawful." See W. Va. Code § 46A-6-104.

43. The WVCCPA defines "unfair methods of competition and unfair or deceptive acts or practices" to mean and include, but not be limited to, the following:

- (A) Passing off goods or services as those of another;

(B) Causing likelihood of confusion or of misunderstanding as to the source . . . of goods or services;

(C) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with . . . another;

(E) Representing that . . . a person has an affiliation or connection that he does not have;

(L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;

(M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby.

W. Va. Code § 46A-6-102(7)(A), -(B), -(C), -(E), -(L), -(M).

44. West Virginia Code § 46A-2-127 provides that “no debt collector shall use any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims”

45. Conduct deemed to be in violation of W. Va. Code § 46A-2-127 includes, but is not limited to, “any false representation or implication of the character, extent or amount of a claim against a consumer, or its status in any legal proceeding.” W. Va. Code § 46A-2-127(d).

46. A creditor collecting its own debts is a “debt collector” and subject to the provisions of the WVCCPA. *See Thomas v. Firestone Tire and Rubber Co.*, 164 W. Va. 763, 769, 266 S.E.2d 905, 909 (W. Va. 1980).

47. The WVCCPA prohibits "excess charges," however denominated, and authorizes the court to impose a civil penalty payable to the consumer of up to ten

times the amount of the excess charge if the charge was made in deliberate violation of or in reckless disregard of the WVCCPA or when the creditor has refused to refund the excess charge within a reasonable time after demand by the consumer or the attorney general. *See* W. Va. Code § 46A-7-111. *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (W.Va. 1995).

48. Any charge in not authorized by the WVCCPA is an excess charge.

49. The WVCCPA provides that a court may refuse to enforce an agreement arising from a consumer credit sale if it finds as a matter of law that the agreement was unconscionable at the time it was made or was induced by unconscionable conduct. *See* W. Va. Code § 46A-2-121.

50. Repeated and willful violations of the WVCCPA may subject the violator to civil penalties of up to \$5,000 for each violation, in accordance with W. Va. Code § 46A-7-111(2).

51. West Virginia Code § 21-11-2 provides:

It is hereby declared to be the policy of the state of West Virginia that all persons desiring to perform contracting work in this state be duly licensed to ensure capable and skilled craftsmanship utilized in construction projects in this state, both public and private, fair bidding practices between competing contractors through uniform compliance with the laws of this state, and protection of the public from unfair, unsafe and unscrupulous bidding and construction practices.

(Emphasis added.)

52. Violation of a law promulgated to protect the public is an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104.

53. Legislative Rule 28, Series 2 , “West Virginia Contractor’s Licensing Act”, defines “specialty contractors” to mean “a person who engages in specialty contracting

services or work incidental to the undertaking which does not substantially fall within the scope of any contractor classification as set out in W. Va. Code § 21-11-1 *et seq.*” 28 C.S.R. § 2.3.36.

54. "Low Voltage Systems (specialty) Contractor" means

A contractor engaged in the installation, repair or maintenance of communication, monitoring, security, sound, and other systems utilizing low voltage electric currents, the system's directly related wiring, and work incidental to the installation or repair. "Low voltage" means wiring systems of 50 volts or less and the control circuits directly associated with the system. "Directly related wiring" means line voltage wiring not in excess of 300 volts originating at the load-side terminals of a disconnecting means or junction box that has been installed by persons properly licensed to install it for the sole purpose of supplying power to the low voltage system.

28 C.S.R. § 2.3.21.

55. Trio is a contractor as defined by 28 C.S.R. § § 2.3.21, -3.36.

56. Trio is not licensed to conduct business in the State of West Virginia as a contractor.

III. RELEVANT PERIOD OF TIME

57. The relevant period of time for this civil action is the period during which Trio commenced the sale and financing of home security systems in West Virginia, including any period encompassing the collection of debts arising from its sale and financing of the security system, up to and including the present and the future.

IV. STATEMENT OF FACTS

The Attorney General's Investigation

58. The Attorney General received at least eight formal complaints from consumers reporting that Trio had engaged in a wide range of violations of the WVCCPA in the sale and financing of home security systems in West Virginia.

59. In order to determine the nature and scope of Trio's potential violations of the WVCCPA, the Attorney General investigated Trio, including but not limited to reviewing materials from the Better Business Bureau and the City of Huntington.

V. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

60. The State reasserts each and every allegation hereinabove in the Complaint as if set forth fully herein.

61. Trio represented it was an agent of consumers' current security provider performing an equipment upgrade when it was not.

62. Trio's conduct constitutes an unfair or deceptive act or practice as defined by W. Va. Code § 46A-6-102(7)(A) in violation of W. Va. Code § 46A-6-104.

SECOND CAUSE OF ACTION

63. The State reasserts each and every allegation hereinabove in the Complaint as if set forth fully herein.

64. Trio represented to consumers that their current home security provider was going out of business or that it had taken over the current provider's business when it had not.

65. By passing off its goods or services as those of another, Trio violated W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(B).

THIRD CAUSE OF ACTION

66. The State reasserts each and every allegation hereinabove in the Complaint as if set forth fully herein.

67. Trio represented to consumers that their current home security provider was going out of business or that it had taken over the current provider's business when it had not.

68. By causing the likelihood or confusion or misunderstanding as to the source of its goods or services, Trio violated W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(C).

FOURTH CAUSE OF ACTION

69. The State reasserts each and every allegation hereinabove in the Complaint as if set forth fully herein.

70. Trio installed security systems and accepted payments from consumers for such systems the same day contracts were signed. This conduct caused confusion and misunderstanding by the consumers as to their ability to cancel their contracts.

71. This conduct constitutes an unfair or deceptive act or practice as defined by W. Va. Code § 46A-6-102(7)(L) in violation of W. Va. Code § 46A-6-104.

FIFTH CAUSE OF ACTION

72. The State reasserts each and every allegation hereinabove in this Complaint as if set forth fully herein.

73. By representing that homeowners' current security provider was going out of business when it was not, Trio engaged in unfair or deceptive sales practices as defined by W. Va. Code § 46A-6-102(7)(M) in violation of W. Va. Code § 46A-6-104.

SIXTH CAUSE OF ACTION

74. The State reasserts each and every allegation hereinabove in the Complaint as if set forth fully herein.

75. Consumers who discovered Trio's misrepresentations cancelled and/or attempted to cancel their contracts with Trio.

76. Upon cancellation, Trio collected and/or attempted to collect amounts it claimed were due under the cancelled contracts.

77. West Virginia Code § 46A-2-127 provides that "no debt collector shall use any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims"

78. By collecting or attempting to collect debts based upon misrepresentations and omissions of material fact, Trio violated W. Va. Code § 46A-2-127.

79. A violation of W. Va. Code § 46A-2-127 constitutes an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104.

SEVENTH CAUSE OF ACTION

80. The State reasserts each and every allegation hereinabove in the Complaint as if set forth fully herein.

81. West Virginia Code § 21-11-2 requires that all entities conducting business as a contractor in the State of West Virginia must first obtain a license.

82. Trio is a contractor as defined by 28 C.S.R. § § 28.2.3.21, -3.36.

83. Trio is not licensed to do business as a contractor in West Virginia.

84. West Virginia Code § 21-11-1, et seq. is a law promulgated to protect the public.

85. Violation of a law promulgated to protect the public is an unfair or deceptive act or practice and violates W. Va. Code § 46A-6-104.

86. By conducting business as a contractor without a license, Trio violated W. Va. Code § 46A-6-104.

EIGHTH CAUSE OF ACTION

87. The WVCCPA does not limit the definition of unconscionable, but provides the court with guidelines set forth in W. Va. Code § 46A-7-109.

88. Trio's misrepresentations and unlawful conduct, taken as a whole, is so egregious as to be an affront to any an ordinary individual. As such, Trio's conduct in entering into contracts with consumers based upon misrepresentations and omissions of material fact, and its attempts collect or the collection of payment upon these unlawful contracts, constitutes unconscionable conduct.

VI. INJUNCTIVE RELIEF

89. The State reasserts each and every foregoing allegation in this Complaint as if set forth fully herein.

90. Pursuant to the West Virginia Consumer Credit and Protection Act, including notably W. Va. Code § 46A-7-108 through -110, the State seeks to temporarily and permanently enjoin the Defendants/Respondents from any ongoing current violations as well as prohibit similar unlawful conduct in the future.

91. The State also seeks an immediate temporary injunction restraining the Defendants/Respondents from soliciting, marketing, selling or leasing home security systems in the State of West Virginia and further prohibiting the Defendants/Respondents from collecting or attempting to collect any amounts alleged to be due under contracts Trio entered into with West Virginia consumers until such time as this Court may make a final determination in this matter.

VII. PRAYER FOR RELIEF

WHEREFORE, the State requests that the Court grant the following relief against the Defendants/Respondents, Trio Alarm, L.L.C. and Tyler Ignatowski, jointly and severally:

2. An Order declaring Tyler Ignatowski, as sole member and manager of Trio Alarm L.L.C., to be personally liable for all actions done in the name of Trio Alarm L.L.C., for the payment of all money awarded to the State by this Court, and subject to all injunctive relief order by this Court;

3. Upon a finding that the Defendants/Respondents have violated the provisions of the WVCCPA, an Order declaring all transactions between Defendants/Respondents and West Virginia consumers unenforceable;

4. Upon a finding that the Defendants/Respondents have violated the provisions of the WVCCPA, an Order requiring that the Defendants/Respondents be required to provide full refunds to all West Virginia consumers with whom it transacted business;

5. An order requiring the Defendants/Respondents cause all negative information it has reported to consumers' credit reports be deleted;

6. An Order requiring the Defendants/Respondents to pay the State of West Virginia a civil penalty of Five Thousand Dollars (\$5,000.00) for each and every violation of the Act, pursuant to W. Va. Code § 46A-7-111(2), and further requiring that said sum shall be used at the discretion of the Attorney General for any one or more of the following purposes: direct and indirect administrative, investigative, compliance, enforcement or litigation costs and services incurred for consumer protection purposes; to be held for appropriation by the Legislature; and/or distribution to taxpayers and/or consumers.

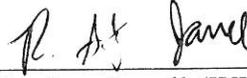
7. An Order requiring that the funds for the refunds and civil penalties be paid to the State within ten (10) days of the entry of the order;

8. An Order requiring that the Defendants/Respondents pay the cost of investigation, litigation, and administration of this matter and the State's attorney fees;

9. An Order granting other further relief as this Court may deem just and proper.

Respectfully submitted:
STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
Attorney General

By Counsel



R. Stephen Jarrell (WV Bar No. 6787)
Assistant Attorney General
Consumer Protection/Antitrust Division
Post Office Box 1789
Charleston, WV 25326-1789
Telephone: 304-558-8986

VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

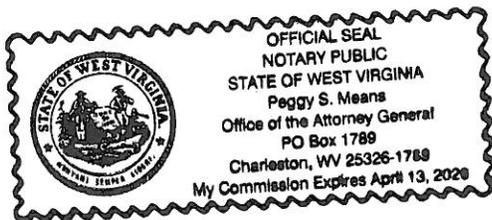
I, R. STEPHEN JARRELL, ASSISTANT ATTORNEY GENERAL, being duly sworn, depose and say that I am the counsel of record for the Plaintiffs in the Complaint For Injunction, Consumer Restitution, Disgorgement, Civil Penalties, And Other Appropriate Relief in the foregoing styled civil action; that I am familiar with the contents of the foregoing Complaint For Injunction, Consumer Restitution, Disgorgement, Civil Penalties, And Other Appropriate Relief; and that the facts and allegations contained therein are true, except such as are therein stated upon information and belief, and that as to such allegations I believe them to be true.

R. Stephen Jarrell

R. STEPHEN JARRELL (WV State Bar 6787)
ASSISTANT ATTORNEY GENERAL
Consumer Protection Division and
Antitrust Division

Taken, subscribed, and sworn to before me in the County and State aforesaid this 27th day of May, 2015.

My commission expires April 13, 2020.



Peggy S. Means

NOTARY PUBLIC