

In the Circuit Court of the Fourteenth Judicial Circuit
in and for Bay County, Florida

State of Florida
Office of the Attorney General
Department of Legal Affairs,

Plaintiff,

vs.

Case No.:

Emerald Coast Water Authority, LLC,
d/b/a Avian Environmental Services,
Environmental Water Works of the
Emerald Coast, Inc, Don A. Madden,
Jr., and Robert A. Madden,

Defendants.

Complaint for Permanent Injunctive Relief, and other Statutory Relief

Plaintiff, State Of Florida, Office of the Attorney General, Department Of Legal Affairs, sues Defendants, Emerald Coast Water Authority, LLC (“Emerald Coast”) d/b/a Avian Environmental Services (“Avian”), Environmental Water Works of the Emerald Coast, Inc. (“Environmental”), Don A. Madden, Jr., and Robert A. Madden, (collectively, “the Maddens”) and alleges:

Jurisdiction and Venue

1. This is an action for damages, injunctive and other statutory relief, brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2006).

2. This Court has jurisdiction pursuant to the provisions of said statute.

3. Plaintiff, State of Florida, Office of the Attorney General, Department of Legal affairs, (hereinafter “State”) is an enforcing authority of Chapter 501, Part II,

Florida Statutes (2006), and is authorized to seek penalties, damages, injunctive relief, and other statutory relief pursuant thereto.

4. The State has conducted an investigation of the matters alleged herein and Bill McCollum has determined that this enforcement action serves the public interest, as required by section 501.207(2), Florida Statutes (2006). (See attached Exhibit A.)

5. Emerald Coast d/b/a Avian is a Florida corporation with its principal address at 16 Ferry Road SE, Fort Walton Beach, Florida 32548. Emerald Coast has designated Ginger L. Barry, 200 Grand Blvd, Suite 205A, Destin, Florida 32550, as its registered agent for service of process.

6. Environmental is a Florida corporation located at the same address as Emerald Coast. Its registered agent for service of process is also Ginger L. Barry.

7. Don A. Madden, Jr., also located at 16 Ferry Road SE, Fort Walton Beach, Florida 32548, is a Manager of Emerald Coast and is the Secretary – Treasurer of Environmental.

8. Robert A. Madden, located at the same address, is a Manager of Emerald Coast and is the President of Environmental.

9. Environmental marketed and sold water purification equipment throughout several northwest Florida counties, including Bay, Walton and Escambia Counties. The Maddens ceased doing business through Environmental about the same time they formed Emerald Coast, which is engaged in the same business of marketing and selling water purification equipment.

10. The Maddens, as officers of Environmental, and Managers of Emerald Coast, are responsible for the advertising and marketing of the products of the companies. They direct and control the advertising and marketing activities of the companies.

11. Environmental, Emerald Coast, and the Maddens are subject to jurisdiction of the courts of this state pursuant to section 48.193, Florida Statutes, because they engaged in business in this state and because they are residents of the state.

12. The statutory violations and Defendants' activities alleged herein occurred in or affect more than one Judicial Circuit including Bay County.

13. All actions material to the complaint occurred between January 16, 2004, and the present, and are not precluded by the time limitations in section 501.207(5), Florida Statutes.

STATEMENT OF FACTS AND
DEFENDANTS' COURSE OF CONDUCT

14. Defendants market products based on the false premise that drinking the local water is hazardous to one's health. In Defendants' post card advertising a free water test, Defendants assert that water quality is changing in some areas. The self-addressed, stamped post card carries a headline in bold, blue print proclaiming itself to be an:

IMPORTANT WATER QUALITY BULLETIN

In the normal print that follows, Avian claims:

“Avian Environmental Services tests water all across the state, FREE of charge.” [This statement is deceptive in two respects – first, Avian does not test water all across the state; second, the word test conveys validity]. The post card goes on to proclaim:

Because of the quality of water changing in some areas (due to increased population, nitrates, and TDS) Avian Environmental Services recommends you have your water tested as soon as possible. Remember this is a FREE service provided by Avian Environmental Services.

Below that there is a place for the entry of contact information. On the right hand side of the card is the following:

TEST DATA
FOR OFFICIAL USE ONLY
To Be Completed At Time of Testing
TDS _____
HARDNESS _____
CHLORINE _____
PRECIP _____
IRON _____
PH _____

At the very bottom of the card in the smallest font on the card, there is this disclaimer:

Avian Environmental Services is a private business doing this as a public awareness program.

15. Defendants have made unsubstantiated claims, directly and implicitly, regarding the harmful health effects caused by drinking tap water or even bottled water.

16. Defendants make unsolicited telephone calls via a recording which state, in substance, that the Emerald Coast Utilities Authority (ECUA) has retained a private firm to test water in the area, and invite consumers to call and make arrangements for this water test. ECUA is the local governmental body responsible for the water systems in Escambia County and the City of Pensacola, previously known as the Escambia County Utilities Authority. There is no connection between the Defendants and ECUA and no such agreements or arrangements regarding water testing have been made.

17. Defendants deceptively call their sales campaign a public awareness program. Further, the tests that are used are invalid, and in some cases, simply contrary to law. When the legitimate water companies are called by the consumers to check out the water,

their test results vary wildly from the Avian tests, never showing that the water is dangerous or contaminated. In short, the tests performed by Defendants always show a need to purchase a water system. The test is a sham, created solely to sell products.

18. Defendants have made and continue to make claims which fail to comply with the substantiation requirements established by the Federal Trade Commission (FTC). They do so by taking information from nonscientific sources, misquoting individuals, drawing inappropriate conclusions regarding scientific research, and making false statements.

19. Defendants have made and continue to make claims, directly and implicitly, that there are health hazards in consumers' water supplies during demonstrations, presentations and sales pitches including, but not limited to, claims that a precipitation test reveals unhealthy total dissolved solids in the water. Their salesmen claim that the precipitation or burn test reveals feces in the water, and that the water in Northwest Florida is unfit to drink. These claims are untrue.

20. Defendants sell a water softening system claiming that consumers will save enough money on detergent to have the system pay for itself. They claim that the water in Northwest Florida is hard and thus needs to be softened in order to increase the efficacy of the soaps and detergents used in the household. These claims are untrue.

21. For purposes of marketing their product, Defendants have presented demonstrations to consumers purporting to show that chlorine is absorbed by the skin. This claim is untrue.

22. Defendants have deceptively claimed that they test the water for the ECUA.

23. Defendants have deceptively claimed that the Director of the ECUA has an Avian water conditioning system in his home.

24. Plaintiff told the Maddens that the use of the precipitation was considered by the Plaintiff to be a deceptive practice as of April 20, 2005. Yet, Environmental and Emerald Coast salesmen continued this practice.

25. These Defendants knew or should have known that the conduct that each participated in was unfair or deceptive, and thus have willfully used a method, act or practice declared unlawful under section 501.204, Florida Statutes.

VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES BY DEFENDANTS

26. Plaintiff realleges paragraphs 1 through 25, as if fully set forth herein, and further alleges:

27. Chapter 501, Part II, Florida Statutes is entitled “Florida Deceptive and Unfair Trade Practices Act.” Section 501.204(1) of the Act provides that, “unfair 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.”

28. As set forth in paragraphs 1 through 24, Defendants have engaged in representations and omissions which are material, and which had the tendency or capacity, or which are likely, to mislead consumers acting reasonably under the circumstances. Defendants have also engaged in unfair competition and acts and practices which were unconscionable, unfair or deceptive. Further, Defendants have committed acts or practices in trade or commerce which offend established public policy and were unethical, oppressive, unscrupulous or substantially injurious to consumers.

Thus, Defendants have engaged in unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of section 501.204(1), Florida Statutes (2006).

RELIEF REQUESTED

WHEREFORE, Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida, asks for judgment:

A. Permanently enjoining Environmental, Emerald Coast and the Maddens and their officers, agents, servants, employees, attorneys, and those persons in active concert and/or participation with it who receive actual notice of the injunction, from engaging in methods, acts or practices which are unfair method of competition or deceptive or unfair acts or practices. More specifically, Plaintiff asks the Court to enjoin Defendants as follows:

1. Prohibiting Defendants from selling water treatment devices (as defined by section 817.558(a), Florida Statutes).
2. Issuing immediate refunds to all Florida consumers who purchased Defendants' various products.
3. Awarding Plaintiff actual damages on behalf of all consumers injured by the unfair competition or deceptive or unfair acts or practices of Defendants, in accordance with section 501.207(1)(c), Florida Statutes.
4. Assessing against Defendants civil penalties in the amount of ten thousand dollars (\$10,000) for each of the known violations of Chapter 501, Part II, pursuant section 501.2075, Florida Statutes (2006); and assessing Defendants civil penalties in the amount of \$15,000 for method, act or practice willfully used in violation of Chapter 501, Part II, Florida

Statutes, which method, act or practice victimized, or attempted to victimize, a person who is 60 years of age or older, pursuant to section 501.2105, and 501.2075, Florida Statutes.

5. Awarding reasonable attorney's fees and costs to Plaintiff, pursuant to sections 501.2105, and 501.2075, Florida Statutes.

6. Granting other relief as this Honorable Court deems just and proper.

DEMAND FOR A JURY TRIAL

The State demands a trial by jury for all issues so triable.

Respectfully Submitted,

BILL MCCOLLUM
ATTORNEY GENERAL

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