

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA
CIVIL DIVISION**

**OFFICE OF THE ATTORNEY GENERAL,
STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,**

Plaintiff,

v.

**HUSKY CARGO, LLC,
a Florida Limited Liability Company,
DWAYNE PASS, an Individual, and
TAMMY PASS, an Individual,**

Defendants.

Case Number: _____

COMPLAINT

Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs (the “Attorney General”), sues Defendants, Husky Cargo, LLC (“Husky”), Dwayne Pass, and Tammy Pass (collectively Dwayne Pass and Tammy Pass are referred as “Pass” and together with Husky, “Defendants”), and alleges the following:

JURISDICTION AND VENUE

1. This is an action for injunctive relief, restitution, civil penalties, attorney’s fees, and other statutory and equitable relief pursuant to the Florida

Deceptive and Unfair Trade Practices Act (hereinafter referred to as “FDUTPA”), Chapter 501, Part II, Florida Statutes (2018).

2. This Court has jurisdiction pursuant to the provisions of FDUTPA. The granting of injunctive and other equitable and statutory relief is within the jurisdiction of the Circuit Court and the amount in controversy satisfies the jurisdictional threshold of the Circuit Court.

3. All actions material to the complaint have occurred within four (4) years of the filing of this action.

4. The statutory violations alleged herein occur in or affect more than one judicial circuit in the State of Florida, including Polk, and the Tenth Judicial Circuit.

5. Venue is proper in Polk County, Florida, as, at all times material hereto, Defendant Husky’s principal place of business was located in Polk County.

6. All conditions precedent to this action have been performed or have occurred.

PARTIES

7. The Attorney General is an enforcing authority of FDUTPA as defined in 501.203(2), Florida Statutes (2018), and is authorized to seek injunctive relief, restitution, and other statutory and equitable relief pursuant to this part.

8. The Attorney General has conducted an investigation of the matters alleged herein and has determined that this enforcement action serves the public interest, as required by Section 501.207(2), Florida Statutes (2018).

9. Defendant Husky is an inactive Florida limited liability company which was administratively dissolved in September 2016.

10. Since at least 2015, Defendant Husky conducted business from within the state of Florida, at 315 Bartow Municipal Airport, Bartow, FL 33830 and, more recently, at 3230 Delta Avenue, Bartow, FL 33830.

11. At all times material hereto, Defendants engaged in “trade or commerce” as defined in Section 501.203(8), Florida Statutes.

12. Defendant Dwayne Pass is an individual who, upon information and belief, resides in Hillsborough County, Florida.

13. Defendant Dwayne Pass was the named Manager of Defendant Husky until May 2015. Upon information and belief, and at all relevant times hereto, Dwayne Pass directly participated in, managed, operated, and controlled, and had the ability to control the operations of Defendant Husky, including, but not limited to, 1) hiring sales representatives, vendors, and employees for the production lane; and 2) making and/or approving operational and financial decisions, such as determining prices for goods, amounts of advance deposits required, and when, how

much, and which vendors to pay. Dwayne Pass also had direct interaction with consumers regarding the sale of goods.

14. Defendant Tammy Pass is an individual who, upon information and belief, resides in Hillsborough County, Florida.

15. At all times material hereto, Defendant Tammy Pass was employed by Defendant Husky as a bookkeeper and was responsible for processing payroll and handling accounts payable. Upon information and belief, and all relevant times hereto, Tammy Pass directly participated in, managed, operated, and controlled, and had the ability to control the operations of Defendant Husky. In addition, Tammy Pass had access to company funds.

STATEMENT OF FACTS AND
DEFENDANTS' COURSE OF BUSINESS

16. Defendants engaged in the business of manufacturing and sale of custom-built, automotive and cargo trailers ("Trailers").

17. Defendants marketed the Trailers and conducted sales through the website, www.huskycargo.com, eBay, other internet advertising means and at Defendants' physical location at 315 Bartow Municipal Airport., Bartow, Florida 33830.

18. From June 2015 to present, the Attorney General received complaints from twenty-nine (29), consumers concerning Defendants' business practices. Consumers have also complained to the Better Business Bureau.

19. Specifically, the complaints allege that consumers placed sales orders with Defendant Husky for Trailers and paid advance deposits but did not receive the Trailers that Husky promised.

20. Consumer complaints indicate that consumers may have paid as much as the full price for a Trailer in advance, but never received the Trailer purchased, nor received any refund of the purchase price.

21. The complaints allege that consumers paid Defendants up to several thousands of dollars in deposits and/or advanced payments for a total amount of approximately One Hundred Fifty-Six Thousand One Hundred and Seventy-Eight Dollars (\$156,178) paid to the Defendants.

22. Consumer complaints also allege that Defendants failed to provide customer service, including, but not limited to, failing to answer business phones and failing to return consumers' phone calls or emails.

23. Dwayne Pass, at all times material hereto, as the general manager of Husky, was responsible for dealing with consumers and their complaints. As such, he was aware of the consumer complaints and customer service issues related to Trailer orders that were escalated to management.

24. Tammy Pass, at all times material hereto, was also aware of consumer complaints and customer service issues.

25. Dwayne Pass and Tammy Pass had full access and control over Husky's business bank accounts. The Passes opened several business accounts purportedly on behalf of Husky but listed their home address on account records. The Passes were the only authorized signers on these accounts.

26. Further, the Passes made several large deposits into one of the Defendant Husky's business accounts: 1) on December 2, 2014 in the amount of One Hundred Thirty-Three Thousand, Nine Hundred Seventy-Seven Dollars and Sixty Cents (\$133,977.60), and 2) on March 24, 2015 in the amount of Twenty-Nine thousand, Seven Hundred Seventy-Two Dollars and Eighty Cents, (\$29,772.80). On or about April 23, 2015, Tammy Pass made a withdrawal from another Defendant Husky business account in the amount of Four Thousand Nine Hundred Five Dollars and Zero Cents (\$4,095.00).

27. Upon information and belief, each Dwayne Pass and Tammy Pass intentionally and wrongfully transferred company funds for their own benefit, while simultaneously failing to fulfill orders or provide refunds to consumers.

COUNT I
VIOLATION OF FLORIDA DECEPTIVE
AND UNFAIR TRADE PRACTICES ACT

28. The Attorney General re-alleges and incorporates by reference paragraphs 1-27 above.

29. Section 501.204(1), Florida Statutes (2018) provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” The provisions of FDUTPA shall be “construed liberally” to promote and “protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” §501.202, Fla. Stat. (2018).

30. Section 501.203(8), Florida Statutes, defines “[t]rade or commerce” as:

the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. “Trade or commerce” shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.

31. As set forth above, Defendants have 1) committed acts or practices in trade or commerce, which shock the conscience, engaged in representations, acts, practices or omissions, which are material, and which are likely to mislead

consumers acting reasonably under the circumstances; 2) committed acts or practices in trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers; and, 3) engaged in acts or practices that are likely to cause substantial injury to consumers, which are not reasonably avoidable by consumers themselves or outweighed by countervailing benefits to consumers or competition. Thus, Defendants have engaged in unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of FDUTPA.

32. Defendants have willfully engaged in the acts and practices described herein when they knew or should have known that such acts and practices were unfair or deceptive or otherwise prohibited by law. Defendants are subject to civil penalties for willful violations of FDUTPA in the amount of Ten Thousand Dollars (\$10,000) for each violation pursuant to Section 501.2075, Florida Statutes (2018), and Fifteen Thousand Dollars (\$15,000) for each violation that victimized or attempted to victimize, a senior citizen pursuant to Section 501.2077, Florida Statutes (2018).

33. These above-described acts and practices of Defendants have injured the public.

34. Unless Defendants are permanently enjoined from engaging further in the acts and practices complained of herein, Defendants' actions will result in irreparable injury to the public for which there is no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs, respectfully requests that this Court enter an order to:

A. Permanently enjoin Defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, who receive actual notice of the injunction, from soliciting orders and collecting funds from new or existing customers relating to marketing and sales of automotive or cargo trailers, parts or equipment;

B. Award equitable remedies, including ordering Defendants, jointly and severally, to pay full restitution to consumers and to disgorge revenues to the Attorney General;

C. Assess against Defendants, jointly and severally, civil penalties in the amount of Ten Thousand Dollars (\$10,000) for each violation of FDUTPA in accordance with Section 501.2075, Florida Statutes, Fifteen Thousand Dollars (\$15,000) for each violation that victimized or attempted to victimize, a senior citizen in accordance with Section 501.2077, Florida Statutes;

D. Award the Attorney General reasonable attorney's fees and costs

pursuant to the provisions of Section 501.2105 of FDUTPA, and as otherwise allowable by applicable statutes or law; and

E. Award any other equitable relief pursuant to Section 501.207(3), Florida Statutes (2018), and such other relief as the interests of justice shall require and that this Honorable Court may deem just and proper.

Dated this 29th day of March 2019.

Respectfully Submitted,
ASHLEY MOODY
ATTORNEY GENERAL

/s/Robert J. Follis

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