

IN THE CIRCUIT COURT OF BENTON COUNTY, MISSOURI

STATE OF MISSOURI, ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
JOHN R. ADAMS)	Div. No.
d/b/a MISSOURI CANNON WORKS)	
)	
Serve: John R. Adams)	
29129 Gazelle Circle)	
Warsaw, Missouri 65355)	
)	
Defendant.)	

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION,
RESTITUTION, CIVIL PENALTIES AND OTHER RELIEF**

The State of Missouri, through the undersigned counsel, states the following for its cause of action:

INTRODUCTION

This action targets Defendant’s merchandising practices that are employed in transactions with consumers. Defendant advertises and sells merchandise, as defined in Chapter 407, RSMo, to Missouri consumers in the form of full-scale replica Civil War cannons and related parts. As explained in the following paragraphs, Defendant has violated Missouri’s Merchandising Practices Act through deceptive and misleading practices, and by accepting advance payments from consumers without completing services and or without delivering products. This action seeks to permanently enjoin Defendant from continuing his unlawful activities and provide monetary relief to consumers who suffered economic losses as a result of Defendant’s actions.

PARTIES AND JURISDICTION

1. Jeremiah W. (Jay) Nixon is the duly elected, qualified, and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to sections 407.020 and 407.100, RSMo Supp. 2003¹.

2. Defendant John R. Adams, d/b/a “Missouri Cannon Works,” is a Missouri resident with a mailing address listed as 29192 Gazelle Circle, Warsaw, Missouri, 65355.

3. For purposes of this action, any references to the acts and practices of Defendant John R. Adams, shall mean that such acts and practices are by and through the acts of Defendant and his officers, directors, employees, partners, or other agents.

4. This Court has subject matter jurisdiction over this action pursuant to section 407.100 which allows the Attorney General to seek injunctive relief, restitution and penalties in circuit court for violations of section 407.020.

5. Venue is proper in this Court pursuant to section 407.100.7, because the Defendant maintains his primary place of business in Benton County, Missouri.

THE MISSOURI MERCHANDISING PRACTICES ACT

6. Section 407.020 provides, in pertinent part:

The act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in

¹ All references, unless otherwise noted, are to Missouri Revised Statutes Supplemental 2003.

trade or commerce or the solicitation of any funds for any charitable purpose, as defined in Section 407.453, in or from the State of Missouri, is declared to be an unlawful practice.

7. Section 407.100 provides:

1. Whenever it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from the state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

4. The court in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including but not limited to, any moneys or property, real or personal, which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured.

5. The court, in its discretion, may appoint a receiver to insure the conformance to any orders issued under subsection 3 of this

section or to insure the payment of any damages ordered under subsection 4 of this section.

6. The court may award to the state a civil penalty of not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

7. Any action under this section may be brought in the county in which the Defendant resides, where the violation alleged to have been committed occurred, or where the Defendant has his principal place of business.

8. The attorney general is authorized to enter into consent judgments or consent injunctions with or without admissions of violations of this chapter. Violation of any such consent judgment or consent injunction shall be treated as a violation under section 407.110

8. "Advertisement" is defined by section 407.010(1) as "the attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise."

9. "Merchandise" is defined by section 407.010(4) as "any objects, wares, goods, commodities, intangibles, real estate or services."

10. "Sale" is defined by section 407.010(6) as "any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or credit."

11. "Trade or Commerce" is defined by section 407.010(7) as "the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real personal, or mixed and any other article, commodity, or thing of value wherever situated. The terms 'trade' and 'commerce' include any trade or commerce directly or indirectly affecting the people of this state."

12. 15 CSR 60-8.020 provides in part that:

(1) An unfair practice is any practice which -

(A) Either -

(1) Offends any public policy as it has been established by the Constitution, statutes or common law of this state, or by the Federal Trade Commission, or its interpretative decisions; or

(2) Is unethical, oppressive or unscrupulous; and

(B) Presents a risk of, or causes, substantial injury to consumers.

13. 15 CSR 60-8.040 provides that “[i]t is an unfair practice for any person in connection with the advertisement or sale of merchandise to violate the duty of good faith in solicitation, negotiation and performance, or in any manner fail to act in good faith.”

14. 15 CSR 60-8.070 provides that “[i]t is an unfair practice for any person in connection with the sale of merchandise to unilaterally breach unambiguous provisions of consumers contracts.”

15. 15 CSR 60-9.020 governs deception and states as follows:

(1) Deception is any method, act, use, practice, advertisement or solicitation that has the tendency or capacity to mislead, deceive, or cheat, or that tends to create a false impression.

(2) Reliance, actual deception, knowledge of deception, intent to mislead or deceive, or any other culpable mental state such as recklessness or negligence, are not elements of deception as used in section 407.020.1, RSMo...Deception may occur in securing the first contact with a consumer and is not cured even though the true facts or nature of the advertisement or offer for sale are subsequently disclosed.

16. 15 CSR 60-9.040 provides:

(1) Fraud includes any acts, omissions or articles which involve falsehood, deception, trickery, breach of legal or equitable duty, trust, or confidence,

and are injurious to another or by which an undue or unconscientious advantage over another is obtained.

17. 15 CSR 60-9.060 governs false promises and states as follows:

(1) False promise is any statement or representation which is false or misleading as to the maker's intention or ability to perform a promise, or likelihood the promise will be performed.

(2) Reliance and injury are not elements of false promise as used in section 407.020.1, RSMo.

STATEMENT OF FACTS

18. Plaintiff incorporates by reference all of the allegations contained in paragraphs 1 through 17 above as if fully set forth herein.

19. Since at least 2006, Defendant has advertised, offered for sale, and sold full size replica Civil War cannons and related parts to consumers. Defendant advertised his products on his website at www.missouricannonworks.com.

20. Defendant's business is not registered with the Missouri Secretary of State's Office.

21. Defendant's website invites consumers to place orders for his products via e-mail or by phone.

22. Upon receiving orders, the Defendant would inform consumers of the cost and the delivery date for their orders.

23. Defendant required consumers to make advance payments for their orders through personal check or wire transfer.

24. The following individuals placed orders with Defendant and made payments for his products and services:

Name	Address	Amount Paid
Nickie Saunders	Box 68 Partridge, KS 67566	\$3,000
Brian Merrill	246 Okehampton Dr. Goose Creek, SC 29445	\$608
David Barton	7022 E. Nelson Dr Tuscon, AZ 85730	\$4,250

25. In most cases, after accepting payments from consumers, Defendant engaged in a pattern and practice of failing to construct and deliver consumers' cannons and related parts by the represented delivery date.

26. In one case, the Defendant delivered some of the ordered products, but then failed to deliver the remaining order as represented.

27. Defendant engaged in a pattern and practice of ignoring consumer inquires and requests for status updates once the consumers ordered cannons and related parts, and made payments for his products and services.

28. When consumers were able to contact the Defendant, he gave various excuses for the cause of the delays in providing the ordered products.

29. Defendant also engaged in a pattern and practice of ignoring consumer requests for refunds.

30. In at least one instance, the Defendant responded to a consumer's requests for a refund by making a partial delivery of the consumer's order.

31. To date, Defendant has not provided, or refuses to provide full refunds to

consumers who paid for but did not receive Defendant's products.

32. Other unnamed consumers may have paid advance fees for Defendant's cannons and related parts who have not received products or refunds from Defendant.

MERCHANDISING PRACTICES ACT VIOLATIONS

33. Plaintiff incorporates by reference all of the allegations contained in paragraphs 1 through 32 above as if fully set forth herein.

34. Defendant acting alone or acting in concert with others, engaged in methods, acts, uses, and practices of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices, and the concealment, suppression and omission of material facts in connection with the advertising, offer of sale, or sale of full-scale replica Civil War cannons and related parts, all in violation of § 407.020, for reasons including, but not limited to, the following:

1. Misrepresenting to consumers that, in exchange for money, the Defendant would provide full-scale replica Civil War cannons and related parts.
2. Omitting the material fact from consumers that Defendant had accepted payments from other consumers for full-scale replica Civil War cannons and related parts without delivering said products;
3. Violating the duty of good faith by evading consumer inquiries as to whether Defendant would deliver full-scale replica Civil War cannons and related parts as represented;
4. Violating the duty of good faith by failing to respond to consumer requests for refunds of their payments for Defendant's products;

35. These unfair and unlawful practices engaged in by Defendant have presented a risk of, and/or have caused, significant injury to consumers.

RELIEF

WHEREFORE, Plaintiff prays this Court issue the following orders:

1. An Order of this Court finding that Defendant has violated the provisions of section 407.020.
2. A Preliminary and Permanent Injunction issued pursuant to section 407.100 prohibiting Defendant from advertising, offering for sale, or selling Civil War replica cannons and/or related parts.
3. An Order of this Court requiring Defendant to provide full restitution to all consumers from whom Defendant has received monies who have been aggrieved by the use of any of the unlawful, unfair and deceptive acts and practices alleged herein.
4. An Order of this Court awarding the State a civil penalty from Defendant of One Thousand Dollars (\$1,000.00) per violation of section 407.020 that the Court finds to have occurred.
5. An Order of this Court requiring Defendant to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against said Defendant, or such other amount as the Court deems fair and equitable.
6. An Order of this Court requiring Defendant to pay all court, investigative and prosecution costs of this case.
7. Any further relief that this Court deems proper.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

MICHAEL J. WAMBOLT
Assistant Attorney General
Missouri Bar No. 51231
615 E. 13th Street, Suite 401
Kansas City, MO 64106
(816) 889-5000
(816) 889-5006 FAX
michael.wambolt@ago.mo.gov

ATTORNEYS FOR PLAINTIFF