

IN THE COURT OF COMMON PLEAS  
MONTGOMERY COUNTY, OHIO

STATE OF OHIO ex rel.	)	
ATTORNEY GENERAL	)	
DAVE YOST	)	Case No:
30 E. Broad St., 14 <sup>th</sup> Floor	)	
Columbus, Ohio 43215	)	
	)	Judge:
Plaintiff,	)	
v.	)	
	)	
B&R FENCE & MORE, LLC	)	COMPLAINT AND REQUEST
c/o Bethany D. Estridge, Statutory Agent	)	FOR DECLARATORY
112 Ingleside Ave.	)	JUDGMENT, INJUNCTIVE RELIEF,
Dayton, Ohio 45404	)	CONSUMER RESTITUTION,
	)	CIVIL PENALTIES, AND
and	)	OTHER APPROPRIATE RELIEF
	)	
ROBERT WOOD	)	
5728 W. Third St.	)	
Dayton, Ohio 45427	)	
	)	
Defendants.	)	

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**JURISDICTION AND VENUE**

1. Plaintiff, State of Ohio, by and through its counsel, the Attorney General of Ohio, Dave Yost, having reasonable cause to believe that violations of Ohio’s consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by R.C. 1345.01 *et seq.*
2. The actions of Defendants, B&R Fence & More, LLC and Robert Wood (collectively, “Defendants”), hereinafter described, have occurred in in the State of Ohio in Montgomery County and are in violation of the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01, *et seq.*, its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, and the Home Solicitation Sales

Act (“HSSA”), R.C. 1345.21 through R.C. 1345.28.

3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(3) in that the Defendants conducted the activity which gave rise to the claims for relief set forth herein in Montgomery County, Ohio.

#### **DEFENDANTS**

5. Defendant B&R Fence & More, LLC is a domestic limited liability company registered with the Ohio Secretary of State on or about April 11, 2019.
6. Defendant Robert Wood is a natural person with a last known address at 5728 W. Third St., Dayton, Ohio 45427.
7. Defendant Robert Wood, at all times pertinent hereto, controlled and directed the business activities and sales conduct of Defendant B&R Fence & More, LLC, causing, personally participating in, or ratifying the acts and practices of the same, including the conduct giving rise to the violations described herein.
8. Defendants are “suppliers,” as that term is defined in R.C. 1345.01(C), as they engaged in the business of effecting “consumer transactions” by advertising, soliciting, and/or selling fence removal, repair, and installation services to individual “consumers” in the State of Ohio for purposes that were primarily personal, family, or household within the meaning of the CSPA, R.C. 1345.01(A), (C), and (D).
9. Defendants are “sellers” pursuant to the HSSA as they engaged in “home solicitation sales” of “consumer goods or services,” specifically fence removal, repair, and installation

services, at the residences of consumers in the State of Ohio for purposes that were primarily personal, family, or household within the meaning of the HSSA, R.C. 1345.21(A), (C), and (E).

#### **STATEMENT OF FACTS**

10. Defendants engaged in the business of advertising, soliciting, and/or selling fence removal, repair, and installation services to consumers in the State of Ohio.
11. Defendants advertised and marketed their fence business to consumers via the Internet and social media.
12. Defendants did not have a retail business establishment with a fixed location in the State of Ohio where the goods or services involved in the Defendants' fence business were regularly offered or exhibited for sale.
13. Defendants entered into contracts in excess of twenty-five dollars with consumers at their residences in Montgomery County, Ohio for fence removal, repair, and/or installation services.
14. Defendants required and received down payments from consumers prior to commencing work under their fence removal, repair, and/or installation service contracts.
15. In some instances, after receiving payment from consumers for fence removal, repair and/or installation services, Defendants permitted more than eight weeks to elapse without either making delivery, making a full refund, advising the consumers of the duration of an extended delay and offering to send a refund within two weeks if so requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.
16. In some instances, after receiving payment from consumers for fence removal, repair,

and/or installation services, Defendants failed to perform any work, and failed to refund any of the consumers' payments.

17. In some instances, after receiving payment from consumers for fence removal, repair, and/or installation services, Defendants performed some work contracted for, but then abandoned the worksite without returning or refunding any of the consumers' payments.
18. In their sale of fence removal, repair, and installation services to consumers, Defendants failed to properly notify consumers of their rights to cancel their transactions and failed to provide consumers with notice of cancellation forms describing the consumers' rights to cancel the transactions within three business days.

**PLAINTIFF'S FIRST CAUSE OF ACTION:**  
**VIOLATIONS OF THE CSPA**

**COUNT I - FAILURE TO DELIVER**

19. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth previously in this Complaint.
20. Defendants committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09(A), and the CSPA, R.C. 1345.02(A), by accepting money from consumers for goods and services, specifically for fence removal, repair and/or installation services, and then permitting more than eight weeks to elapse without making delivering, making a full refund, advising the consumers of the duration of an extended delay and offering to send a refund within two weeks if so requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.

**COUNT II – SHODDY/INCOMPLETE PERFORMANCE**

21. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth

previously in this Complaint

22. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by entering into contracts with consumers to provide fence removal, repair and/or installation services, but then only partially performing under the contracts before abandoning the worksite and failing to return to finish and/or correct such work.
23. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

**PLAINTIFF'S SECOND CAUSE OF ACTION:**  
**VIOLATION OF THE HSSA**

**FAILURE TO PROVIDE PROPER NOTICE**  
**OF THREE-DAY RIGHT OF RESCISSION**

24. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth previously in this Complaint.
25. Defendants violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by failing to give proper notice to consumers of their right to cancel their transactions and by failing to provide consumers with notice of cancellation forms describing the consumers' rights to cancel the transactions within three business days.
26. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. DECLARE, pursuant to R.C. 1345.07(A)(1), that each act or practice complained of herein violates the CSPA, R.C. 1345.01, *et seq.*, its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, and the HSSA, R.C. 1345.21 through R.C. 1345.28, in the manner set forth in the Complaint.
- B. ISSUE A PERMANENT INJUNCTION, pursuant to R.C. 1345.07(A)(2), enjoining the Defendants, their agents, employees, successors or assigns, and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership, or other association, under these or any other names, from engaging in the acts and practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 *et seq.*, its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, or the HSSA, R.C. 1345.21 through R.C. 1345.28.
- C. ORDER Defendants, pursuant to R.C. 1345.07(B), to pay damages to all consumers injured by the conduct of the Defendants as set forth in this Complaint.
- D. ASSESS, FINE and IMPOSE upon Defendants, pursuant to R.C. 1345.07(D), a civil penalty of up to \$25,000.00 for each separate and appropriate violation described herein.
- E. ORDER that Defendants be enjoined, pursuant to R.C. 1345.07(B), from engaging in consumer transactions as a supplier in the State of Ohio until they satisfy any monetary obligations ordered to be paid in this matter.
- F. ORDER Defendants to pay Plaintiff collection costs and interest, as permitted by Ohio law, including, but not limited to, R.C. 131.02, 109.08, and 109.081, on the unpaid balance of any judgment entered against the Defendants in this matter.
- G. ORDER Defendants to pay all court costs associated with this matter.

H. GRANT such other relief as the court deems to be just, equitable, and appropriate.

Respectfully submitted,

DAVE YOST  
Attorney General

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