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FILED

AUG 28 2009

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J.S.C.

By: Jeffrey Koziar
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION,
UNION COUNTY.
DOCKET NO.: JNN-C-177-09

ANNE MILGRAM, Attorney General of the State
of New Jersey, and DAVID M. SZUCHMAN,
Director of the New Jersey Division of Consumer
Affairs,

Plaintiffs,

v.

BRAKE-O-RAMA, INC. d/b/a JERSEY
AUTOMOTIVE WAREHOUSE, JANE and
JOHN DOES 1-10, individually and as owners,
officers, directors, shareholders, founders,
managers, agents, servants, employees,
representatives and/or independent contractors of
BRAKE-O-RAMA, INC. d/b/a JERSEY
AUTOMOTIVE WAREHOUSE, and XYZ
CORPORATIONS 1-10,

Defendants.

Civil Action

VERIFIED COMPLAINT

Plaintiffs Anne Milgram, Attorney General of the State of New Jersey ("Attorney General"),
with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and David M. Szuchman,

Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Verified Complaint state:

PRELIMINARY STATEMENT

1. By necessity, many consumers rely on the representations made by auto mechanics. Very few consumers have the necessary expertise to make informed decisions about how best to repair their vehicles. Most have no choice but to put their faith in the integrity of those who offer automotive repair services to the public. The State of New Jersey ("State" or "New Jersey") has recognized the dangers of unsuspecting vehicle owners being exploited by automotive repair facilities and has enacted a comprehensive statutory and regulatory scheme aimed at deterring and remedying automotive repair fraud.

2. At all relevant times, Defendant Brake-O-Rama, Inc. d/b/a Jersey Automotive Warehouse ("Brake-O-Rama" or "Defendant") has advertised and offered for sale automotive repair services through thirteen (13) locations in the State. Defendant won the trust of consumers by portraying itself out as an experienced automotive repair facility. This trust was misplaced as Defendant has repeatedly deceived consumers by charging for automotive repair work that was not actually performed. For example, Defendant has repeatedly charged consumers for wheel alignments, transmission flushes, power steering flushes and coolant flushes while not even having the necessary equipment to perform such repairs. Additionally, Defendant has promoted its shops as State inspection facilities despite not having the necessary licenses from the New Jersey Motor Vehicle Commission ("MVC"). Defendant's egregious misconduct has endangered the safety of consumers by deceiving them about the condition of their vehicles. Consequently, the Attorney

General and Director commence this action to, among other things, cease Defendant's deceptive and unsafe practices.

PARTIES AND JURISDICTION

3. The Attorney General is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA") and the regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. ("CFA Regulations"). The Director is charged with the responsibility of administering the CFA and the CFA Regulations on behalf of the Attorney General.

4. By this action, the Attorney General and Director (collectively, "Plaintiffs") seek injunctive and other relief for violations of the CFA and the CFA Regulations. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19. Venue is proper in Union County, pursuant to R. 4:3-2, because it is a county in which the Defendant has advertised and/or conducted business.

5. Brake-O-Rama is a corporation established in the State on May 25, 1970. At all relevant times, Brake-O-Rama has maintained a principal business address of Route 46 & Money Street, Lodi, New Jersey 07644.

6. Upon information and belief, the registered agent in the State for Brake-O-Rama is Eugene DeAngelo, who maintains a mailing address of Route 46 & Money Street, Lodi, New Jersey 07644.

7. At varying times since May 25, 1970, Brake-O-Rama was registered to conduct business in the State under the alternate name of "Jersey Automotive Warehouse."

8. Upon information and belief, John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers,

agents, servants, employees, representatives and/or independent contractors of Brake-O-Rama who have been involved in the conduct that gives rise to this Verified Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Verified Complaint to include them.

9. Upon information and belief, XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Verified Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Verified Complaint to include them.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

10. At all relevant times, Defendant has engaged in the operation of automotive repair facilities in the State. Upon information and belief, Defendant advertises, offers for sale and sells a full range of automotive repair services, including but not limited to, wheel alignments, transmission flushes, power steering flushes and coolant flushes.

11. At all relevant times, Defendant has advertised automotive repair services for sale to consumers in this State and elsewhere through various media including, but not limited to, newspaper advertisements, advertising circulars and internet web sites including, but not limited to, the Brake-O-Rama website located at www.brake-o-rama.com ("Brake-O-Rama Web Site").

12. Upon information and belief, Defendant has advertised and offered for sale automotive repair services at the following thirteen (13) locations in the State under the name "Brake-O-Rama" (collectively, "Brake-O-Rama Stores"):

460 Brick Blvd.	Brick, New Jersey 08723 ("Brake-O-Rama Brick")
240 Paterson Plank Road	Carlstadt, New Jersey 07072
450 N. Broad Street	Elizabeth, New Jersey 07207 ("Brake-O-Rama Elizabeth")

1223 Ringwood Avenue	Haskell, New Jersey 07420
1693 Route 37 East	Island Heights, New Jersey 08732
2374 Kennedy Blvd.	Jersey City, New Jersey 07304 ("Brake-O-Rama Jersey City")
495 St. George Ave.	Linden, New Jersey 07203 ("Brake-O-Rama Linden")
Route 46 & Money St.	Lodi, New Jersey 07644 ("Brake-O-Rama Lodi")
234 Scotland Rd.	Orange, New Jersey 07050
475 Smith Street	Perth Amboy, New Jersey 08862
260 Franklin Avenue	Ridgewood, New Jersey 07450 ("Brake-O-Rama Ridgewood")
307 S. Whitehorse Pike	Stratford, New Jersey 08084
6100 Kennedy Blvd.	West New York, New Jersey 07093 ("Brake-O-Rama West New York")

13. On June 11, 2009, the Division of Consumer Affairs ("Division") conducted undercover inspections of Brake-O-Rama Brick, Brake-O-Rama Elizabeth, Brake-O-Rama Jersey City, Brake-O-Rama Linden and Brake-O-Rama West New York.

14. The Division's inspections revealed, among other things, that Defendant charged for automotive repair services including, but not limited to, wheel alignments, transmission flushes, power steering flushes and coolant flushes, for which it either had no or inadequate equipment to perform.

15. The Division's investigation was obstructed by Defendant's refusal to permit the Division's Investigators to perform inspections of Brake-O-Rama Elizabeth, Brake-O-Rama Jersey City and Brake-O-Rama West New York.

16. On June 24 and 25, 2009, the Division conducted another series of inspections of Brake-O-Rama Stores. These inspections revealed that many Brake-O-Rama Stores were not conspicuously posting the required notice of consumer rights.

17. Between July 31 and August 7, 2009, the Division conducted another series of inspections of Brake-O-Rama Stores which revealed that Brake-O-Rama Lodi and Brake-O-Rama Ridgewood were promoting themselves as State vehicle inspection facilities.

18. The following four (4) current Brake-O-Rama locations were previously licensed with MVC as private vehicle inspection facilities, but their licenses were revoked on the date indicated: (a) Brake-O-Rama Brick (revoked June 30, 2008); (b) Brake-O-Rama Linden (revoked June 30, 2002); (c) Brake-O-Rama Lodi (revoked June 30, 2008); and (d) Brake-O-Rama West New York (revoked June 30, 2004).

COUNT I

VIOLATIONS OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES)

19. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 18 above as if more fully set forth herein.

20. The CFA, N.J.S.A. 56:8-2 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 . . .

21. Since at least 2007, Defendant, through its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors, have advertised, offered for sale and sold automotive repair services consumers in this State and elsewhere.

22. In so doing, Defendant, through its owners, officers, director, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors have engaged in the use of unconscionable commercial practices, false promises, misrepresentations and the knowing omission of material facts.

23. Defendant's conduct in violation of the CFA includes, but is not limited to, the following unconscionable commercial practices:

- a. Charging consumers for automotive repairs not performed;
- b. Failing to perform necessary automotive repairs, thus endangering the safety of consumers;
- c. Performing faulty repairs, thus endangering the safety of consumers;
- d. Establishing a pricing structure for automotive repairs whether or not these services were, or could be, performed;
- e. Failing to properly diagnose automotive repairs;
- f. Advertising, offering for sale and selling automotive repairs at Brake-O-Rama Stores that did not possess the necessary equipment to perform the repairs;
- g. Advertising, offering for sale and selling motor vehicle inspection services, when Brake-O-Rama Stores were not licensed by MVC to perform such services; and
- h. Charging consumers for motor vehicle inspection services, then taking the vehicle to the MVC operated inspection facility.

24. Each unconscionable commercial practice by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT II

**VIOLATION OF THE CFA BY DEFENDANT
(FALSE PROMISES OR MISREPRESENTATIONS
AND KNOWING OMISSIONS OF MATERIAL FACTS**

25. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 24 above as if more fully set forth herein.

26. Defendant's conduct in violation of the CFA includes, but is not limited to, the following false promises and/or misrepresentations.

- a. Representing that Brake-O-Rama Lodi and Brake-O-Rama Ridgewood are State vehicle inspection facilities although these locations did not possess the necessary license from MVC;
- b. Misrepresenting to consumers that certain Brake-O-Rama Stores could perform wheel alignments even when they lacked the necessary equipment;
- c. Misrepresenting to consumers that certain Brake-O-Rama Stores could perform coolant flushes even when they lacked the necessary equipment;
- d. Misrepresenting to consumers that certain Brake-O-Rama Stores could perform power steering flushes even when they lacked the necessary equipment;
- e. Misrepresenting to consumers that certain Brake-O-Rama Stores could perform transmission flushes even when they lacked the necessary equipment; and
- f. Misrepresenting to consumers the actual automotive repairs work that were done on their vehicles.

27. Defendant's conduct in violation of the CFA includes, but is not limited to, the following knowing omissions of material fact:

- a. Failing to disclose to consumers that certain Brake-O-Rama Stores did not have the necessary equipment to perform certain automotive repairs; and

b. Failing to disclose to consumers that they were paying Brake-O-Rama to take their vehicles to State facilities to be inspected because Brake-O-Rama Stores were not licensed by MVC to perform such inspections.

28. Each false promise, misrepresentation and/or knowing omission of material fact by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATIONS OF THE REPAIR REGULATIONS BY DEFENDANT

29. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 28 above as if more fully set forth herein.

30. The Regulations Governing Automotive Repairs, N.J.A.C. 13:45A-26C.1 et seq., promulgated pursuant to the CFA (hereinafter the "Repair Regulations"), govern the repair of motor vehicles.

31. The Repair Regulations provide, in pertinent part, that it shall be an unlawful practice for an automotive repair dealer to engage in the following conduct:

Making deceptive or misleading statements or false promises of a character likely to influence, persuade or induce a consumer to authorize the repair, service or maintenance of a motor vehicle.

[N.J.A.C. 13:45A-26.2(a)5.]

32. The Repair Regulations provide that it shall be an unlawful practice for an automotive repair dealer not to post the following notice in a conspicuous place:

"A CUSTOMER OF THIS ESTABLISHMENT IS ENTITLED TO:

1. When a motor vehicle is physically presented during normal working hours and, in any event before work begins, a written estimated price stated either:

- (A) PRICE NOT TO EXCEED \$. . . and given without charge;
or
 - (B) As an exact figure broken down as to parts and labor. This establishment has the right to charge you for this diagnostic service, you will not be charged twice for any part of such charge necessary to make the repair.
 - (C) As an exact figure to complete a specific repair.
2. For your protection, you may waive your right to an estimate only by signing a written waiver.
 3. Require that this establishment not start work on your vehicle until you sign an authorization stating the nature of the repair or problem and the odometer reading of your vehicle if you physically present the vehicle during normal working hours.
 4. A detailed invoice stating charges for parts and labor separately and whether any new, rebuilt, reconditioned or used parts have been supplied.
 5. The replaced parts, if requested before work is commenced, unless their size, weight or similar factors make return of the parts impractical.
 6. A written copy of the guaranty"

[N.J.A.C. 13:45A-26C.2(a)(11)].

33. The Repair Regulations further provide that it shall be an unlawful practice for an automobile repair dealer to:

Commenc[e] work for compensation without either:

I. One of the following:

- (1) Providing the customer with a written estimated price to complete the repair, quoted in terms of a not-to-exceed figure; or
- (2) Providing the customer with a written estimated price quoted as a detailed breakdown of parts and labor necessary to complete the

repair. If the dealer makes a diagnostic examination, the dealer has the right to furnish such estimate within a reasonable period of time thereafter, and to charge the customer for the cost of diagnosis. Such diagnostic charge must be agreed to in advance by the customer. No cost of diagnosis which would have been incurred in accomplishing the repair shall be billed twice if the customer elects to have the dealer make the repair; or

- (3) Providing the customer with a written estimated price to complete a specific repair . . . ;

[N.J.A.C. 13:45A-26C.2(a)(3).]

34. The Repair Regulations also prohibit the following conduct: "Failure to provide a customer with a copy of any receipt or document signed by him, when he signs it." N.J.A.C. 13:45A-26C.2(a)(4).

35. In its sale of repair services, Defendant has engaged in conduct in violation of the Repair Regulations including, but not limited, to the following:

- a. Inducing consumers to authorize additional repairs by promising to perform repairs that it did not have the equipment to complete;
- b. Failing to conspicuously post the required notice of consumer rights;
- c. Failing to provide consumers with written estimates prior to commencement of automotive repairs; and
- d. Failing to provide consumers with signed copies of estimates and/or invoices.

36. Each violation of the Repair Regulations by Defendant constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

COUNT IV

**VIOLATIONS OF THE ADVERTISING
REGULATIONS BY DEFENDANT**

37. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 36 above as if more fully set forth herein.

38. The Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq., (“Advertising Regulations”) promulgated pursuant to the CFA, among other things, govern general advertising practices.

39. Specifically, the Advertising Regulations provide, in pertinent part:

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

.....

9. The making of false or misleading representations concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.

[N.J.A.C. 13:45A-9.2(a)(9).]

40. In its advertisement for automotive repairs, Defendant violated the Advertising Regulations by:

- a. Misrepresenting in the Brake-O-Rama Website and otherwise, that Brake-O-Rama Stores could perform certain automotive repairs, including, but not limited to, wheel alignments, transmission flushes, power steering flushes and coolant flushes, when certain locations either failed to possess working equipment or the equipment at all in order to perform such repairs; and
- b. Misrepresenting that Brake-O-Rama Stores are motor vehicle inspection facilities, when they were not licensed by MVC to perform such inspections.

41. Each violation of the Advertising Regulations by Defendant constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

COUNT V

**VIOLATION OF THE CFA BY DEFENDANT
(INTERFERENCE WITH THE DIVISION'S INVESTIGATION)**

42. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 41 above as if more fully set forth herein.

43. The CFA provides in pertinent part as follows:

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 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].

44. On June 11, 2009, Defendant interfered with the Division's right to conduct an investigation by preventing Division investigators from examining repair equipment at Brake-O-Rama Elizabeth, Brake-O-Rama Jersey City and Brake-O-Rama West New York to determine whether the equipment was operable.

45. Defendant's conduct constitutes multiple violations of the CFA, N.J.S.A. 56:8-3.

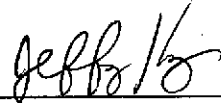
PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, the Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that the acts and omissions of Defendant constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Repair Regulations, N.J.A.C. 13:45A-26C.1 et seq., and the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., including, but not limited to, the acts and practices alleged in the Verified Complaint;
- (b) Permanently enjoining Defendant and its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under its control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Repair Regulations, N.J.A.C. 13:45A-26C.1 et seq., and the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., including, but not limited to, the acts and practices alleged in the Verified Complaint;
- (c) Permanently enjoining Defendant and its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under its control, from engaging in the activity that is the subject of Plaintiffs' request for temporary and preliminary injunctive relief, as set forth in the accompanying Order to Show Cause with Temporary Restraints Pursuant to Rule 4:52;
- (d) Directing the assessment of restitution amounts against Defendant to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (e) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (f) Directing the assessment of costs and fees, including attorneys' fees, against Defendant for the use of the State of New Jersey, as authorized by the CFA, 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.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By:  _____
Jeffrey Koziar
Deputy Attorney General

Dated: August 28, 2009
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the CFA, N.J.S.A. 56:8-1 et seq., the Repair Regulations, N.J.A.C. 13:45A-26C.1 et seq., and the Advertising Regulations, N.J.A.C. 13:45A-9.1, is not the subject of any other action pending in any other court of this State. I am aware that private contract and other actions have been brought against the Defendant, but have no direct information that any such actions involve consumer fraud allegations. 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.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

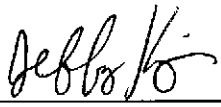
By: Jeffrey Koziar
Jeffrey Koziar
Deputy Attorney General

Dated: August 28, 2009
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Jeffrey Koziar, Deputy Attorney General, is hereby designated as trial counsel on behalf of Plaintiffs in this action.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Jeffrey Koziar
Deputy Attorney General

Dated: August 28, 2009
Newark, New Jersey

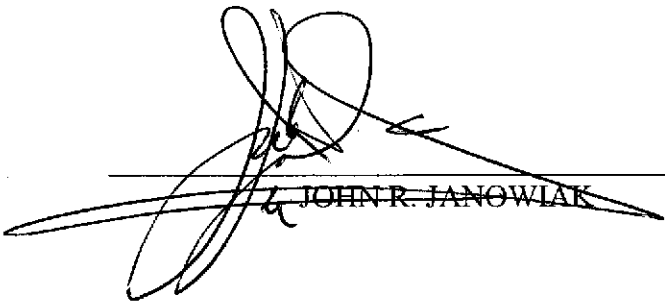
VERIFICATION

I, John R. Janowiak, of full age, hereby certifies 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 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.



JOHN R. JANOWIAK

Dated: August 28, 2009
Newark, New Jersey