

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

STATE OF MISSOURI, ex rel.)
Attorney General Chris Koster,)
)
Plaintiff,)
)
v.) Case No.)
)
WALGREEN CO.,) Division:)
An Illinois Corporation,)
)
SERVE AT:)
The Prentice-Hall Corporation System, Inc.)
221 Bolivar Street)
Jefferson City, Missouri 65101)
)
Defendant.)

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION, CIVIL
PENALTIES, AND OTHER COURT ORDERS (EC)**

Plaintiff, State of Missouri, at the relation of Attorney General Chris Koster, brings this Petition for Preliminary and Permanent Injunction, Civil Penalties, and Other Court Orders against Defendant herein, and upon information and belief, states as follows:

PARTIES

1. Chris Koster is the duly elected, qualified, and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to Chapter 407, RSMo.

2. Defendant Walgreen Co. (“Walgreens”) is a corporation organized under the laws of the State of Illinois. Walgreens is an active corporation that transacts business in Jackson County, Missouri, among other places. It can be served through its registered agent at: The Prentice-Hall Corporation System, Inc., 221 Bolivar Street, Jefferson City, Missouri 65101.

3. Walgreens does business within the State of Missouri by, among other activities, advertising merchandise to be sold in its retail stores within the State of Missouri and by selling such merchandise in retail stores within Missouri.

4. Any acts, practices, methods, uses, solicitations, or conduct of Walgreens alleged in this Petition include the acts, practices, methods, uses, solicitations, or conduct of Walgreens’ employees, agents, or other representatives acting under its direction, control, or authority.

JURISDICTION

5. This Court has subject matter jurisdiction over this action under Art. V, § 14 MO. CONST.

6. This Court has authority over this action pursuant to § 407.100, which allows the Attorney General to seek injunctive relief, penalties, and other relief in circuit court against persons who violate § 407.020.

7. This Court has personal jurisdiction over the Defendant pursuant to the Missouri Merchandising Practices Act, §§ 407.010, RSMo, *et seq.*, and § 506.500, RSMo.

VENUE

8. Venue is proper in this Court pursuant to § 407.100.7, which provides that “[a]ny action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.”

9. Walgreens advertises, markets, solicits, or sells merchandise in Jackson County, Missouri, among other places, and, in connection with such activities, engages in the acts, practices, methods, uses, and conduct described below that violate § 407.020.

MERCHANDISING PRACTICES ACT

10. Section 407.020 of the Merchandising Practices Act 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 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.... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

11. "Person" is defined as "any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof." § 407.010(5).

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

13. "Sale" is defined as "any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit." § 407.010(6).

14. "Trade" or "commerce" is defined 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." § 407.010(7).

15. Walgreens advertises and sells merchandise in trade or commerce within the meaning of § 407.010.

16. Pursuant to authority granted in § 407.145, the Attorney General has promulgated rules explaining and defining terms utilized in §§ 407.010 to 407.145 of the Merchandising Practices Act. Said rules are contained in the Missouri Code of State Regulations (CSR). The rules relevant to Plaintiff's Merchandising Practices Act allegations include, but are not limited to, the provisions of 15 C.S.R. 60-7.010 to 15 C.S.R. 60-7.110, 15 C.S.R. 60-8.010 to 15 C.S.R. 60-8.090, as well as 15 C.S.R. 60-9.010 to 15 C.S.R. 60-9.110. These rules, attached as Exhibit A, are adopted and incorporated by reference.

17. The Attorney General is authorized by § 407.100.2 to seek preliminary orders for violations of the Missouri Merchandising Practices Act. The State need not establish the inadequacy of legal remedies as a prerequisite to an injunction issued pursuant to § 407.100. Once a violation of the Missouri Merchandising Practices Act is found to have occurred or is about to occur, irreparable harm and harm to the public are presumed. *State ex rel. Nixon v. Beer Nuts, Ltd.*, 29 S.W.3d 828, 837-38 (Mo. App. E.D. 2000).

ALLEGATIONS OF FACT

18. From at least 2012 to the present, Walgreens has consistently and systematically displayed inaccurate sales tags, overcharged customers,

failed to remove expired sales tags, failed to consistently ensure the price charged is the same as the price advertised, and used misleading or confusing in store-signs.

19. Walgreens is a retailer offering cosmetic, healthcare, household, pharmaceutical, and miscellaneous products for sale in approximately 200 retail locations throughout Missouri.

20. Walgreens engages in trade or commerce that directly or indirectly affects Missouri residents and others as defined by § 407.010(7).

21. Walgreens is a Person as defined by § 407.010(5).

22. Walgreens engages in the advertisement of merchandise in the form of publications, solicitations, and dissemination of information as defined by § 407.010(1).

23. Walgreens sells merchandise as defined by § 407.101(4).

24. Walgreens engages in the sale of merchandise as defined by § 407.010(6).

25. Since at least 2012 to the present, Walgreens has advertised prices of its merchandise in the form of shelf tags located next to the item. The tags display, among other information, various prices for the merchandise. Examples of Walgreens' shelf price tags on July 31, 2013, are displayed below:



26. Walgreens' prices are also advertised in print media, broadcast, and in other in-store displays, in addition to the shelf tags.

27. In June and July of 2013, Plaintiff inspected the pricing practices at multiple retail stores owned or operated by Walgreens in Missouri. In the course of such inspections, Plaintiff made purchases of merchandise to test the accuracy of Walgreens' advertised prices.

28. Plaintiff's inspection and purchases from Walgreens' retail stores revealed that its stores had numerous pricing discrepancies in which the price of merchandise at checkout or point of sale was higher than the price that had been advertised for the merchandise, including the shelf-tags.

29. On a single day in July 2013, overcharges and inaccurate advertisements were documented in every store inspected. In June and July, in inspections of eight stores across the state, there were over 100 advertisements which displayed sale prices after the sale had expired.

30. Overcharges at the point of sale varied in amount and ranged from a few cents to over \$15.00. On a single date in July, over 17 percent of the merchandise purchased rang up at the point of sale at an amount higher than the advertised price.

31. Plaintiff's inspection and purchases from Walgreens' retail stores revealed that its advertised prices were *not* the scanned prices at checkout or point of sale.

32. Plaintiff's inspection and purchases indicate consumers were being charged a higher price for items than was advertised.

33. Walgreens' representations of prices were false and misleading as to prices then in effect and available to consumers.

34. Walgreens' advertising of prices is intended to be alluring to consumers and to induce consumers to purchase Walgreens' merchandise.

35. Prices, availability, and the terms of sale of merchandise offered by Walgreens is likely to be considered important by consumers when considering making a purchase from Walgreens and is likely to cause them, in whole or in part, to make a particular purchase of Walgreens' merchandise.

36. Walgreens falsely advertises merchandise for sale at a reduced price from its current or usual and customary price.

37. Walgreens falsely advertises its prices to be a reduction from a former or future price for a limited period of time.

38. Walgreens uses shelf price tags and makes other representations about prices in such a way as to require unreasonably careful study for consumer comprehension of the price being offered or the terms on which the offered price might be available. The numerous price tags displayed and the format of the tags containing multiple prices, discounts, or points require consumers to review tags for an unreasonably long period of time, and are likely to cause confusion to a reasonable consumer as to the actual price of the item being offered.

39. Merchandise is located in proximity to multiple price tags or other signs offering incomplete or conflicting information. Oftentimes, information pertaining to merchandise being offered at a sale price is displayed on multiple price tags or other signs making it difficult for a reasonable consumer to discern the actual price of the item.

40. Many tags are confusing, including but not limited to tags that contain claims that the purchase of an item is “like getting” the product for the reduced price displayed, when in fact that is not accurate.

41. Many tags representing sale prices remain on display even though the sale has expired.

42. Walgreens displays inaccurate advertisements to the effect that items bought in quantities greater than one would be available at a reduced price, when the additional units are not discounted.

43. In addition to the price-related advertising of Walgreens for general sales, Walgreens also offers consumers membership in an incentive program or rewards program with the promise that membership will result in the consumer’s receipt of additional price reductions or savings.

44. Many sales tags are confusing, including but not limited to tags that are applicable only to participants in a rewards or incentive program, and not to consumers who had not joined such programs yet were the same color, size, and style as the general sales tags.

45. Many tags are deceptive, including but not limited to tags that contain fine print that the purchase of an item at the sale price displayed requires a coupon from Walgreens' print advertisements in addition to membership in the rewards or incentive program.

46. Walgreens' incentive program members do not receive all the "with card" savings or other membership savings as advertised.

47. Walgreens' display of multiple prices for merchandise is in a manner and format that is confusing or difficult for consumers to understand.

48. Walgreens' use of text and formatting in providing information about the prices, availability, or terms on which merchandise is offered for sale is difficult to read or comprehend.

49. Walgreens uses inaccurate price comparisons and inaccurate pricing, because prices are not honored at checkout or the point of sale.

50. Walgreens engages in or has engaged in and is likely to engage in unfair and deceptive practices which result in immediate and irreparable injury, loss, or damage to consumers.

VIOLATIONS

Count I

Misrepresentations

§ 407.020, 15 C.S.R. 60-7, and 15 C.S.R. 60-9

51. Plaintiff incorporates all allegations above stated.

52. Walgreens uses or employs unlawful acts and practices in violation of § 407.020 before, during or after the sale or advertisement of merchandise to Missouri consumers by misrepresenting, both expressly and impliedly, in connection with the sale or offer for sale of merchandise including:

- a. Misrepresenting the price, availability, or terms of sale of merchandise through inaccurate, unclear, false, or misleading statements of facts in advertisements, including in the form of shelf tags and other advertising containing untrue statements of material facts as to the price, availability or terms of sale of merchandise; or
- b. Advertising in a format that, because of overall appearance, has the tendency or capacity to mislead consumers as to the price, availability, and terms of sale of merchandise, or tends to cause consumers to form a false impression as to the price, availability, or terms of sale of such merchandise.

Count II
False Promises
§ 407.020, 15 C.S.R. 60-7, and 15 C.S.R. 60-9

53. Plaintiff incorporates all allegations above stated.

54. Walgreens uses or employs unlawful acts and practices in violation of § 407.020 before, during or after the sale or advertisement of merchandise to Missouri consumers by falsely promising, in connection with the sale or offer for sale of merchandise including:

- a. Falsely promising that certain merchandise is available at a reduced price when it is not, either because it does not honor the advertised price at check-out or point of sale, or because the offer is expired; or
- b. Falsely promising that consumers will receive a reduced price if they are members of Walgreens' reward or incentive program, or doing so while also requiring an additional coupon in order to obtain a reduced price.

Count III
Concealment, Suppression or Omission of a Material Fact
§ 407.020, 15 C.S.R. 60-7, and 15 C.S.R. 60-9

55. Plaintiff incorporates all allegations above stated.

56. Walgreens engages in conduct that violates § 407.020 by concealing, suppressing or omitting material facts, both expressly and

impliedly, likely to be considered important in order to induce a purchasing decision by Missouri consumers, including but not limited to concealing, suppressing or omitting:

- a. The actual price a consumer will be charged;
- b. The time period during which any advertised prices are in effect;
- c. Restrictions on or requirements as to the quantity of products that must be purchased or applicable limitations of quantity;
- d. Material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- e. Accurate comparisons in prices between current and former prices or between current and future prices, or
- f. Material terms of sale required for receiving the price being advertised.

Count IV

Deceptive Use of Sale Terminology in Advertising § 407.020, 15 C.S.R. 60-7

57. Plaintiff incorporates all allegations above stated.
58. Walgreens engages in unfair practices in violation of § 407.020 in that it improperly used and uses Sale Terminology as described in 15 C.S.R.

60-7.010 to .030 and 15 C.S.R. 60-7.050, both expressly and impliedly, including:

- a. Implying that a reduction from a price is being offered from the price in effect immediately prior to the advertisement when it is not;
- b. Advertising a reduction in price that is not meaningful;
- c. Advertising that its incentive award members will receive reductions in prices; or
- d. Advertising that items associated with a particular advertisement are available at reduced prices when the advertisement does not clearly identify which products are and are not reduced in price.

Count V
Unfair Merchandising Practices
§ 407.020, 15 C.S.R. 60-8-010 to 60-8-090.

59. Plaintiff incorporates all allegations above stated.

60. Walgreens engages in unfair practices in violation of § 407.020

that present a risk of or cause substantial injury to consumers by:

- a. Violating its duty of good faith in providing accurate and timely pricing information and other information about the availability

and terms of sale of its merchandise to consumers to whom it advertises merchandise; or

- b. Engaging in the unethical and unscrupulous practice of enticing consumers to shop at its stores and to purchase its merchandise while failing to update and maintain accurate tags and other advertisements of sales, and the terms of those sales.

RELIEF

WHEREFORE, Plaintiff prays this Court enter judgment:

- A. Finding that Walgreens has violated the provisions of § 407.020.
- B. Issuing a preliminary injunction prohibiting Walgreens and its agents, servants, employees, representatives, and other individuals acting at its direction or on its behalf from engaging in any of the acts and practices described herein that this Court declares unlawful.
- C. Issuing a permanent injunction pursuant to § 407.100 prohibiting and enjoining Walgreens and its agents, servants, employees, representatives, and other individuals acting at its direction or on its behalf from engaging in any of the acts and practices described herein that this Court declares unlawful.

D. Requiring Defendant, pursuant to § 407.100.6, to pay to the State a civil penalty in such amounts as allowed by law per violation of Chapter 407 that the Court finds to have occurred.

E. Granting costs of the investigation and prosecution of this action.

F. Granting any additional relief that is just or proper.

Respectfully submitted,

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