

**PRACTICING CONSUMER
LAW IN OHIO**

COMMON MISTAKES TO AVOID

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WHY CONSUMER LAW?

- It's not complicated
 - Don't need a large war chest
- Lots of Experience
- Large potential Recovery
 - Including attorney fees
- Huge client base
 - Daily violations
 - 7 violations in one transaction
- It's fun!



LAWS YOU SHOULD KNOW


- Home Solicitation Sales Act ("HSSA")
 - O.R.C. § 1345.21 *et seq.*
- Consumer Sales Practices Act ("CSPA")
 - O.R.C. § 1345.01 *et seq.*
- *There are others:*
 - Lemon Law
 - Telephone Solicitation Sales
 - 25 Laws in Ohio alone



HOME SOLICITATION SALES ACT

O.R.C. §§ 1345.21 *et seq.*


- Applies to all "home solicitation sales"
 - Statutory Definition
 - 7 exceptions
 - Services, goods, construction, etc.
- 3-day cancellation rule
 - Written notice in written contract
 - "Notice of Cancellation"
 - Oral notice
- Remedies
 - Cancellation & Refund
 - 10-days



CONSUMER SALES PRACTICES ACT


O.R.C. §§ 1345.01 *et seq.*

- Prohibits unfair, deceptive, and unconscionable practices by "suppliers"
- Governs "consumer transactions" with "consumers"
- Many ways to violate
- Remedies
 - Revoking contract
 - Actual damages
 - Treble damages
 - Statutory damages
 - Attorney fees



EXAMPLES OF CSPA VIOLATIONS

- Violating the HSSA
- Quotations
- Receipts
- Subcontracting
- Disclaiming express warranties
- Knowingly breaching a contract
- Distress sales going too long
- Delays
- Failure to correct shoddy work
- Making misleading statements
- Etc.



COMMON HSSA MISTAKES

- Consumer Lawyers:
 - Failing to cancel the contract and demand a refund.
 - If Seller failed to meet all cancelation requirements, Consumer can cancel at **any time**
 - Refund must be given with 10-days of cancellation receipt

- Seller Lawyers:
 - Suing a homeowner
 - Foreclosing on a lien
 - Suing for breach of contract

 - No talk of early settlement



EXAMPLE #1 - CONSUMER'S LAWYER

- Homeowner hires concrete contractor

- Cost of services: \$40,000

- Homeowner claims shoddy work

- Cost of repairs: \$10,000

- Homeowner's attorney sues for treble \$10,000 damages and attorney fees.

WHY WAS THAT A MISTAKE?

What you got:	What you <i>should have</i> got:
$ \begin{array}{r} \$10,000 \\ \times \quad 3 \\ \hline \mathbf{\$30,000} \end{array} $	$ \begin{array}{r} \$40,000 \\ \times \quad 3 \\ \hline \mathbf{\$120,000} \end{array} $
Plus attorney fees	Plus attorney fees

EXAMPLE #2 – SELLER’S LAWYER

- *Teeters Constr. v. Dort*, 2006-Ohio-2754
- Construction company installed windows, siding, and performed roof work.
- Homeowners were unhappy and refused to pay balance on \$10,000.
- Seller’s lawyer sued homeowners for breach of contract
- Homeowner’s counterclaimed

WHY WAS THAT A MISTAKE?

- Failed to counsel clients about actual risk of suing
- Cost his clients unnecessary legal fees to bring suit
- Homeowner may never have sued otherwise
 - Think they got a steal
 - Would not have consulted an attorney
- This should have been settled early



THE MAIN DEFENSE ATTORNEY MISTAKE

- Not focusing on prevention with your clients:
 - Many businesses don’t care
 - They have been operating “this way for years”
 - You need to scare them into doing it right
 - This will save them thousands
 - They need these forms, and you can easily make them for them
 - Other benefits:
 - Lifelong client
 - They will pay you for it

COMMON CSPA MISTAKES

- Consumer's Lawyer:
 - Statute of limitations
 - Election of remedies
 - Not maximizing violations
 - Pleading mistakes
- Supplier's Lawyer:
 - Not counseling client on the risks
 - Failing to settle early
 - Mechanic's lien counseling



EXAMPLE #3 – STATUTE OF LIMITATIONS & REMEDY ELECTION

- Construction work is done 12/1/2007
- Consumer moves in 8/1/2008
 - Discovers "defect"
- Consumer meets with Lawyer in summer 2009.
- Lawyer files CSPA lawsuit 2/1/2010
- Remedy elected: treble damages



WHY WAS THAT A MISTAKE?

- O.R.C. § 1345.10(C) – Two-year limitations period
 - Exceptions: Counterclaims & Rescission actions
- *Cypher v. Bill Swad Leasing Co.* (1987), 36 Ohio App. 3d 200, 201, 521 N.E.2d 1142, 1144

*R.C. 1345.10(C) sets forth an **absolute two-year** statute of limitations in which to file a suit to recover treble damages. . . . The very language . . . would preclude the 'discovery' exception.*



A SIDE NOTE ABOUT JUDGES

- Judges can be wrong:
 - Filed summary judgment
 - Summarily denied without reason
 - Our argument was that there is no discovery rule, so the SOL ran
 - Their argument was if the discovery did apply (they didn't argue it did), then they were fine

EXAMPLE #4 - MAXIMIZING VIOLATIONS / PLEADING

- Repairman approaches homeowners with water damage in house
- Says he will fix it up and deal with insurance company directly, no quote, no written contract
- Repairman does work, and is paid by homeowners from proceeds of insurance - \$21,000
- Work was defective
- Repairman says he is owed another \$11,000 more than the \$21,000
- Cost of fixing defects with another company: \$4,000
- Consumer wants to sue for breach of contract

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WHY WAS THAT A MISTAKE?

What happens:	What should happen:
Award: \$4,000	Award: \$12,000 <i>or</i> \$63,000
Less:	\$15,000 (fees) \$2,000 (\$200x10)
\$10,000 – Atty fees	Less:
\$1,500 – Expert fees	\$1,500 – Expert fees
\$250 – Other fees	\$250 – Other fees
\$250 – Missed work	\$250 – Missed work

Consumer will not sue because he will net a negative \$8,000 – No client here.

Consumer will sue because he will net \$27,000 to \$78,000 – You have a new client!

EXAMPLE #5 – SETTLEMENT MISTAKES

- Insulation company (has no office) does \$3,000 of work
- It causes damage to other portions of the house for \$4,000
- No cancellation notice was provided
- Homeowner wants to settle for just the \$4,000 in repairs
- Company's lawyer balks, counsels them not to settle



WHY WAS THAT A MISTAKE?

- You need to know when you are going to lose, and give competent advice:
 - At trial, company could lose and have to pay between \$12,000 and \$40,000. We did eventually settle for closer to \$12,000.
 - Company would still have to pay the attorney to defend, too
 - Plaintiff is practically guaranteed at least \$4,000 at trial plus attorney fees
 - Lawyer failed to be realistic with the client

EXAMPLE #6 - MECHANIC'S LIENS

- *Aber v. Vilamoura, Inc.*, 2009-Ohio-3364
 - Defendants offered to build house for Plaintiff
 - No 3-day cancellation notice
 - Defendants abandoned job and Plaintiff stopped paying
 - Defendants' attorney counseled them to file and did file a mechanic's lien
 - Plaintiff sued Defendants

WHY WAS THIS A MISTAKE?

- Similar to *Teeters*, mechanic's lien requires a contract
- Plaintiff told Defendants that the attorney malpractice, and Defendants intended to sue their attorney
- Attorney should have told them the mechanic's lien would be no good—it was a waste
- What Plaintiff could have done: **slander to title**

LEGISLATIVE DEVELOPMENTS

- **CSPA Right to Cure Amendment** –
 - Ohio House Bill 275: Business would have 30 days after receiving Complaint in lawsuit to send a cure offer to consumer.
 - Cure Offer must include offer of cash, goods, or services and attorneys fees equal or less than **\$2,500** to consumer.
 - Consumer can accept or reject within 30 days.
 - If accepted, Court will oversee the cure, but otherwise case is over.
 - If rejected, consumer cannot get 3x damages (treble) or attorneys fees after the offer is made if the offer was worth more than the actual damages awarded at trial.

RESOURCES

- **CSPA:**
 - O.R.C. 1345.01 – 1345.13
 - O.A.C. 109:4-3
 - *Online Public Inspection File:*
 - <http://www.opif.ag.state.oh.us>
- **HSSA:**
 - O.R.C. 1345.21 – 1345.28



CONCLUSION

- This is a relatively easy, rewarding, and important area of practice, even if the law changes
- This area is ripe for solo and small firm practice
- Inexperienced and experienced lawyers alike mess it up—don't mess it up
- Always be mindful when your client or potential client is or has dealt with a consumer

QUESTIONS?

