

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OH

FILED
2016 MAR 18 P 2:11
LAKE MAUREEN P.
CLARK CO. CLERK

MAX GERBOC
248 Euclid Ave. #205
Cleveland, OH 44114

**On his own behalf and for all others
similarly situated,**

Plaintiff,

vs.

CONTEXTLOGIC, INC.
One Sansome Street
40th Floor
San Francisco, CA 94104

Defendant.

16CV000516
RICHARD L COLLINS JR

CLASS ACTION COMPLAINT

Now comes Max Gerboc, individually and as a representative of all others similarly situated, and for his Class Action Complaint states:

INTRODUCTION

1. Plaintiff brings this class action against Defendant for advertising fake discounts on its website, www.wish.com, and on its mobile application, *Wish*, which do not exist.
2. It is unlawful to advertise discounts and price advantages which do not exist. Ohio statutory law, and the common law, prohibits listing products as having been marked down from higher price, when the product was never sold at the higher price.
3. Defendant engages in this unlawful practice for ALL of its products: listing a false, higher price, struck through, marked down to a seemingly lower price, when the product was never sold for the higher price. By advertising discounts which are false, and breaching a material term of its contract with the customer to sell them the product at a discounted price, without providing a discount to its customers, Defendant is violating Ohio statutory law, the common law, and is defrauding its customers. This lawsuit is to stop this unlawful practice and recover for customers the actual discounts they were entitled to receive but did not.

PARTIES

4. Max Gerboc is, and at all times relevant hereto, a resident of the State of Ohio.
5. Defendant ContextLogic, Inc. is a California corporation based at One Sansome Street, San Francisco, CA 94104.

VENUE

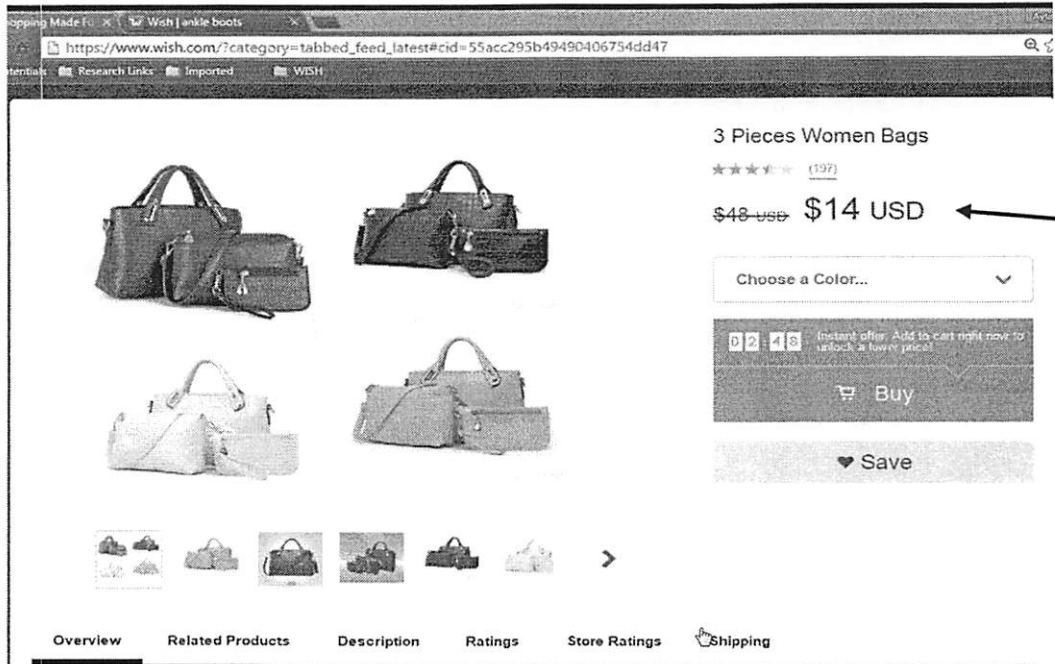
6. Venue is proper in this court as the conduct Defendant engages in which Plaintiff is challenging occurs across the country, including in this county and state.

FACTS

7. Defendant is the creator and operator of the website, www.wish.com, and mobile device application ("App") *Wish* where consumers across the United States buy thousands of types of products, ranging from home goods to apparel.
8. Competition for customers by online product websites is fierce, with some of the largest retailers now being online-only stores such as Amazon, eBay, Zappos, Ali Baba, and Zulilly; and pricing is a key component in this battle for customers.
9. However, Defendant used deceptive marketing practices, lying to all of its customers about discounts on the price of the items they were buying.
10. Potential customers on Defendant's website and/or *Wish* App are shown items on a page which displays a picture of the products with a percentage off marker in the top left corner:



11. When the potential customer clicks for more information on a specific product, it opens up on its own webpage, where again Defendant displays the supposed discount, showing a higher price, struck-through, and a sale price next to it in bold typeface:



12. Defendant's advertisements do not disclose the nature of the reference price, i.e. the stated higher price. Defendant merely lists the higher price with a slash through it.
13. Also, Defendant routinely sends emails and notifications to its users emphasizing these fake discounts with promises of "60% OFF Boots Today" or "ALL things HAIR are 60-80% OFF".
14. However, all of the advertising described in the above paragraphs is false and deceptive because these represented discounted and lower prices are not discounts at all. They are the prices for which Defendant regularly sells the item.
15. In fact, Defendant never sells these items, *or even offers* these items, at the stated higher price, which makes these purported higher prices completely fictional, and the purported "discounts" from them a knowing misrepresentation.

PLAINTIFF PURCHASES

16. On or about January 15, 2016, Plaintiff went to wish.com to browse consumer products for sale.

17. On that date, Plaintiff purchased products through Defendant's website for a total of \$27.00. Defendant represented to and contracted with Plaintiff that each of the products Plaintiff purchased was being sold for a discount, off of a higher regular price.
18. As Plaintiff's January 15, 2016 order reflects, Plaintiff purchased Mini Bluetooth Speakers which Defendant represented to have a regular price of \$300, an advertised savings of 91%, and a discounted price of \$27.00.
19. Immediately below are images of the product Plaintiff purchased, a shopping cart checkout, and Plaintiff's order, all of which evidence the above-stated purchases and representations of pricing and discounts:





Hi Maximilian,

Your order is now confirmed. Thanks for shopping with us!

This order was placed while logged into Wish on your Facebook account with email maximilian.gerboc@gmail.com.

Have any questions? Contact support

[View Order](#)

Order ID: 5699199328e9ca1554230670

Item Total	\$27.00
Estimated Shipping	Free
Order Total	\$27.00

Shipping Address:

Maximilian G. Gerboe
248 Euclid Ave. #205
Cleveland, Ohio 44114
United States

Payment Method:

Credit Card
Visa: **** 9542
Zip/Postal Code: 44114



Mini Bluetooth Speakers 4.0 Su...
Store: OnlyFly

20. Upon information and belief, Defendant has never, or at least not for a substantial time, sold the product at the represented higher price.
21. Upon information and belief, this product was never, or at least not for a substantial time, offered for sale by other retailers at the higher stated price.

22. Defendant used this sales model using a false higher price, with a listed discount, to induce Plaintiff and all potential customers to make their purchases from Defendant, and intended them to rely on those representations.
23. Plaintiff and the putative class members justifiably relied on these representations of discounts and purchased their products from Defendant.
24. Defendant's representations that Plaintiff and all others would receive discount price advantages were false. The products Plaintiff and the putative class members purchased were not discounted and Plaintiff and the class did not receive the advertised discounts.

CLASS ALLEGATIONS

25. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.
26. Plaintiff brings this action on behalf of himself and all other similarly situated persons (hereinafter referred to as "putative class members"), to wit:

Anyone who, during the statute of limitations period, purchased any product(s) through Defendant's website and/or App, which Defendant's records show were sold with an alleged advertised savings amount, but where the product(s) were not sold at the non-discount price for at least 28 of the last 90 days prior to the purchase.

27. The class numbers over forty (40) persons and is so numerous that joinder of all members is impracticable, and it is further impracticable to bring all such persons before this Court.
28. The injuries and damages to these class members present questions of law and fact that are common to each class member, and that are common to the class as a whole. For example:
 - a. Whether Defendant's practice of continuously advertising products listed on its website and/or App at a discounted price without offering such products at a non-discounted price for at least 28 of the 90 days prior to a customer's purchase violated the Ohio Consumer Sales Practices Act, O.R.C. § 1345, *et seq.*;
 - b. Whether Defendant's failure to provide Plaintiff and the putative class with a material term of the contract by failing to provide them the agreed percentage off discount is a breach of contract;

- c. Whether Defendant has been unjustly enriched by its practice of continuously advertising products at a discounted price or with a percentage-off discount, without offering such products at a non-discounted price for at least 28 of the 90 days prior to a customer's purchase.
29. Defendant has engaged in the same conduct regarding all of the other members of the class asserted in this suit.
30. The claims, defenses, and injuries of the representative Plaintiff are typical of the claims, defenses, and injuries of all those in the class he represents, and the claims, defenses, and injuries of each class member are typical of those of all other members in the class.
31. The representative Plaintiff will fully and adequately protect and represent the entire class, and all of its putative class members.
32. The identity of all members of the class cannot be determined at this time, but will be so determined at a later time upon obtaining discovery from Defendant and others.
33. The prosecution of separate actions by each member of these classes would create a substantial risk of inconsistent or varying adjudications with regard to individual members of the class that would establish incompatible standards of conduct for Defendant.
34. The prosecution of separate actions would also create a substantial risk of adjudication with respect to individual members of the class which, as a practical matter, would be dispositive of the interest of other members not parties to the adjudication, thereby substantially impairing and impeding their ability to protect these interests. Further, the maintenance of this suit as a class action is the superior means of disposing of the common questions which predominate herein.

FIRST CLAIM FOR RELIEF

**Ohio Consumer Sales Practices Act
O.R.C. § 1345 *et seq.***

35. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.
36. This count is brought pursuant to Ohio's Consumer Sales Practices Act, Ohio Revised Code § 1345, *et seq.* ("CSPA").

37. At all relevant times hereto, including at all times during the transactions between Plaintiff and Defendant, and the consumer transactions between the putative class members and Defendant, Plaintiff and each of the putative class members were “consumers” as defined in the CSPA, and the transactions were “consumer transactions” as defined in the CSPA.
38. At all relevant times hereto, Defendant was a “supplier” as defined in the CSPA.
39. The Ohio Attorney General has adopted price comparison rules pursuant to its authority under R.C. § 1345.05, and which “define with reasonable specificity certain circumstances in which a supplier’s acts or practices in advertising price comparisons are deceptive and therefore illegal” under R.C. § 1345.01 et seq. See O.A.C. 109:4-3-12(A).
40. Defendant has violated both Ohio Administrative Code (“O.A.C.”) 109:4-3-12(E) and 109:4-3-12(F).
41. Under O.A.C.109:4-3-12(E), it is deceptive for a supplier to make any price comparison unless the comparison is (a) to the supplier’s regular price; (b) is the regular price of a previous season, and the season and year are conspicuously disclosed; or (c) the advertisement clearly and conspicuously discloses the nature of the reference price.
42. Here, the stated reference price, i.e. the stated higher price advertised by Defendant, is not the supplier’s regular price because it is not “the price at which the goods or services are openly and actively sold by a supplier to the public on a continuing basis for a substantial period of time” (see O.A.C. 109:4-3-04(F)(1)) and is not Defendant’s actual selling price, or the price at which Defendant recently sold the goods in the past (see O.A.C. 109:4-3-04(F)(1)(a)-(b)).
43. The higher prices Defendant advertises for the items it sells are not the prices the goods were sold at in a previous season, and there is no disclosure by Defendant indicating as such.
44. Finally, Defendant’s advertisements do not disclose any other nature of the reference price, i.e. the stated higher price. Defendant merely lists the higher price with a slash through it.
45. Accordingly, Defendant’s advertisement practices are unfair and deceptive and violate O.A.C. 109:4-3-12(E).

46. Under O.A.C. 109:4-3-12(F), it is deceptive for a supplier to use a reference price in making a price comparison to a price which is not its own unless such reference price is genuine and the advertisement clearly and conspicuously indicates the reference price is not the supplier's own price.
47. Defendant's advertisement of a reference price, i.e. the stated higher price, is not a genuine reference price according to O.A.C. 109:4-3-12(F)(2) because such price does not correspond with prices at which substantial offers for sales have recently been made at retail outlets in the trading area in which such goods are offered at the reference price.
48. Further, Defendant's advertisements do not disclose that the reference price is not Defendant's own price, let alone in a clear and conspicuous manner as required by law.
49. Accordingly, Defendant's advertisement practices were unfair and deceptive and violate O.A.C. 109:4-3-12(F).
50. Defendant's deceptive representations of a discounted sales price were material to the consumer transaction between Plaintiff and Defendant, and between the putative class members and Defendant.
51. As a result of the conduct described herein, Defendant has knowingly engaged in unfair and deceptive sales practices in violation of Ohio's Consumer Sales Practices Act O.R.C. § 1345 et seq., by:
 - a. advertising that its products were discounted when they were not, which represents that its products had benefits that they did not have, which is a violation of ORC 1345.02(B)(1);
 - b. advertising that its products were discounted when they were not, so that when the Defendant supplied the product to Plaintiff, it failed to do so in accordance with its previous representations to wit: that the product was on sale, which is a violation of ORC 1345.02(B)(5); and
 - c. advertising that its products were discounted when they were not, which represents that its products had a specific price advantage when they did not, which is a violation of ORC 1345.02(B)(8).
52. These specific practices have already been found to be a violation of ORC 1345.01 et seq. in the following cases: See *State ex rel. Fisher v. Diamonds Columbus Inc. et al.*,

Case No. 91CVH043316, PIF No. 10000102; *State ex rel. Montgomery v. International Diamond Exchange Jewelers, Inc., et al.*, Case. No. 96 5380, PIF No. 10001701; *Ogden v. Intrigue Jewelers*, Case No. 881CVH117, PIF Number 10000637; *State of Ohio ex rel. Rogers v. Indoor Environmental Air Consulting, LLC*, Case No. 08 CVH 03 4028, PIF No. 10002721; *State ex rel Celebrezze v. Nationwide Warehouse & Storage, Inc.*, Case No. 90CVH086199, PIF No. 10001100; *State of Ohio ex rel. Petro v. Craftmatic Organization, Inc.*, Case No. 05-CVH-06-06060, PIF No. 10002347.

53. Because the above cases are available in the Ohio Public Inspection File, and because of the plain language of the CSPA itself, Defendant was and is on notice that its acts and/or practices constitute the same acts or practices that have previously been recognized to violate the CSPA.
54. Moreover, because of the plain language of the O.A.C. Substantive Rules stated above and at O.A.C. § 109:4-3-1 et seq. (specifically, but not limited to, O.A.C. 109:4-3-12(D), O.A.C. 109:4-3-12(E), and/or O.A.C. 109:4-3-12(F)), Defendant was and is on notice that its acts and/or practices constitute the same acts or practices that have previously been recognized to violate the CSPA. See O.R.C. § 1345.09(B). See ¶¶ 40-49, above.
55. As a direct and proximate result of Defendant's violations, Plaintiff and the putative class members have been injured in an amount to be established at trial. For example, if consumer John Doe purchased something that Defendant represented was 50% off, Defendant's promised 50% off savings was false. Doe was damaged in this amount (i.e. 50% of the price he was charged and paid), which equals the deceptive savings that the Defendant purported to, but did not actually, provide.
56. Plaintiff, on behalf of himself and on behalf of the putative class members, seeks restitution, disgorgement, injunctive relief, and all other relief allowable under O.R.C. §1345 et seq.

SECOND CLAIM FOR RELIEF

Breach of Contract

57. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.
58. Plaintiff and the putative class members entered into a contract with Defendant to purchase product under stated terms and conditions.

59. The contract provided that Plaintiff and the putative class members would pay Defendant for its products.
60. One of the material terms was that Defendant would provide, and Plaintiff and the putative class members would pay, a specifically discounted price.
61. The images at ¶19 are a true and accurate copy of the contract entered.
62. As set forth in the contract, a specific term of the contract is that the price being charged, and paid, includes a specific discount.
63. Plaintiff and the putative class members paid Defendant for these products, and satisfied all other conditions, or same were waived.
64. Defendant breached the contract by failing to comply with the material term of providing the specific, agreed discount.
65. As a direct and proximate result of Defendant's breach, Plaintiff and the putative class members have been injured in an amount to be established at trial.

THIRD CLAIM FOR RELIEF

Unjust Enrichment

66. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.
67. This claim is asserted in the alternative to a finding of breach contract. This claim asserts that it is unjust to allow Defendant to retain profits from its deceptive, misleading, and unlawful conduct alleged herein.
68. Defendant charged Plaintiff and the putative class members for its products.
69. Defendant represented that these products were discounted.
70. As detailed above, the products were not discounted.
71. Because the products were advertised as being discounted when they were not, Defendant collected more than if the products had been discounted as promised.
72. Plaintiff conferred a benefit upon Defendant by purchasing these products at a price which was not actually discounted.
73. As a result of these actions, Defendant received benefits under circumstances where it would be unjust to retain these benefits.
74. Defendant has knowledge or an appreciation of the benefit conferred upon it by Plaintiff and the putative class members.
75. Defendant has been unjustly enriched.

76. Plaintiff and the putative class members are entitled to restitution and/or disgorgement of all such overcharges obtained by the Defendant from their deceptive, misleading, and unlawful conduct.
77. Alternatively, Plaintiff and the putative class members are entitled to disgorgement from Defendant of all net profits it derived from the foregoing improper conduct.

FOURTH CLAIM FOR RELIEF

Fraud

78. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.
79. Defendant represented to Plaintiff and the putative class members that they were receiving a discount on the purchased items.
80. These representations about price are material to the sale of products.
81. The representations were false, since the stated higher prices were not prices charged by Defendant.
82. For Plaintiff, the price he paid for the purchase described in this complaint is not a discounted price at all, and Defendant's representation to the contrary was false. The price paid was the retail and every day price of the item, not a discounted price.
83. The foregoing is likewise true for each class member.
84. Defendant knew that Plaintiff and the putative class members would be misled by these representations.
85. Defendant intended that Plaintiff and the putative class members would justifiably rely on these representations of a discounted price in order to induce customers into making purchases, and they did so.
86. Defendant had no intention of ever offering Plaintiff and the putative class members a discount at the time it made its representations of a discount since it knew the advertised discounted price was actually the regular price.
87. Plaintiff and the putative class members were harmed by Defendant's fraudulent representations in the amount of the discount they did not receive and are entitled to recover that amount from Defendant, with all other remedies provided by law.

PRAYER FOR RELIEF

WHEREFORE Plaintiff demands judgment as follows:

1. For an Order determining at the earliest possible time that this matter may proceed as a class action under Civil Rule 23 and certifying this case as such;
2. For compensatory damages;
3. For punitive damages;
4. For reasonable costs and attorney fees necessarily incurred herein pursuant to common law and/or R.C. § 1345.09(F);
5. For such other or further relief as this Honorable Court deems Plaintiffs and the class entitled.

Respectfully submitted,



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