

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

TIMOTHY COGHLAN, individually and on behalf of all others similarly situated,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	Judge:
)	
SAMSUNG ELECTRONICS AMERICA, INC.)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	

CLASS ACTION COMPLAINT

Plaintiff Timothy Coghlan brings this action on behalf of himself and all others similarly situated against Defendant Samsung Electronics America, Inc. (“Samsung”). Plaintiff makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to the allegations specifically pertaining to himself, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a class action against Defendant for falsely and misleadingly concealing the fact that its televisions use significantly more energy than the Energy Guide labelling and advertising for those televisions indicate, thereby increasing purchasers’ electricity costs.

2. This is done in two ways. First, Defendant’s televisions will switch to a mode that disables the primary energy-saving feature (known as automatic brightness control or “ABC”) without warning whenever the factory-default picture settings are changed. Unknown to consumers, this setting increases energy consumption in televisions sharply, leading to increased yearly electrical bills.

3. Second, Samsung's televisions contain a feature called "Motion Lighting", which is a feature that will dim the brightness of the television or briefly turn off the backlight during scenes of rapid motion or frequent scene changes. While Samsung has stated that this feature is done with the purpose of saving energy in the television, it is in fact primarily designed as a method by which to circumvent the Department of Energy testing video used on all Defendant's televisions. This allows Defendant to register their televisions under DoE testing as televisions using less energy – in some cases becoming qualified to display the "Energy Star" energy-efficient product badge – when, in fact, most televisions use far, far more energy than the Energy Guide labels would predict.

4. Independent laboratory testing has revealed these two testing defeat features, and has shown that the average consumer will pay an extra \$100 to \$200 in energy bills over the standard ten-year lifetime of a television.

5. As a direct and proximate result of Defendant's false and misleading advertising claims and marketing practices, Plaintiff and the members of the Classes, as defined herein, would not have purchased the televisions or would have paid less for them had they known that the televisions used more energy than claimed. Additionally, Plaintiff and members of the Classes have paid more in their energy bills than they would have had the televisions used the energy levels described in the Energy Guide labels and on Defendant's websites.

6. Plaintiff seeks relief in this action individually and on a class-wide basis for breach of express warranty, unjust enrichment, and for violations of the Illinois Consumer Fraud Act, 815 ILCS 505/1, *et seq.*

THE PARTIES

7. Plaintiff Timothy Coghlan is a resident of the State of Illinois, residing in Cook County. Plaintiff Coghlan has purchased a Samsung UN40H6350AF, one of the affected models. Plaintiff changed the factory default picture settings shortly after activating the television. Had Plaintiff Coghlan known that Samsung's conduct and the EnergyGuide labels were fraudulent or misleading, Plaintiff would not have purchased the television, or he would have paid less for it. Plaintiff suffered an injury in fact and lost money as a result of Defendant's deceptive, misleading, false, unfair, and fraudulent practices, as described herein.

8. Defendant Samsung Electronics America, Inc. is a New York corporation with its principal place of business in Ridgefield Park, New Jersey. Samsung is a wholly-owned subsidiary of Samsung Electronics Co. Ltd., which is a Korean company headquartered in Suwon, South Korea. Defendant has been and still is engaged in the business of distributing, marketing, and selling televisions throughout the United States and this District.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 Class members, the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from either Defendant.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District, as Defendant is headquartered in this District, and as Defendant does business throughout this District, including selling and distributing the products at issue in this District.

ADDITIONAL FACTUAL ALLEGATIONS

11. News reports from Europe in October 2015 first reported that some Samsung televisions in Europe used less energy during official testing conditions than they do in real world use¹. These tests were conducted by an EU-funded independent laboratory. The reports indicated that several countries, including Sweden and the UK, had complained to the European Commission about this fact in recent years.

12. On September 21, 2016, the National Resources Defense Council released a study (hereinafter, “The NRDC Report”) on American televisions made by LG, Panasonic, Philips, Samsung, Sony, and Vizio². The NRDC reported that as part of its independent testing, done in partnership with Ecos Research, that the same characteristics were present in American televisions as the European ones.

13. The NRDC reported that Samsung and LG televisions both feature “motion detection dimming” (MDD), which Samsung calls “Motion Lighting” (“ML”) and LG calls “Motion Eye Care” (“MEC”). During television clips featuring frequent scene cuts or rapid motion, the television screen’s backlight dims or even briefly turns off, sharply dropping the energy consumption of the television. *Id.* at 6.

14. While only tested for two current models of Samsung televisions, the power consumption difference between active and inactive Motion Lighting ranged between an additional 13% and 45% consumption. *Id.* at 14. The NRDC report stated, “Put simply, the MDD feature saves more energy during the official government testing than it does when users view most programming that viewers typically watch.” *Id.* at 6.

¹ See <https://www.theguardian.com/environment/2015/oct/01/samsung-tvs-appear-more-energy-efficient-in-tests-than-in-real-life>, last accessed October 11, 2016.

² See <https://www.nrdc.org/sites/default/files/costs-manufacturers-exploiting-loopholes-tv-energy-test-report.pdf>, last accessed October 11, 2016.

15. While the NRDC study only examined 2015 and 2016 televisions, Samsung has maintained Motion Lighting as a standard feature on televisions since 2011.³

16. 2011 is also the first year that the Federal Trade Commission began requiring all new televisions to display EnergyGuide labels on televisions for sale.⁴

17. The NRDC Report also states that when the default picture setting is changed in Samsung, Vizio, or LG televisions, MDD and ABC are eliminated. NRDC Report at 6. Additionally, for an undetermined number of Samsung televisions, *any* adjustment to the brightness or contrast also disables the MDD and ABC. NRDC Report at 7. The report states, “If the MDD feature was truly intended to deliver energy savings and potentially reduce eye fatigue when content with certain characteristics is viewed, why do Samsung and LG design their TVs to disable this feature when the user selects a different picture setting?” NRDC Report at 6.

18. The U.S. Department of Energy has also conducted a similar preliminary study and is seeking comment on whether it should change its testing practices for measuring television energy consumption. While specifically not named, the DOE test did include Samsung and LG televisions, and of those two brands, stated, “Based on the results, it appears that ML and MEC have different impacts on power draw among different content and TV models. However, for all tested models, the IEC [DoE test] clip usually triggered the largest reduction in power when enabled, implying that the IEC clip and recut IEC clip contained the most motion among all of the tested video clips. This is consistent with DOE's observation of the IEC test clip, which is composed of short segments of high motion video stitched together, so

³ See <https://www.nrdc.org/sites/default/files/costs-manufacturers-exploiting-loopholes-tv-energy-test-report.pdf>, last accessed October 11, 2016.

⁴ See <https://www.ftc.gov/news-events/press-releases/2010/10/starting-2011-ftc-will-require-energyguide-labels-televisions>, last accessed October 11, 2016.

that the video content has faster changing scenes compared to most content a user typically would watch.⁵”

19. Additionally, the ABC feature, found on Samsung, LG, and Vizio televisions, also works to automatically change the brightness of the screen based on the ambient light in the room. However, while it is billed as a power-saving function, it is similarly easily – and unintentionally – disabled by changing the default factory settings.

20. For Samsung televisions, as with the MDD feature discussed *supra*, the ABC feature was disabled by changing the default picture settings for all or virtually all Samsung models, and in an indeterminate number of Samsung televisions, the ABC was also disabled by adjusting the brightness or contrast in any way.

21. The NRDC Report estimates that the average, across-the-board additional cost of owning a Samsung not using MDD or ABC is approximately \$17 more per unit per year than the level calculated using Defendant’s reported figures. NRDC Report at 29. While the exact numbers for the UN40H6350AF are in the sole control of Samsung, the cost of using a Samsung without MDD or ABC would be nearly *triple* than what the EnergyGuide label would suggest. Below is a picture of the Energy Guide label for the UN40H6350AF taken from Samsung’s website:

⁵ See <https://www.regulations.gov/document?D=EERE-2016-BT-TP-0023-0001>, last accessed October 11, 2016.



22. Additionally, several of Defendant’s televisions qualify for the “Energy Star” badge, which is a badge given to certified models of televisions which, on average, are 25% more energy-efficient than conventional models⁶. EnergyStar-certified models have a competitive advantage to other televisions and are more desirable to consumers. On information and belief, many of the EnergyStar-certified televisions of Defendant would not qualify for this certification but for the Defendant’s implementation of its deceptive test defeat tactics.

23. Similarly, the NRDC Report notes that Oregon, California, and Connecticut have mandatory energy efficiency standards for televisions which Defendant’s televisions likely would not have met but for the Defendant’s implementation of its deceptive test defeat tactics.

⁶ See <https://www.energystar.gov/products/electronics/televisions>, last accessed October 11, 2016.

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action as a class action under Federal Rule of Civil Procedure 23 on behalf of all persons in the United States who, within the relevant statute of limitations period, purchased televisions manufactured by Samsung between 2011 and the present (the “Products”), which featured MDD and/or ABC (the “Class”).

25. Plaintiff seeks to represent a subclass defined as all members of the Class who purchased the Product in Illinois (the “Illinois Subclass”).

26. Excluded from the Class and Illinois Subclass are the Defendant, the officers and directors of the Defendant at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendant has or had a controlling interest, as well as any judge assigned to hear this case.

27. Also excluded from the Class and Illinois Subclass are persons or entities that purchased the Products for purposes of resale.

28. Plaintiff is a member of the Class and Illinois Subclass he seeks to represent.

29. The Class and Illinois Subclass are so numerous that joinder of all members is impractical. Although Plaintiff does not yet know the exact size of the Class, the products are sold in retail locations throughout the United States, and on information and belief, members of the Class number in the hundreds of thousands, if not millions.

30. The Class and Illinois Subclass are ascertainable because their members can be identified by objective criteria – the purchase of Defendant’s Products in the United States during the statute of limitations period. Individual notice can be provided to Class members “who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

31. There are numerous questions of law and fact common to the Class which predominate over any individual actions or issues, including but not limited to whether the labeling and marketing of the Product was false and misleading.

32. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's wrongful conduct. Plaintiff has no interests antagonistic to the interests of the other members of the Class. Plaintiff and all members of the Class have sustained economic injury arising out of Defendant's violations of common and statutory law as alleged herein.

33. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class members they seeks to represent, they have retained counsel that is competent and experienced in prosecuting class actions, and they intend to prosecute this action vigorously. The interests of the Class members will be fairly and adequately protected by Plaintiff and his counsel.

34. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of

Defendant's liability. Class treatment of the liability issues will ensure that all claims are consistently adjudicated.

FIRST CLAIM FOR RELIEF
(Breach of Express Warranty)

35. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth herein.

36. Plaintiff brings this Count individually and on behalf of the members of the Class and Illinois Subclass.

37. As noted above, Defendant knowingly designed its products so that certain energy-saving features are activated during energy consumption testing in order to obtain favorable EnergyGuide ratings and labels, but these same energy-saving features are automatically deactivated without the knowledge of the consumer whenever the default settings are changed.

38. Defendant prominently placed or caused to be placed "EnergyGuide" labels on all floor models of televisions sold by them in stores. In addition, Defendant prominently placed or caused to be placed "EnergyGuide" labels for all affected models conspicuously on their and retailers' websites for those models so consumers could view average energy consumption standards for each of the affected models.

39. Defendant's affirmations of fact and promises made to Plaintiff and the Class and the Illinois Subclass on the Product labels became part of the basis of the bargain between Defendant on the one hand, and Plaintiff and the Class and Illinois Subclass members on the other, thereby creating express warranties that the Product would conform to Defendant's affirmations of fact, representations, promises, and descriptions.

40. Defendant breached its express warranties because the Products, in fact, consume energy at much higher rates than those purported on the EnergyGuide labels.

41. Defendant's own intentional conduct in using ABC to circumvent the testing standards for energy consumption for use in EnergyGuide labelling put Defendant on actual notice that they have breached the express warranty regarding energy consumption.

42. Because the Defendant intentionally designed its Products to disable the energy-saving features whenever any adjustment no matter how slight is made to the factory default viewing settings without notice to the purchaser, Defendant had or should have had actual knowledge of the defect. This defect, a test defeat feature, by design, affected all of the Products, including the specific item purchased by the Plaintiff. Additionally, Defendant either knew or should have known of the results of the independent laboratory tests discussed above which revealed that Defendant's Products, including the specific television purchased by Plaintiff, consumed excess energy when operated under real world conditions, which was made public prior to the filing of this Complaint.

43. Plaintiff and Class and Illinois Subclass members were injured as a direct and proximate result of Defendant's breach because: (a) they would not have purchased the Product or would not have paid as much for the Products if they had known the true facts; (b) they purchased and paid more for the Products due to the mislabeling; (c) the Products did not have the characteristics, quality, or value as promised, and (d) the Products caused Plaintiff and Class members to spend more on electricity costs than they would have had the Products actually performed according to the EnergyGuide labels.

SECOND CLAIM FOR RELIEF
(Illinois Consumer Fraud and Deceptive Business Practices Act,
815 ILCS 505/1 et seq.)

44. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth herein. Plaintiff brings this Count individually and on behalf of the members of the Illinois Subclass.

45. As alleged herein, Plaintiff has suffered injury in fact and lost money or property as a result of Defendant's conduct because he purchased one of the Products which Defendant falsely claimed met the average energy uses of the prominently-displayed "EnergyGuide" label on the floor model of the Products.

46. At all times relevant hereto, the sale of the Products in Illinois were governed by the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/1 *et seq.*

47. The ICFA is a regulatory and remedial statute intended to protect consumers, including Plaintiff and the Illinois Subclass, against unfair or deceptive acts or practices.

48. Specifically, Section 2 of the ICFA prohibits deceptive acts or practices, which are committed in the course of trade or commerce and with the intent that others rely upon. *See* 815 ILCS 505/2, which states:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

49. In addition, 815 ILCS 510/2(a)(5) of the Uniform Deceptive Trade Practices Act

states:

“A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person. . .represents that goods or services have. . .characteristics,. . .uses, [or] benefits. . .that they do not have. . .”

50. The above-described unfair or deceptive acts or practices occurred in the course of conduct involving trade or commerce, namely, the sale of goods to Plaintiff and the Illinois Subclass.

51. Defendant’s practice of knowingly and unlawfully engaging in the activity described above also constitutes “unfair” business acts or practices because, *inter alia*, Defendant engaged in false advertising, which misrepresents and omits material facts regarding the Products.

52. Defendant’s business acts or practices therefore offend an established public policy, and Defendant engaged in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers, as alleged in detail previously, and therefore Defendant’s actions are unfair or deceptive acts or practices prohibited by Chapter 2 of the ICFA. 815 ILCS 505/2.

53. Defendant intended that Plaintiff and the Illinois Subclass rely on the deceptive acts or practices described herein. Defendant’s intent is evidenced by, *inter alia*, the fact that Defendant used test defeat features in order to obtain deceptive Energy Guide labels for its TVs to make its Products appear more energy efficient to consumers than they really were.

54. Any consumer wishing to purchase the Products would have seen the prominent yellow “EnergyGuide” label on the store display model or on Defendant’s or retailer’s website, displayed according to federal Department of Energy regulations.

55. Defendant's material misrepresentations and omissions described above have caused harm to Plaintiff and other members of the Illinois Subclass.

56. Plaintiff and the Illinois Subclass reserve the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

57. Plaintiff and the other members of the Illinois Subclass have suffered injury in fact and lost money as a result of these unlawful, unfair, and fraudulent practices.

58. Plaintiff and the other members of the Illinois Subclass would not have purchased the Products or would have paid less for them had they known about Defendant's deceptive conduct. Plaintiff and members of the Illinois Subclass also paid more for electricity costs than they would have had Defendant's products performed as advertised.

THIRD CLAIM FOR RELIEF
(Unjust Enrichment Pled in the Alternative to the Warranty Claim)

59. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth herein.

60. Plaintiff brings this Count individually and on behalf of the members of the Class and Illinois Subclass.

61. Plaintiff and members of the Class and Illinois Subclass conferred benefits on Defendant by purchasing the Product.

62. Defendant has been unjustly enriched in retaining revenues derived from Plaintiff's and Class and Illinois Subclass members' purchases of the Product. Retention of that revenue under these circumstances is unjust and inequitable because Defendant misrepresented facts concerning the characteristics, qualities, and value of the Product and caused Plaintiff and

Class and Illinois Subclass members to purchase the Products and to pay more for the Products, which they would not have done had the true facts been known.

63. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiff and members of the Class and Illinois Subclass is unjust and inequitable, Defendant must pay restitution to Plaintiff and members of the Class for its unjust enrichment, as ordered by the Court.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- A. Determining that this action is a proper class action;
- B. For an order declaring that the Defendant's conduct violates the statutes and common law referenced herein;
- C. Awarding compensatory and punitive damages in favor of Plaintiff, members of the Class and the Illinois Subclass against Defendant for all damages sustained as a result of Defendant's wrongdoing, in an amount to be proven at trial, including interest thereon;
- D. Awarding injunctive relief against Defendant to prevent Defendant from continuing their ongoing unfair, unconscionable, and/or deceptive acts and practices;
- E. For an order of restitution and/or disgorgement and all other forms of equitable monetary relief;
- F. Awarding Plaintiff and members of the Class and the Illinois Subclass their reasonable costs and expenses incurred in this action, including attorney's fees; and
- G. Awarding such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims so triable in this action.

Dated: October 11, 2016

Respectfully submitted:

By: /s/ Theodore B. Bell

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Carl Malmstrom

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