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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION,
ESSEX COUNTY
DOCKET NO. _____

GURBIR S. GREWAL, Attorney General of the
State of New Jersey, and KAITLIN A. CARUSO,
Acting Director of the New Jersey Division of
Consumer Affairs,

Plaintiffs,

v.

SMITH & WESSON SALES CO., INC., a/k/a
AMERICAN OUTDOOR BRANDS SALES
CO., a/k/a SMITH & WESSON CORP.,

Defendant.

Civil Action

VERIFIED COMPLAINT

Plaintiffs Gurbir S. Grewal, Attorney General of the State of New Jersey (“Attorney General”), and Kaitlin A. Caruso, Acting Director of the New Jersey Division of Consumer Affairs (“Director”) (collectively, “Plaintiffs”), by way of this Verified Complaint state:

PRELIMINARY STATEMENT

1. The New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -226 (“CFA”), provides the Attorney General with broad authority to investigate possible deceptive practices in the advertisement, offering for sale, and sale of merchandise. To effectuate that authority, the CFA,

specifically N.J.S.A. 56:8-3 to -4, authorizes the Attorney General to issue subpoenas to any person to determine whether the CFA and related statutes and regulations have, in fact, been violated. In the event a person fails to respond to such subpoena, the CFA, specifically N.J.S.A. 56:8-6, authorizes the Attorney General to obtain from the Superior Court an Order, among other things, directing the person to respond to the subpoena and restraining the person from engaging in the advertisement, offering for sale, and sale of merchandise until a response has been provided.

2. On October 13, 2020, the Division issued an Administrative Subpoena Duces Tecum (“Subpoena”) to Smith & Wesson Sales Co., Inc., a/k/a American Outdoor Brands Sales Co., a/k/a Smith & Wesson Corp. (“Smith & Wesson” or “Defendant”) requesting documents regarding Smith & Wesson’s advertising and marketing of firearms. To date, Defendant has refused to produce any documents in response to the Subpoena. Pursuant to N.J.S.A. 56:8-8 and R. 4:67-1(a), Plaintiffs are entitled to summary relief requiring Defendant to appear and show cause why it should not be held in contempt and why it should not be required to immediately produce all documents requested in the Subpoena.

JURISDICTION AND PARTIES

3. The Attorney General is charged with the responsibility of enforcing the CFA, and the Director is charged with the responsibility of administering the CFA on behalf of the Attorney General. The Attorney General and the Director have offices located at 124 Halsey Street, Newark, New Jersey.

4. This action is brought by Plaintiffs pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-4 and 56:8-6, and the New Jersey Rules Governing Civil Practice, specifically R. 1:9-6(b) and R. 4:67-1. Venue is proper in Essex County, pursuant to R. 4:3-2, because it is a county in which Plaintiffs reside.

5. Defendant Smith & Wesson is a for-profit corporation established in Delaware that registered to do business in New Jersey on March 5, 2000. Smith & Wesson maintains a principal place of business at 2100 Roosevelt Avenue, Springfield, Massachusetts 01104.

6. Smith & Wesson's registered agent in New Jersey is Registered Agent Solutions, Inc., which maintains a mailing address at 208 West State Street, Trenton, New Jersey 08608.

GENERAL ALLEGATIONS

7. The Attorney General is charged with protecting consumers from commercial practices that violate the CFA, including advertising practices that mislead or fail to disclose material facts about merchandise, including firearms.

8. The Division commenced an investigation of Smith & Wesson to determine whether certain of its advertising and marketing practices violated the CFA and the Advertising Regulations or Hazardous Products Regulations promulgated thereunder.

9. The preliminary investigation suggests that certain of Smith & Wesson's firearms advertisements and marketing available to New Jersey consumers may misrepresent the impact owning a firearm has on personal safety and/or safety in the home. In addition, certain of Smith & Wesson's advertisements to New Jersey consumers depict and market the concealed carry of firearms while omitting the material fact that, in New Jersey, concealed carry of a firearm requires a permit.

10. On October 14, 2020, the Division served the Subpoena on Smith & Wesson's registered agent in New Jersey. Among other things, the Subpoena sought copies of certain Smith & Wesson's advertisements and documents substantiating the safety-related claims depicted therein.

11. The Subpoena set a November 13, 2020 deadline for Smith & Wesson to respond.

12. On November 3, 2020, Smith & Wesson requested a thirty-day extension to respond to the Subpoena. When asked for an explanation regarding why such an extension was necessary, an Assistant General Counsel for Smith & Wesson described the request as “modest” and responded that “we are just not in a position yet to provide any meaningful clarity.” The Division agreed to extend the return date to December 14, 2020.

13. In a letter dated December 14, 2020, Smith & Wesson stated that it was refusing to produce any documents in response to the Subpoena. It did not propose any modifications to the Subpoena’s scope or otherwise engage in a good-faith dialogue; nor did it move to quash the Subpoena.

14. Rather than filing a motion to quash the filing of the Attorney General and Director’s Subpoena in this Court, on December 15, 2020, Smith & Wesson filed suit in the United States District Court for the District of New Jersey against the Attorney General and the Division, Smith & Wesson Brands, Inc. v. Grewal, 20-cv-19047 (D.N.J.). In that action, Smith & Wesson alleges that the issuance of the Subpoena investigating potentially misleading or deceptive advertising impacting New Jersey consumers violates the U.S. Constitution. Among other things, Smith & Wesson claims that as a firearms manufacturer, the representations and depictions it made in its advertising constitute constitutionally protected opinion immune from investigation for violation of CFA and other state laws. Through its preemptive action, Smith & Wesson not only has engaged in forum shopping, but seeks to avoid any investigation into the lawfulness of its conduct under New Jersey law.

15. To date, Smith & Wesson has failed to produce any documents in response to the Subpoena.

COUNT I

**VIOLATION OF THE CFA BY DEFENDANT
(FAILURE TO COMPLY WITH THE SUBPOENA)**

16. Plaintiffs repeat and reallege paragraphs 1 through 15 as if more fully set forth herein.

17. The CFA prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise

[N.J.S.A. 56:8-2.]

18. Under the CFA, the Attorney General has broad investigatory authority to investigate potential violations. Among other things, the CFA provides that:

When it shall appear to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this act, or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any such practice, he may . . .

(c) Examine any merchandise or sample thereof, record, book, document, account or paper as he may deem necessary

[N.J.S.A. 56:8-3.]

19. In this regard, the CFA authorizes the Attorney General to issue subpoenas to any person:

To accomplish the objectives and to carry out the duties prescribed by this act, the Attorney General . . . may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, promulgate such rules and regulations, and prescribe such forms as may be necessary, which shall have the force of law.

[N.J.S.A. 56:8-4.]

20. The CFA addresses the failure or refusal of a person to obey a subpoena issued by the Attorney General and provides:

If any person shall fail or refuse to file any statement or report, or obey any subpoena issued by the Attorney General, the Attorney General may apply to the Superior Court and obtain an order:

- (a) Adjudging such person in contempt of court;
- (b) Granting injunctive relief without notice restraining the sale or advertisement of any merchandise by such persons;
- (c) Vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this State or revoking or suspending the certificate of authority to do business in this State of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and
- (d) Granting such other relief as may be required; until the person files the statement or report, or obeys the subpoena.

[N.J.S.A. 56:8-6.]

21. Defendant is a “person” within the meaning of the CFA, specifically N.J.S.A. 56:8-1(d).

22. At all relevant times, Defendant has been engaged in the advertisement, offering for sale, and sale of firearms, which comprise merchandise within the meaning of the CFA, specifically N.J.S.A. 56:8-1(c).

23. The Subpoena was issued pursuant to the Attorney General’s authority under the CFA, specifically N.J.S.A. 56:8-3 and 56:8-4.

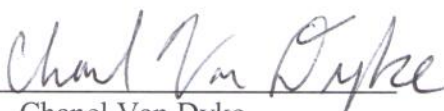
24. Defendant has violated the CFA by failing to produce the documents requested in the Subpoena.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter an Order:

- (a) Adjudging Defendant in contempt of Court for failing or refusing to obey the Subpoena;
- (b) Restraining Defendant from engaging in the advertisement, offering for sale, or sale of any merchandise until it fully responds to the Subpoena;
- (c) Directing Defendant to respond fully to the Subpoena within ten (10) days;
- (d) Enjoining the destruction of any documents specifically requested in the Subpoena;
- (e) Directing that this matter be heard in a summary manner pursuant to the provisions of N.J.S.A. 56:8-8 and R. 4:67-1(a);
- (f) Directing the assessment of costs and fees, including attorneys' fees, against the Defendant for the use of the State of New Jersey, as authorized by N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (g) Granting such other relief as the interests of justice may require.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Chanel Van Dyke
Deputy Attorney General

Dated: February 12, 2021
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify to the best of my information and belief, the matter in controversy in this action involving the aforementioned potential violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -226, is the subject of an action pending in the United States District Court for the District of New Jersey, Smith & Wesson Brands, Inc. v. Grewal, 20-cv-19047.

I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Chanel Van Dyke
Chanel Van Dyke
Deputy Attorney General

Dated: February 12, 2021
Newark, New Jersey

RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Chanel Van Dyke
Chanel Van Dyke
Deputy Attorney General

Dated: February 12, 2021
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Chanel Van Dyke, Deputy Attorney General, is hereby designated as trial counsel on behalf of the Plaintiffs.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

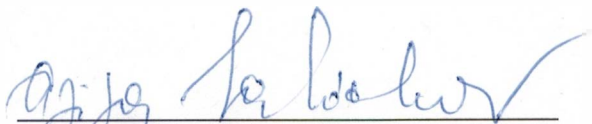
By: Chanel Van Dyke
Chanel Van Dyke
Deputy Attorney General

Dated: February 12, 2021
Newark, New Jersey

VERIFICATION

I, Aziza Salikhova, of full age, hereby certify as follows:

1. I am an Investigator with the New Jersey Division of Consumer Affairs (“Division”), Office of Consumer Protection.
2. I have read the foregoing Verified Complaint and on my own personal knowledge and review of documents in possession of the Division, I know that the facts set forth herein are true and they are incorporated in this certification by reference, except for those alleged upon information and belief.
3. I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Aziza Salikhova

Dated: February 11, 2021
Newark, New Jersey