

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

Federal Trade Commission

Plaintiff,

CaseNo.

F Y

v.

American Screening LLC, a Louisiana limited liability
company;

Ron Kilgarlin Jr., individually and as an officer of
American Screening LLC; and

Shawn Kilgarlin, individually and as an officer of
American Screening, LLC

Defendants.

authority to control, or participated in the acts and practices of American Screening, including the acts and practices set forth in this Complaint. Mr. Kilgarlin Jr. is married to Defendant Shawn Kilgarlin. Defendant Kilgarlin Jr., in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

8. Defendant Shawn Kilgarlin is the chief operating officer, quality manager, and quality management representative for American Screening. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of American Screening, including the acts and practices set forth in this Complaint. Her responsibilities included overseeing responses to consumer complaints and quality control of American Screening's products. Defendant S. Kilgarlin, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

COMMERCE

9. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

Overview

10. Before the recent pandemic, Defendants mostly sold drug test and professional medical equipment. After the pandemic spread to the United States, they sought to capitalize on the high demand for personal protective equipment ("PPE") by marketing and selling masks, gloves, hand sanitizer, and other PPE through their website. Defendants represented—and still

represent to this day—that they would ship all products “24-48 hours after processing, pending product availability,” and that the advertised PPE was “in stock” and/or “available to ship.”

11. Defendants’ promises to ship currently available products 24-48 hours after processing are, in many cases, false. Consumers, including many small businesses and medical practitioners, have complained they still have not received PPE items they ordered weeks or even months ago. Although Defendants have repeatedly failed to ship in accordance with the periods promised on the company’s website, they have not informed consumers of the delay, and ignored persistent consumer questions and refund demands.

12. Based on these practices, the Better Business Bureau revoked American Screening’s accreditation on June 11, 2020.

Defendants’ Shipping Policy

13. American Screening markets and sells medical supplies and equipment; medical tests (used by employers to screen employees for drug use); health, sanitation, and beauty products; and PPE to consumers throughout the United States and internationally. Defendants sell these products in bulk to hospitals, local governments, schools, and nursing homes—as well as to individual consumers.

14. American Screening exclusively sells these goods through its website, www.americanscreeningcorp.com.

15. American Screening ships products ordered online, and makes representations about the speed of its order processing.

16. Specifically, American Screening tells consumers that its practice (the “Shipping Policy”) is to ship paid-for orders 24-48 hours after processing pending product availability.

21. American Screening includes a statement at the top of its home page that “[p]roducts may ship 7-10 business days after [an] order has been placed.”



22. Despite American Screening’s shipping representations, many consumers have, as of the filing of this complaint, still not received the PPE they ordered weeks or even months after placing their orders.

23. American Screening’s website continues to make express representations next to individual items of PPE (including gloves, masks and disinfecting products) that the items are “in stock” and “available to ship.” For example, American Screening’s website contained the following representation as of June 23, 2020:



24. Consumers relied and continue to rely on these representations of timely shipment, and in some cases even paid for expedited shipping, only to wait weeks and months without receiving the PPE they ordered.

Defendants' Failure to Ship PPE During Pandemic

25. American Screening lacked a reasonable basis to believe it would be able to ship PPE within the promised time. Indeed, in response to numerous consumer complaints, its representatives regularly admitted the items consumers ordered were not in stock despite American Screening's express representations to the contrary.

26. American Screening received hundreds of complaints regarding the shipping delays. However, American Screening did not respond to many of these consumers and

continued to make the “in stock” and “available to ship” presentations regarding PPE described above. When it did respond to consumer complaints, it often failed to offer cancellations and refunds.

27. For instance, one American Screening customer placed an order for PPE on March 18, 2020, but still had not received the items over a month later when he filed a complaint on April 24, 2020. He stated, “When the Coronavirus became known I was looking for masks, gowns, gloves and face shields for my wife’s medical practice and American Screening on line thru a Google search. Their website indicated they had the gowns and the face shields so I placed an order with them for \$215. A few days later I checked their website and the site indicated my order was complete. I called and spoke to a customer service person (female) and she told me that the order showed complete because I had placed the order, they had taken my money and input the order into the system. I was also told that all of the items were out of stock (this status was not shown on their website) and were expected in 2 weeks at which time my order would be shipped. Over the last three weeks I have called (the answering system takes the call, transfers it and then the system disconnects my call), I have tried to leave a voice mail but the mailbox is full. I have sent emails asking for update and all to no avail. The website currently shows (as of April 24, 2020) that the order is scheduled to ship between April 6 and April 17. It is now April 24 and nothing has shipped nor been received by me.”

28. In another complaint filed on May 27, 2020, a consumer stated “I ordered basic sanitation supplies in bulk, because they were advertised on their website as in stock. I was provided an order confirmation number. Several days later I was informed via email that supplies were backordered. That was March 15. I waited until about the 15th of May and then began trying to contact the company through every possible avenue, to no avail. Finally, after several

days I received a call from a representative of the company who told me the product had shipped, but gave me the name of a shipping company (GLC) which I can't find ANY trace of. She wasn't able to provide

31. In numerous instances, when American Screening failed to ship one or more pieces of ordered PPE within the promised timeframes, and also failed to offer consumers the required opportunity to either consent to a delay in shipping or to cancel their orders and receive refunds, American Screening did not deem the orders cancelled and issue refunds.

32. In numerous instances, when American Screening failed to ship consumers ordered PPE (a)

b. fail to ship orders within the timeframe required by MITOR, they also fail to offer customers the opportunity to consent to a delay in shipping or to cancel their order and receive a prompt refund;

c. fail to ship orders within the timeframe required by MITOR and fail to offer consumers the opportunity to consent to a delay in shipping or to cancel their order, they do not cancel those orders or provide consumer refund;

d. receive cancellation and refund requests from consumers pursuant to any option under MITOR, they do not deem those orders cancelled or provide a prompt refund.

42. Defendants' practices as alleged in Paragraphs 41-44 violate MITOR, 16 C.F.R. § 435.2(a), (b), and (c), and therefore are unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE FTC ACT

43. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

44. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

Count II – Section 5 Violations

45. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of goods including PPE Defendants have represented and continue to represent directly or indirectly, expressly or by implication, that

a. the items are "in stock" or "available to ship" and they will process the orders the same day or the next day after an order, and ship the orders within 24 hours of processing;

- b. items will ship within 710 business days after an order is placed
- c. specific PPE items are “available to ship” or “in stock.”

46. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 45:

- a. Defendants failed to process orders the same day or the next day after an order was placed and then to ship those items within 48 hours of processing
- b. Defendants failed to ship items within 10 business days after an order was placed
- c. The specific PPE items Defendants represented were “available to ship” or “in stock” were not.

47. Therefore, Defendants’ representations set forth in Paragraph 45 are false, misleading or unsubstantiated, and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

48. Consumers are suffering, have suffered, and will continue to suffer substantial injury as a result of Defendants’ violations of the FTC Act and MITOR. Additionally, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT’S POWER TO GRANT RELIEF

49. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant

jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

50. Section 19 of the FTC Act, 15 U.S.C. § 57b, and MITOR authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of MITOR, including the rescission or reformation of contracts and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Sections 18(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b), 57b, MITOR, and the Court's own equitable powers, requests the Court:

- A. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;
- B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and MITOR, including restitution, rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice and
- C. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

ALDEN F. ABBOTT
General Counsel

Dated: Aug. 04, 2020

/s/ Dillon J. Lappe

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