

IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE *ex rel.* HERBERT H.)
SLATERY III, Attorney General and Reporter,)

Plaintiff,)

v.)

THE RUSTIC FLAG COMPANY,)
a general partnership,)

and)

JUSTIN SCOTT,)
general partner,)

Defendants.)

Case No. _____

JURY DEMAND

CIVIL ENFORCEMENT COMPLAINT

INTRODUCTION

This civil enforcement action is brought to stop the ongoing deception and unfair business practices Defendants committed through their operation of a business that advertised the sale of handmade wooden flags, a product that thousands of consumers paid for in full, yet never received. By continuing to promise shipment dates they knew could not be met and taking orders they knew could not be fulfilled, Defendants deceived consumers while pocketing thousands of dollars in unjust profits.

The State of Tennessee, through its Attorney General and Reporter, Herbert H. Slatery III, brings this civil enforcement action under the Tennessee Consumer Protection Act of 1977, Tennessee Code Annotated §§ 47-18-101–131 (TCPA) and the Attorney General’s power at common law to obtain temporary and permanent injunctive relief, rescission or reformation of

contracts, restitution, refund of monies paid, disgorgement of ill-gotten gains, civil penalties, attorneys' fees, and other equitable and statutory relief for Defendants' violations of the TCPA.

1. The State has reason to believe that Defendants have engaged in, are engaging in, and are about to engage in acts or practices declared unlawful by the TCPA in the operation of their retail business.

2. At all material times, Defendants, individually, collectively, and/or as agents of one another, have engaged in acts or practices that affect the conduct of trade or commerce, as defined in Tennessee Code Annotated § 47-18-103(19).

3. The State has reason to believe that this civil enforcement action is in the public interest.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction under Tennessee Code Annotated § 47-18-108(a).

5. As a court of general jurisdiction, the Circuit Court is authorized to hear this matter and sit as a court of equity in this matter under Tennessee Code Annotated §§ 16-10-101 and -111.

6. Venue is proper in Davidson County under Tennessee Code Annotated § 47-18-108(a)(4) because it is one of the counties where the unfair, deceptive, and misleading acts and practices took place, and it is one of the counties in which Defendants conduct, transact, or have conducted or transacted business.

7. As set forth in this Complaint, this Court has personal jurisdiction over Defendant The Rustic Flag Company because it is organized under the laws of Tennessee. *See* Tenn. Code Ann. § 20-2-222.

8. As outlined in this Complaint, this Court has personal jurisdiction over Defendant Justin Scott because he is domiciled in Tennessee. *See* Tenn. Code Ann. § 20-2-222.

9. Defendants are further subject to jurisdiction in this state because they have conducted and continue to conduct business in Tennessee by offering for sale, selling, and manufacturing handmade wooden flags from Trenton, Tennessee to consumers both in Tennessee and out-of-state. *See* Tenn. Code Ann. § 20-2-223.

10. Defendants are further subject to jurisdiction in this state because they have contracted to supply or furnish things from and within this state through their operation of a retail business. *See* Tenn. Code Ann. § 20-2-223.

11. Defendants are further subject to jurisdiction in this state on any other basis authorized by law or not inconsistent with the constitutions of Tennessee or the United States. *See* Tenn. Code Ann. § 20-2-225.

THE PARTIES

12. Plaintiff, the State of Tennessee, is one of the fifty sovereign states of the United States. Herbert H. Slatery III is the Attorney General and Reporter of the State of Tennessee and has been duly appointed to serve as Attorney General by the Tennessee Supreme Court.

13. Defendant, The Rustic Flag Company (RFC), is a Tennessee general partnership (SOS Control No. 000928491), with a principal address of [REDACTED] Trenton, TN 38382.

14. RFC registered with the Tennessee Secretary of State in October 2017 but was originally formed in late 2015.

15. RFC has two general partners, Defendant Justin Scott and his wife, Donna Scott.

16. Defendant Justin Scott is an individual and resident of Gibson County, Tennessee, residing at [REDACTED] Trenton, TN 38382.

INDIVIDUAL PARTICIPATION & UNJUST ENRICHMENT

17. Defendant Justin Scott is jointly and severally liable for the conduct of RFC because he had the authority to formulate, direct, or control its activities, and knew or should have known of its unlawful conduct but failed to stop it.

18. Defendant Justin Scott has received ill-gotten funds that are the proceeds of the unlawful acts and practices alleged in this Complaint and has no legitimate claim to those funds.

FACTUAL ALLEGATIONS

A. Background

19. Defendant Justin Scott started RFC with his wife in late 2015, selling handmade wooden flags out of their basement.

20. Neither of the Scotts had managed or operated a business before RFC, and they relied on Facebook to get RFC off the ground.

21. During this period, Defendants only sold flags in one size for around \$150 each.

22. By 2017, customer orders for Defendants' flags had increased significantly with no signs of slowing down. At its peak, RFC was producing up to 240 flags per day.

23. To accommodate this demand, Defendants purchased a warehouse located at [REDACTED]

[REDACTED] Trenton, TN 38382. This purchase was finalized around February 2017.

24. Although Defendants took orders and payments through multiple online platforms throughout RFC's history, Shopify, Inc. (Shopify) began hosting RFC's primary site, www.therusticflagcompany.com, in March of 2017.

25. RFC's Shopify site offered a variety of pre-designed flags and allowed customers to request personalized designs.

26. The price of each pre-designed flag varied depending on size and style, ranging from approximately \$95 to \$600 per flag.

27. Lead times for pre-designed flags were included in each of the flags' website descriptions so that customers were aware of the waiting period before purchase. These lead times were specific to each flag type and varied depending on size and design, but none of these lead times were over 16 weeks.

28. Custom flags were priced individually and ranged from approximately \$100 to \$4,000.

29. Lead times for custom flags also varied, but never exceeded 16 weeks.

30. After placing an order, customers would receive an email notifying them of the estimated lead time, as seen in *Illustration 1* below.



Illustration 1

31. The third full sentence of this email represents that consumers should expect shipments no later than 16 weeks after their order date.

32. Indeed, Defendants' statement that "some specialty flags and custom orders *may*" take "up to 16 weeks to complete," implies that some specialty and custom orders may in fact arrive earlier. It also follows that pre-designed flags, which do not require custom artwork, would be shipped before the 16-week deadline.

33. Additionally, the email instructs customers to allow "the full lead time" for their item to ship. Referencing "the full lead time" for a specific item encouraged customers to rely on the lead time provided on RFC's website for that particular item. For pre-designed flags, those "full lead times" were well under 16 weeks.

34. The lead times presented to customers both before and after purchase naturally affected the customer's decision-making about whether to purchase, when to follow up on the purchase, and how to interact with Defendants.

B. Defendants Keep Consumers in the Dark About the Status of Orders

35. During the Holiday season of 2017, Defendants began to receive more orders than they could satisfy.

36. As RFC took on more orders, Defendants began to extend product lead times. In early 2017, lead time was approximately 3–5 weeks. By November 2017, it had grown to 6–8 weeks. By early 2018, the lead time was approximately 10–12 weeks. Most recently, RFC's customers received lead times of "up to 16 weeks."

37. By at least early 2018, Defendants knew that they were unable to keep up with the demand and were regularly behind schedule, even with these extended lead times. Yet, many customers received no communications alerting them that their order would be delayed.

38. Rather than alerting consumers to this issue and limiting the number of orders RFC would take, Defendants did nothing and allowed the steady influx of Shopify orders to grow.

39. As a result, the Tennessee Division of Consumer Affairs has received over 1,100 consumer complaints and the Better Business Bureau has received over 2,100 consumer complaints from RFC customers.

40. Most of these complaints are due to consumers not receiving the flags they purchased from Defendants, either within the lead time communicated to them or at all. These consumers often paid between \$100 and \$400, and sometimes even more, for a product they never received.

41. Many consumers state that they did not receive any follow-up communications from Defendants alerting them that their product was delayed or adjusting the expected shipping date.

42. For example, consumer Alia S. placed an order for a flag on September 3, 2018. She paid \$255.00. After receiving her initial confirmation email, Alia did not hear from Defendants again. Over a year later, she still has not received her flag.

43. Other customers did receive follow-up emails, like the one seen in *Illustration 1* above, confirming the lead times stated on RFC's website at the time of purchase and implying that the orders were on track to be completed within that time. This follow-up email bolstered the customer's false belief that the original lead time still applied.

44. For example, consumer Jason B. paid \$194.81 for a flag on June 13, 2018. The confirmation email Jason received specifically represented a lead time of "up to 16 weeks," as seen in *Illustration 1* above. Jason received follow-up emails after four and six weeks had passed. Each of these emails confirmed the amount of time that had passed since Jason's order but said nothing about RFC delaying shipment to any time beyond what was stipulated in the initial lead-time email.

45. Jason did not receive his order within 16 weeks. In fact, over a year later, Jose is still without his two flags.

46. Some consumers even reached out to Defendants themselves to inquire about the status of their flags.

47. On occasion, Defendants would respond to a customer email and provide updated lead times but often still failed to meet these new deadlines.

48. Many customers never received a response at all, and some had their emails returned as “undeliverable,” as seen in *Illustration 2* below.

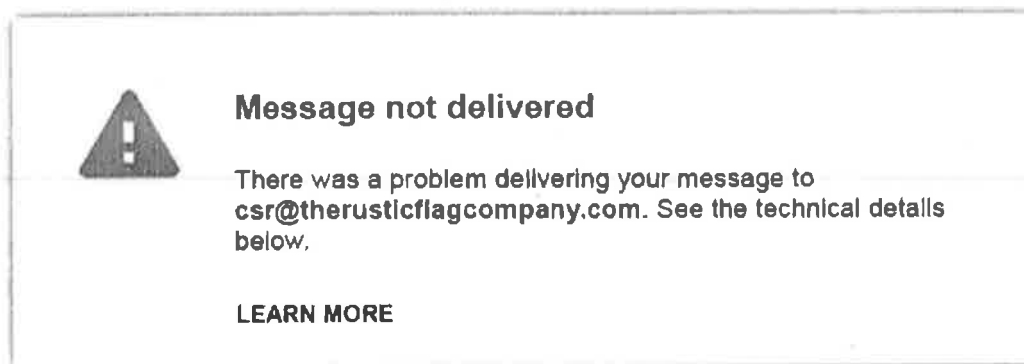


Illustration 2

49. For example, James M. paid \$194.00 for two flags on April 30, 2018, and received a confirmation email. Similar to other customers, he received several status-update emails. James emailed RFC multiple times about his order and received responses indicating that the messages could not be delivered. James received no further communication—or his flag—from Defendants.

50. Mary I., another of RFC’s customers, paid \$225.00 for two flags on June 14, 2018. She received three status-update emails, the last of which was received on August 23, 2018. She never received another update. After over 10 months of waiting for her flags, Mary emailed RFC requesting an update. Her email was returned as undeliverable. She still has not received her order.

51. Similarly, customers who attempted to call Defendants to inquire about their order status found that RFC's phone number had been disconnected.

52. For example, David A. paid \$259.00 for a flag on May 18, 2018. After placing his order, David emailed RFC several times without response. He also attempted to call but found that RFC's phone number was disconnected.

53. Even though Defendants were unable to respond to consumers or satisfy thousands of outstanding orders as early as February 2018, they continued to take orders through Shopify for another nine months, until November 2018.

C. Defendants Mismanage Financial Records

54. Defendants' inability to keep up with customer demand was prefaced by a multitude of poor financial decisions.

55. To begin with, Defendants' record-keeping for RFC is scant.

56. Defendant Justin Scott's wife, Donna Scott, was RFC's primary bookkeeper. She handled payroll, tax filings, and keeping track of the company accounts. Ms. Scott kept all of RFC's records on a QuickBooks Cloud-based service. Neither Ms. Scott nor Defendant Justin Scott had any prior experience managing business finances.

57. This lack of financial experience is evident in some of RFC's employment practices.

58. For instance, at the height of RFC's growth, the company staffed over 30 regular employees. Depending on the position, hourly workers were making anywhere between \$9 and \$20 per hour. Three employees were salaried at around \$41,000 per year.

59. Around October of 2018, RFC laid off some of its workers. Yet, there does not appear to be any records showing which employees were dismissed, what their pay was at the time of termination, or when they were officially terminated.

60. Employees that remained were supposed to be paid weekly through direct deposit. However, when RFC's operating funds were sparse—a recurring consequence of the careless spending described below—Defendants resorted to paying staff with paper checks out of the Scotts' personal funds or other accounts. As such, records of employees' wage payments are haphazard.

61. Additionally, Defendants paid family friends to design and apply the artwork on custom orders and certain pre-designed flags. Defendants describe this working relationship as a "contract" or "subcontract" but never entered into any formal agreement for these services, and there was no set cost for any given flag or design. Rather, these family friends would charge whatever they thought was fair for a given design and Defendants would pay that price without question. These payments, similar to Defendants' payment practices for RFC's employees, were disorganized, inconsistent, and unreliable—a description in keeping with RFC's financial records as a whole.

62. Eventually, Defendants began to take their lack of financial oversight seriously when they realized that RFC's accounts were not in line with their QuickBooks records.

63. In early 2018, the Defendants hired an outside accountant to rectify these discrepancies and agreed to pay approximately \$15,000 to correct a year and a half of RFC's records.

D. Defendant Justin Scott Misuses RFC's Funds for Personal Benefit

64. A major contributor to RFC's financial chaos was Defendant Justin Scott's personal spending habits.

65. Indeed, when Defendant Scott or his wife wanted money for personal expenditures, they withdrew or transferred funds from RFC's business accounts.

66. These transactions are inconsistent in both timing and amount because they are often cash withdrawals and deposits, and most are also untraceable using RFC's bank records.

67. While some of the Scotts' transactions were for day-to-day expenses, many went towards larger indulgences.

68. For instance, RFC received a capital loan from Shopify for \$300,000 on December 19, 2017. That same day, Defendant Scott withdrew \$215,000 in cash from the RFC operating account. He then deposited this amount, in cash, to his personal bank account before using it to pay off the balance on his home loan.

69. The Scotts made several other personal purchases from RFC funds, including, but not limited to:

- A. the outright purchase of their daughter's 2017 Mustang (~\$26,000);
- B. the down payment on a Corvette (~\$20,000);
- C. monthly payments on a 2016 Escalade (~\$1,100/month);
- D. monthly payments on a 2019 F-150 (~\$800/month);
- E. landscaping on their personal property (~\$25,000);
- F. at least two four-wheelers (~\$3,400 each); and
- G. an upgrade to a woodshop on their personal property (~\$12,000).

70. In addition, the Scotts started RFC Tactical, their second business, in July of 2016 using at least \$40,000 from RFC's funds.

71. RFC Tactical was a retail store that sold outdoor clothing and gear, firearms, ammunition, and other related items.

72. Similar to RFC, RFC Tactical was a general partnership for which Justin and Donna Scott were the sole partners. Donna Scott also handled RFC Tactical's finances and bookkeeping.

73. Besides using RFC funds for the initial investment, Defendants regularly transferred funds back and forth between RFC and RFC Tactical without keeping records of these transactions. In March 2018 alone, at least \$150,000 was transferred from RFC to RFC Tactical.

74. Ultimately, RFC Tactical failed and officially closed in May of 2019. Its inventory was sold for \$120,000—money that was immediately spent by Defendants to pay off outstanding debts.

75. This outcome was not surprising given that Defendants accrued several debts throughout RFC's operation.

E. Defendants Accumulate Large Amounts of Debt

76. As evidenced above, Defendants were not frugal with RFC's money, and much of that money was not Defendants' to spend however they chose.

77. For instance, the Defendants had an ongoing loan arrangement with Shopify. In addition to hosting Defendants' website, Shopify also provided at least \$615,000 in total capital loans for Defendants to grow RFC as a business.

78. The terms of this loan agreement instituted a schedule for Defendants to pay Shopify back with 12% interest.

79. Defendants missed several of these payment deadlines and eventually stopped paying at all.

80. It is estimated that Defendants currently owe Shopify at least \$200,000 on the balance of these capital loans.

81. Defendants also currently owe debts to the following parties:

A. their accountant, for the outstanding balance on the services described in ¶ 64 (~\$8,500);

B. the IRS (~\$23,000-\$25,000);

C. United Postal Service (~\$32,000); and

D. City Lumber Company (~\$3,000).

82. Defendants also have a judgment of approximately \$60,000 against them in Gibson County for failure to pay rent.

VIOLATIONS OF LAW

Violations of the TCPA Tenn. Code Ann. § 47-18-104

83. Plaintiff, the State of Tennessee, adopts by reference and re-alleges every allegation contained in paragraphs 1–82 of this Complaint.

84. By receiving payments from thousands of consumers for products that were not provided, Defendants have engaged in unfair trade practices in violation of Tennessee Code Annotated § 47-18-104(a).

85. By failing to respond to customer inquiries related to the manufacturing and shipping of purchased products, Defendants have engaged in unfair trade practices in violation of Tennessee Code Annotated § 47-18-104(a).

86. By making express material misrepresentations that customers would receive their orders within a specific amount of time, Defendants have engaged in deceptive trade practices that violated Tennessee Code Annotated § 47-18-104(a) and (b)(27).

87. By actively participating in, approving, directing, or otherwise controlling the acts and practices referenced in paragraphs 1–82 on behalf of Defendant RFC, Defendant Justin Scott is individually liable for those acts and practices, as they apply to the TCPA violations asserted in this Complaint.

PRAYER FOR RELIEF

Therefore, Plaintiff, the State of Tennessee, under Tennessee Code Annotated § 47-18-108(a) and (b), the Attorney General's power at common law, and this Court's own equitable powers, requests that this Court:

A. Enter judgment against each Defendant and in favor of the State of Tennessee for each violation alleged in this complaint;

B. Enter a permanent injunction to prevent future violations of the TCPA by Defendants;

C. Enter an injunction against further disposition by Defendants of assets that lawfully belong to the State, freezing assets, appointing a receiver to take charge of the assets that rightfully belong to the State, and granting any other relief the circumstances may require pursuant to Tennessee Code Annotated § 47-18-108;

D. Award such relief as the Court finds necessary to redress consumer injury resulting from Defendants' violations of the TCPA, including, but not limited to, rescission or reformation of contracts, restitution including pre-judgment statutory interest and the costs of a restitution administrator to effectuate redress, refund of monies paid, and disgorgement of ill-gotten gains;

E. Adjudge and decree that each Defendant has engaged in the aforementioned acts and practices which violate the TCPA;

F. Adjudge and decree that each Defendant separately pay civil penalties of not more than \$1,000 per violation to the State of Tennessee for each violation of the TCPA as provided by Tennessee Code Annotated § 47-18-108(b)(3);

G. Enter judgment in favor of the State of Tennessee for the reasonable costs and expenses of the investigation and prosecution of this action, including attorneys' fees, expert and

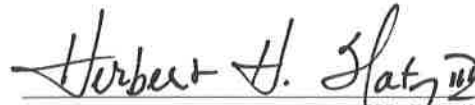
other witness fees, and costs, as provided by Tennessee Code Annotated § 47-18-108(a)(6) and (b)(4);

H. Order that this Complaint be filed without cost bond as provided by Tennessee Code Annotated §§ 20-13-101, 47-18-108, and 47-18-116;

I. Order that all costs in this case be taxed against Defendants and no costs be taxed to the State of Tennessee as provided in Tennessee Code Annotated § 47-18-116; and

J. Award the State of Tennessee such other and additional relief as the Court may determine just and proper.

Respectfully submitted,



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