VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

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FEB 27 2017
CONSUMER PROTECTION SECTION

COMMONWEALTH OF VIRGINIA, *EX REL.* MARK R. HERRING, ATTORNEY GENERAL,	
Plaintiff,	
v.	**CASE NO. CL16002929-00** -5
SHOCKOE BOTTOM AUTOMOTIVE & TIRES, INC. d/b/a SHOCKOE BOTTOM TIRES/EMERALD TIRES, a Virginia corporation,	

CONSENT JUDGMENT

COME NOW the Plaintiff, Commonwealth of Virginia, by, through, and at the relation of its Attorney General, Mark R. Herring, and the Defendant, Shockoe Bottom Automotive & Tires, Inc., on behalf of itself, its employees, officers, directors, agents, related entities, successors, and assigns, to resolve the matters in controversy between them, having agreed to the terms of this Consent Judgment, as follows:

I. STIPULATED FACTS

1. The Plaintiff is the Commonwealth of Virginia, *ex rel.* Mark R. Herring, Attorney General ("Plaintiff" or "the Commonwealth"). The Attorney General has statutory authority to enforce the Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 to 59.1-207 and Virginia Code § 18.2-217(a) ("the bait and switch statute").

2. The Defendant, Shockoe Bottom Automotive & Tires, Inc. ("Defendant" or "Shockoe Bottom Tires") is a Virginia corporation with its principal business address at 2500 E. Main Street, Richmond, Virginia 23223. The Defendant also uses the names "Shockoe Bottom Tires," and "Emerald Tires" when referring to its business.

3. Based upon materials received by the Office of the Attorney General, and its subsequent investigation, the Commonwealth previously filed a Complaint alleging that the Defendant operated in violation of § 59.1-200(A)(5), (8) and (14) of the VCPA, and Virginia Code § 18.2-217(a), by advertising and offering tires for sale at one price ($25) with the intent not to sell at that price; by advertising and offering tires "BUY 3 GET 1 FREE," with the intent not to sell the tires at this price or upon the terms advertised; and by advertising and offering a tire alignment service as included with the purchase of tires, or otherwise advertising a "free alignment," with the intent not to sell this service at the price or upon the terms advertised.

4. In the interest of resolving the Commonwealth's claims, the Commonwealth and the Defendant have agreed on a basis for the settlement of the Complaint and stipulated to entry of this Consent Judgment between the parties without trial or the adjudication of the validity of any alleged issue of law or fact.

5. The Defendant does not admit the allegations set forth in the Commonwealth's Complaint, and affirmatively states that its execution of this Consent Judgment is for settlement purposes only.

6. The Defendant and the Commonwealth waive their right to appeal from this Consent Judgment and enter into this Consent Judgment voluntarily and state that no promises of any kind were made to enter into this Consent Judgment, except as provided herein.

7. The Defendant acknowledges and agrees that the Commonwealth's Complaint in this matter states claims upon which relief could be granted under the provisions of the VCPA and the bait and switch statute.

8. The Defendant consents to and submits itself to the jurisdiction of this Court and waives any objections it may have had to the jurisdiction of this Court over it for all matters relating to the entry, execution, monitoring, and enforcement of this Consent Judgment. The Defendant further waives any objections it may have had to venue in this Court for matters relating to the

entry, execution, monitoring, and enforcement of this Consent Judgment.

II. ORDER

NOW, THEREFORE, based upon the advice and stipulation of the parties, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Upon agreement of the parties, the Court hereby enters this Consent Judgment.

2. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Judgment.

A. Injunctive Relief

3. Shockoe Bottom Tires, in its own name, or doing business under any other trade name, and its agents, employees, officers, directors, and any other persons in active concert or participation with it, with either actual or constructive knowledge of this Consent Judgment, are hereby permanently enjoined from:

a. Engaging in those acts and practices alleged by the Commonwealth in its Complaint to be violations of the VCPA and the bait and switch statute; and

b. Engaging in any act or practice in violation of the VCPA or the bait and switch statute as they now exist, or as amended in the future.

4. Effective the date of entry of this Consent Judgment, Shockoe Bottom Tires shall modify all written signage, coupons, posting, or advertisements in any form, in person or on any website it operates, to be in compliance with the following:

a. Where any price for a product or service is mentioned, and that price is intended to reflect the start of a range, rather than a set price, that range shall be clearly stated (e.g. "and up," "prices starting at…") in typeface no less than fifty percent (50%) the size of the listed price; and

b. Where any product or service is offered for free or at a discount, conditioned upon

purchase of another product or service, and that offer is (i) subject to an expiration date; or (ii) subject to any other specific terms or conditions, said expiration date or terms or conditions must be clearly and conspicuously stated alongside the offer.

5. Nothing in this Consent Judgment shall be construed to prohibit Shockoe Bottom Tires from selling or offering goods or services at any specific price or subject to any specific terms, provided that the advertisement of its prices or terms are consistent with Paragraphs 4(a) and (b) above, and are in compliance with all applicable laws of the Commonwealth.

B. Definitions

6. For purposes of this Consent Judgment, the following definitions shall apply:

a. "Relevant Period" is defined as September 1, 2013 to One Hundred Eighty (180) days from the Effective Date.

b. "Effective Date" shall mean the date on which this Consent Judgment is entered by the Court.

c. "Restitution-Eligible Consumers" refers to all consumers who purchased tires and/or associated services from the Defendant during the Relevant Period, who file a complaint with the Virginia Attorney General's Office, the Better Business Bureau, or the Defendant itself, alleging conduct in violation of the VCPA or the bait and switch statute on the part of the Defendant, and who suffered monetary harm as a result of the Defendant's alleged violations.

d. "Monetary harm" refers to financial loss suffered by Restitution-Eligible Consumers, and received by the Defendant, as a result of the Defendant's alleged violations of the VCPA and the bait and switch statute, including, but not limited to, any monies paid in excess of $25 for any tire purchased at Shockoe Bottom Tires' East Main St. location, but where the advertised price was $25 without qualification; any monies paid or charges incurred for a fourth tire where three tires were purchased at one time; any charges for an alignment where the consumer purchased two or more tires and sought but did not receive a free alignment; or any

other charges incurred as a result of the Defendant's failure to honor its advertised terms or price(s).

C. Restitution/Consumer Relief

7. The Commonwealth, as trustee for affected Restitution-Eligible Consumers, shall recover from the Defendant, the sum of Four Thousand and Eighty Five Dollars ($4,085) as restitution for all Restitution-Eligible Consumers whose complaints are made within One Hundred Eighty (180) days of the Effective Date. All presently-known Restitution-Eligible Consumers, and the amount of restitution they are deemed owed pending receipt of a signed claim form and release, are identified in Exhibit A attached to this Consent Judgment.

8. The Commonwealth will take responsibility for providing restitution to Restitution-Eligible Consumers. In this regard, the Virginia Attorney General's Office will mail claim forms to all Restitution-Eligible Consumers explaining this settlement, and stating that consumers are entitled to restitution in the amounts determined at the discretion of the Virginia Attorney General's Office. The claim forms may include a release in favor of the Defendant to be signed by consumers and returned to the Virginia Attorney General's Office. The Virginia Attorney General's Office agrees to provide all original releases to the Defendant upon the conclusion of the restitution program. The parties shall agree on the form and substance of any required release.

9. The claims of any Restitution-Eligible Consumers will be satisfied from the restitution dollars described in Paragraph 7. To the extent the restitution dollars do not satisfy the amounts claimed by all Restitution-Eligible Consumers, the Defendant agrees to provide the Virginia Attorney General's Office with additional restitution dollars to satisfy such claims. In such event, any complaints from Restitution-Eligible Consumers other than those expressly identified in Exhibit A shall be handled in accordance with the following:

a. The Virginia Attorney General's Office shall provide to the Defendant copies of

consumer complaints against the Defendant that are received by the Virginia Attorney General's Office within One Hundred Eighty (180) days after the Effective Date, including the consumer restitution amounts the Virginia Attorney General's Office maintains is owed to each consumer.

b. To the extent the Defendant objects to additional restitution amounts demanded by the Virginia Attorney General's Office, the Defendant shall, within fourteen (14) calendar days of receipt of a demand pursuant to Paragraph 9(a), respond in writing to the Virginia Attorney General's Office, laying out specific, good-faith, grounds for the objection. Failure of the Defendant to do so shall constitute a waiver of any objection. In the event of a dispute, the parties agree to negotiate such restitution amounts in good faith.

c. For the period beginning with the filing of this Consent Judgment and ending One Hundred Eighty (180) days after the Effective Date, the Defendant agrees to forward all complaints received from Virginia residents to the Virginia Attorney General's Office within five (5) calendar days of receipt.

10. The Virginia Attorney General's Office will make reasonable efforts to locate Restitution-Eligible Consumers whose claim/release forms or refund checks are returned as undeliverable. If the Virginia Attorney General's Office is not successful in locating any consumer whose refund check is returned as undeliverable, such amounts will be forwarded to the Unclaimed Property Division of the Department of the Treasury pursuant to, and for the purposes set forth in, §§ 55-210.9 and 55-210.12 of the Uniform Disposition of Unclaimed Property Act, Virginia Code §§ 55-210.1 to 55-210.30.

11. The parties agree that any residual of the restitution dollars referenced in Paragraph 7 left unclaimed after the Virginia Attorney General's Office completes distribution of restitution to affected consumers may be deposited to the Virginia Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund and treated as an additional award of attorneys' fees pursuant to Virginia Code § 59.1-206(C).

12. Simultaneously with the execution of this Consent Judgment, the Defendant agrees to make payment of the restitution amounts identified in Paragraph 7 above by delivery of a cashier's or certified check, payable to "Treasurer of Virginia," and remitted to the Office of the Attorney General, Attn: Joelle E. Gotwals, 202 North Ninth Street, Richmond, Virginia 23219.

13. The Defendant agrees not to knowingly destroy any records, whether maintained in electronic or hard copy form, relating to any Restitution-Eligible Consumer.

D. Attorneys' Fees and Civil Penalties

14. The Commonwealth shall recover from the Defendant, and the Defendant agrees to pay the Commonwealth, the sum of Three Thousand Dollars ($3,000), pursuant to § 59.1-206(C) of the VCPA for reimbursement of the Commonwealth's reasonable expenses, costs, and attorneys' fees in investigating and preparing this action. Any amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

15. The Commonwealth shall recover from the Defendant, and the Defendant agrees to pay the Commonwealth, the sum of One Thousand Five Hundred Dollars ($1,500), pursuant to §59.1-206(A) of the VCPA, as a civil penalty for alleged violations of the VCPA. Any amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

16. Simultaneously with the execution of this Consent Judgment, the Defendant agrees to make payment of the attorneys' fee and civil penalty amounts specified in Paragraphs 15 and 16 by delivery of a cashier's or certified check in the amount of Four Thousand, Five Hundred Dollars ($4,500) payable to "Treasurer of Virginia," and remitted to the Office of the Attorney General, Attn: Joelle E. Gotwals, 202 North Ninth Street, Richmond, Virginia 23219.

E. Default

17. In the event the Defendant defaults on its full payment obligation as set forth in Paragraph 9, the Commonwealth shall be authorized to make available all funds received first for restitution. In the event received funds do not satisfy all restitution claims made by any Restitution-Eligible Consumers who file complaints within One Hundred and Eighty Days of the Effective Date, the Commonwealth is authorized to distribute restitution to Restitution-Eligible Consumers in pro rata shares.

F. Miscellaneous

18. This Consent Judgment constitutes the entire agreement between Shockoe Bottom Tires and the Commonwealth, concludes the Office of the Attorney General's inquiry into this matter to its satisfaction, and releases the Defendant from all claims asserted or which might have been asserted, by the Commonwealth under the VCPA, the bait and switch statute, or any other consumer protection law arising out of the allegations set forth by the Commonwealth in its Complaint. The parties agree that, if Shockoe Bottom Tires files for bankruptcy within ninety (90) days of any required payment under this Consent Judgment, this release shall be null and void.

19. Nothing in this Consent Judgment shall affect the Defendant's obligation to comply with all applicable state and federal laws.

20. The entry of this Consent Judgment shall not bar private causes of action, if any, with the exception of those causes of action specifically released by individual consumers in connection with restitution provided pursuant to Section II.C.

21. The Commonwealth accepts this Consent Judgment in full satisfaction of the claims it asserted, or could have asserted, in its Complaint against the Defendant, arising out of the subject matter hereof.

22. This Consent Judgment may be modified only by order of this Court. After making a

good faith effort to obtain the concurrence of the other party for the requested relief, the Defendant or the Commonwealth may petition this Court for modification of the terms and conditions of this Consent Judgment.

23. A violation of any provision of this Consent Judgment shall be punishable as contempt and may subject the person or entity in violation to all penalties or sanctions allowed by law.

24. The waiver or failure of any party to exercise any rights under this Consent Judgment shall not be deemed a waiver of any right or any future rights. If any part of this Consent Judgment shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Judgment, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

Enter: 2/8/17

Beverly W. Snukals
Judge, Circuit Court of the City of Richmond

A Copy
Teste: EDWARD F. JEWETT, CLERK
BY: Donna C Lythgoe D.C.

WE ASK FOR THIS:

COMMONWEALTH OF VIRGINIA,
***EX REL.* MARK R. HERRING,**
ATTORNEY GENERAL

By: _____

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SHOCKOE BOTTOM AUTOMOTIVE & TIRES, INC.

By: _____

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Counsel for Shockoe Bottom Automotive & Tires, Inc.

By: _____
Nakeeha Young

Its: Vice President
Title