

STATE OF INDIANA
IN THE MORGAN COUNTY CIRCUIT/SUPERIOR COURT

55C01-1904-PL-000718

CAUSE NO. _____

STATE OF INDIANA,

Plaintiff,

v.

HOPKINS AND RAINES INC.,

Defendant.

**COMPLAINT
FOR INJUNCTION,
RESTITUTION, CIVIL
PENALTIES, AND COSTS**

I. INTRODUCTION

1. The State of Indiana, by Attorney General Curtis T. Hill, Jr. and Deputy Attorney General Mark M. Snodgrass, commences this civil action under the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, and the Indiana Promotional Gifts and Contests Act, Ind. Code § 24-8-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.
2. The Defendant, Hopkins and Raines Inc., (“H&R”) promoted and ran sales events on behalf of numerous Indiana motor vehicle dealerships. To promote the dealers’ various sales events, H&R sent promotional mailings to 2,141,185 Indiana recipients. The mailings contained game pieces and represented recipients could be the winner of a significant prize, such as \$1,000.00 cash, a TV, or a motor vehicle, if their game piece had winning numbers or symbols. The “winning” numbers or symbols were identical on every game piece sent by H&R, resulting in all recipients being informed they

were “winners.” When recipients took the mailings to the various sales events to claim their prizes, the recipients were subjected to sales pitches soliciting the purchase of a motor vehicle before eventually being informed they had not won the prizes represented on the mailings. The recipients were then given an item of nominal value as their “prize,” such as a \$5.00 gift card or mail-in rebate coupon for a discount on the purchase of a turkey. H&R’s misrepresentations and actions are unfair, abusive, and deceptive, and constitute violations of Indiana’s Deceptive Consumer Sales Act and Promotional Gifts and Contests Act.

II. PARTIES

3. The Plaintiff, the State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief under Ind. Code § 24-5-0.5-4(c).
4. The Defendant, Hopkins and Raines Inc., is a foreign corporation engaged in the business of automotive promotions and marketing, with a principal place of business in the state of Texas, located at 6500 Summerhill Rd. STE 202, Texarkana, TX 75503.
5. At all times relevant to this Complaint, H&R and its representatives sent promotional mailings to Indiana consumers, including consumers located in Morgan County, and physically participated in and assisted in running sales events at motor vehicle dealerships located in Indiana.

III. FACTS

Background

6. H&R runs promotion and marketing campaigns on behalf of motor vehicle dealerships.
7. At issue for purposes of this Complaint are H&R's promotional prize mailings ("Prize Mailings") sent to Indiana recipients advertising dealership sales events ("Sales Events"), which occurred at sponsoring Indiana motor vehicle dealerships, including but not limited to The Auto Park Buick GMC Inc., doing business as Auto Park of Elkhart ("APE"), Auto Park of Goshen ("APG"), Auto Park of Plymouth ("APP"), Auto Park of Rochester ("APR"), and Auto Park of South Bend ("APSB"); Batesville Chrysler-Dodge-Jeep, Inc. ("BCDJ"); Car Country, LLC ("CC"); Heritage Automotive Sales LLC, doing business as Heritage of Bedford ("HOB"), Heritage of Cloverdale ("HOC"), Heritage of Linton ("HOL"), and Heritage of Petersburg ("HOP"); Hobson Chevrolet Buick GMC, LLC ("HCBG"); Law Automotive Enterprises, LLC, doing business as Law Chevrolet Buick ("LAW"); Premier Toyota of Richmond ("PTR"); and Tom Tepe Autocenter, Inc. ("TTAC").
8. The sponsoring dealerships each paid H&R an upfront fee, averaging \$16,059.55, to design and send the Prize Mailings and manage or assist with the corresponding Sales Events.

9. H&R, in collaboration with the sponsoring dealerships, designed and sent each set of Prize Mailings to thousands of Indiana recipients to advertise each Sales Event.
10. The purpose of the Prize Mailings was to lure consumers to the sponsoring dealership under the guise that the recipient had won a significant prize.

Prize Mailings

11. H&R sent Prize Mailings on behalf of the following dealerships advertising specific Sales Events, on the following dates, to the following number of Indiana recipients:

Dealer	Date of Prize Mailing	Number of Prize Mailings Sent	Exhibit
11.1. APSB	3/10/2016	30,500	1
11.2. HCBG	4/22/2016	30,095	2
11.3. TTAC	5/12/2016	40,139	3
11.4. LAW	5/13/2016	27,009	4
11.5. HCBG	5/20/2016	30,091	5
11.6. HCBG	6/17/2016	30,094	6
11.7. APR	7/14/2016	20,050	7
11.8. APE	7/14/2016	20,050	8
11.9. PTR	7/29/2016	60,074	9
11.10. APG	8/11/2016	36,534	10
11.11. APSB	8/11/2016	35,550	11
11.12. PTR	8/13/2016	55,055	12
11.13. APP	8/18/2016	36,500	13
11.14. APB	8/18/2016	35,500	14
11.15. LAW	8/19/2016	30,048	15
11.16. PTR	8/23/2016	55,041	16
11.17. APE	9/1/2016	36,550	17
11.18. PTR	9/4/2016	55,000	18
11.19. APR	9/8/2016	36,545	19

11.20. HBCG	9/9/2016	30,043	20
11.21. PTR	9/17/2016	55,088	21
11.22. TTAC	9/29/2016	50,025	22
11.23. PTR	10/15/2016	55,049	23
11.24. HCBG	10/21/2016	30,047	24
11.25. LAW	11/11/2016	30,049	25
11.26. HCBG	11/11/2016	30,043	26
11.27. PTR	11/12/2016	55,043	27
11.28. PTR	11/26/2016	30,049	28
11.29. PTR	12/8/2016	55,074	29
11.30. HCBG	1/20/2017	30,050	30
11.31. HOB	1/25/2017	50,025	31
11.32. TTAC	2/16/2017	50,025	32
11.33. LAW	2/17/2017	30,025	33
11.34. HOL	2/18/2017	40,025	34
11.35. HOL	3/4/2017	40,000	35
11.36. HCBG	3/10/2017	30,000	36
11.37. HOB	3/18/2017	40,000	37
11.38. HOB	4/8/2017	40,000	38
11.39. TTAC	4/13/2017	50,000	39
11.40. BCJD	4/20/2017	40,000	40
11.41. LAW	5/4/2017	30,025	41
11.42. HCBG	5/12/2017	30,025	42
11.43. HOL	5/27/2017	40,025	43
11.44. CC	6/1/2017	50,000	44
11.45. HOL	7/9/2017	40,000	45
11.46. TTAC	7/13/2017	50,000	46
11.47. HCBG	7/14/2017	30,000	47
11.48. HOP	7/29/2017	40,000	48
11.49. LAW	8/18/2017	30,025	49
11.50. HCBG	10/13/2017	30,000	50
11.51. LAW	11/10/2017	30,000	51
11.52. HCBG	12/21/2017	30,000	52
11.53. TTAC	1/31/2018	50,000	53
11.54. LAW	2/16/2018	30,000	54
11.55. HOC	2/22/2018	40,000	55
11.56. HCBG	3/9/2018	30,000	56

12. True and accurate copies of the Prize Mailings advertising each Sales Event are attached and marked as Exhibits 1 through 56, respectively, as identified in Paragraph 11.
13. H&R sent a total of 2,141,185 Prize Mailings to Indiana recipients to advertise the Sales Events.
14. H&R was paid \$563,087.50 by the various dealers to send the Prize Mailings and manage or assist in running the Sales Events.
15. The Prize Mailings failed to include the name and address of the promoter of each Sales Events, H&R.
16. The Prize Mailings failed to include a statement of the odds of winning each prize in immediate proximity to each listing of a prize in each place it appears on the Prize Mailings, listed in the same size type and boldness of the prize.
17. The Prize Mailings failed to include a statement of the verifiable retail value of each prize in immediate proximity to each listing of a prize in each place it appears on each of the Prize Mailings, listed in the same size type and boldness of the prize.
18. The Prize Mailings failed to include a disclosure that recipients may be required or invited to hear a sales presentation in order to claim their prize.
19. The Prize Mailings represented the recipient could be the winner of one of several specified prizes which varied on each Prize Mailing, such as \$500 to \$25,000 cash, a 70 inch HDTV, a \$1,000 Walmart gift card, a vehicle from the

dealership sponsoring the Sales Event, a pair ATVs, a boat, a vacation package, an MP3 player, or other prizes.

20. The Prize Mailings each contained a game piece that purported to determine whether a recipient was the winner of one of the prizes referenced on the Prize Mailings.
21. The game pieces, and each's "winning numbers," matching symbols, or other criteria purportedly used to determine whether a recipient won a prize, was identical on each set of Prize Mailings.
22. Every game piece on the Prize Mailings declared each recipient a "winner."
23. The various game pieces on the Prize Mailings had no bearing on whether a recipient won a prize. Whether a recipient had matching numbers or symbols on their game piece was irrelevant to whether they won any of the prizes referenced.
24. Whether a recipient won a specific prize was determined by the unique confirmation or claim number listed in small print on each of the Prize Mailings, located separately from the game piece, inconspicuously in another area of the Prize Mailings.
25. The Prize Mailings included a game piece only to generate excitement and deceive recipients into believing they won a significant prize to drive attendance at the corresponding Sales Events in order to provide H&R and the sponsoring dealerships with opportunities to sell recipients motor vehicles.

26. The odds of winning one of the prizes prominently displayed on the Prize Mailings were 1 in tens of thousands, depending on the exact number of Prize Mailings sent out for each Sales Event.
27. On numerous Prize Mailings, not only did the Prize Mailings represent the receipt was a “winner,” the Prize Mailings also represented the recipient had won a specific prize, such as \$1,000 cash. The following Prize Mailings represented the recipients won the following specific prizes:

Exhibit	Specific Prize
1	\$1,000 Cash
2	\$2,000 Cash
3	\$1,000 Cash
6	\$250 Cash
7	\$1,000 Cash
8	\$1,000 Cash
9	\$1,000 Cash
10	\$1,000 Cash
11	\$1,000 Cash
12	\$1,000 Cash
13	\$1,000 Cash
14	\$1,000 Cash
15	\$2,000 Cash
16	\$1,000 Cash
21	\$500 Cash
22	\$1,000 Cash
23	\$2,500 Cash
24	\$2,000 Cash
28	\$1,000 Cash
29	\$500 Cash
31	\$1,000 Cash
34	\$1,000 Cash
35	\$1,000 Cash

37	\$1,000 Cash
39	\$1,000 Cash
40	\$1,000 Cash
41	\$500 Cash
43	\$750 Cash
44	\$750 Cash
46	\$750 Cash
47	\$1,000 Cash
48	\$500 Cash
49	\$500 Cash
51	\$500 Cash
54	\$1,000 Cash
55	\$1,000 Cash

28. Despite representing on each Prize Mailing referenced in Paragraph 27 that the recipient was the winner of a specific prize, no recipient was awarded the specific prize represented.
29. H&R did not award a prize valued at more than \$12.00 to any Indiana recipient, despite sending 2,141,185 Prize Mailings, each representing the recipient was the winner of a prize of significant value.
30. In all instances, when a recipient took their “winning” Prize Mailing to one of the various Sales Events, the recipient was provided an item of nominal value as a “prize,” such as a \$5.00 Walmart gift card, a cheap MP3 player, or a scratch-off lottery ticket.
31. These nominal items were typically not prominently referenced as potential “prizes” on the Prize Mailings, and instead were only referenced in the middle of a block of very small fine print. Other prizes which were never

awarded, such as cash, TVs, and vehicles, were advertised prominently on each Prize Mailing, typically with large print and large color pictures.

32. H&R represented on various Prize Mailings that the verifiable retail value of the MP3 player “prize” was \$39.00.
33. H&R purchased the MP3 players awarded as “prizes” for \$2.25 each.
34. H&R possesses no information that the MP3 player has been sold at retail for the price H&R represented on Prize Mailings as the verifiable retail value.
35. Similarly, H&R represented on various Prize Mailings that the verifiable retail value of the Smartwatch “prize” was \$300.00.
36. H&R purchased the Smartwatches awarded as “prizes” for \$11.63 each.
37. H&R possesses no information that the Smartwatch has been sold at retail for the price H&R represented on Prize Mailings as the verifiable retail value.
38. The recipients of Prize Mailings attached as Exhibits 19 and 22 were given the Smartwatch as their “prize” when they attended the respective Sales Events. Recipients were then required to pay taxes in the amount of \$19.95 on the Smartwatch, which was worth \$11.63. However, only the first 200 recipients who attended the Sales Event were given an actual Smartwatch (this was reduced to the first 150 at the Sales Event advertised on Exhibit 22). Exhibits 19 and 22 were mailed to 35,545 recipients and 50,025 recipients, respectively. Any recipient who attempted to claim a Smartwatch after the first 200 (or 150) were distributed was instead provided a certificate

for a Smartwatch. Recipients receiving the certificate were also required to pay taxes in the amount of \$19.95 on the Smartwatch, as well as unspecified shipping and processing fees to obtain a Smartwatch.

39. Exhibit 27 represented that if a recipient had matching numbers (which every recipient had), then the recipient “won one of the prizes listed!” The listed prizes, which were prominently referenced with large color photos of each, consisted of \$25,000 cash, a Honda ATV, a 70” TV, or \$1,000 cash. When recipients of Exhibit 27 arrived at the Sales Event, they were provided as their “prize” a mail-in rebate certificate for \$10.00 off the purchase of a turkey. No consumer was awarded \$25,000 cash, a Honda ATV, a 70” TV, or \$1,000 cash, contrary to the representations on Exhibit 27. The only reference on Exhibit 27 to a mail-in rebate for a turkey was in the middle of a block of very small fine print.
40. When recipients of the Prize Mailings attended the respective Sales Events to claim their “prizes,” they were subjected to sales pitches from employees of H&R and the sponsoring dealerships, attempting to sell consumers motor vehicles.

IV. CAUSES OF ACTION

COUNT I:

VIOLATIONS OF THE PROMOTIONAL GIFTS AND CONTESTS ACT- FAILURE TO INCLUDE REQUIRED DISCLOSURES

41. The State realleges Paragraphs 1 through 40 of this Complaint.
42. H&R sent Prize Mailings by mail to persons located in Indiana.

43. H&R failed to include the name and address of the promoter of the respective promotions in the Prize Mailings mailed to consumers, violating Ind. Code § 24-8-3-2.
44. H&R failed to include a statement of the odds of winning each prize in immediate proximity to each listing of a prize in each place it appeared on the Prize Mailings, listed in the same size type and boldness of the prize, violating Ind. Code § 24-8-3-5.
45. H&R failed to include a statement of the verifiable retail value of each prize in immediate proximity to each listing of a prize in each place it appeared on the Prize Mailing, listed in the same size type and boldness of the prize, violating Ind. Code § 24-8-3-5.
46. H&R failed to include a disclosure on the Prize Mailings that recipients of the Prize Mailings may be required or invited to hear a sales presentation in order to claim their prize, violating Ind. Code § 24-8-3-6.

COUNT II:
VIOLATIONS OF THE PROMOTIONAL GIFTS AND CONTESTS ACT-
MISREPRESENTING VERIFIABLE RETAIL VALUE OF PRIZES

47. The State realleges Paragraphs 1 through 46 of this Complaint.
48. H&R represented various prizes, including the MP3 player and Smartwatch, had retail values substantially higher than the amount H&R paid for the prizes, and had no evidence that a substantial number of the prizes had been sold at retail at the verifiable retail value represented by H&R, violating Ind. Code § 24-8-2-8.

COUNT III:
VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT-
MISREPRESENTING RECIPIENTS WON SPECIFIC PRIZES

49. The State realleges Paragraphs 1 through 48 of this Complaint.
50. The solicitations and transactions identified in this Complaint are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(1).
51. H&R is a “supplier” as defined by Ind. Code § 24-5-0.5-2(3).
52. H&R- by sending Prize Mailings which represented or implied the recipient won a specific prize when they did not- committed unfair, abusive, and deceptive acts, omissions, and practices in connection with consumer transactions, violating Ind. Code § 24-5-0.5-3(a).
53. H&R- by sending Prize Mailings which represented the recipient won a specific prize when they did not- represented consumer transactions had characteristics or benefits they did not have, which H&R knew or reasonably should have known they did not have, violating Ind. Code § 24-5-0.5-3(b)(1).

COUNT IV:
VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT-
MISREPRESENTING THE RESULTS OF GAME PIECES

54. The State realleges Paragraphs 1 through 53 of this Complaint.
55. H&R – by representing and implying that the game pieces located on H&R’s Prize Mailings determined whether a recipient won a prize when the game pieces were not determinant as to whether a recipient won a prize – committed unfair, abusive, and deceptive acts, omissions, and practices in connection with consumer transactions, violating Ind. Code § 24-5-0.5-3(a).

56. H&R – by representing that the game pieces located on H&R’s Prize Mailings determined whether a recipient won a prize when the game pieces were not determinant as to whether a recipient won a prize – represented that consumer transactions had characteristics, uses or benefits they did not have, which H&R knew or reasonably should have known they did not have, violating Ind. Code § 24-5-0.5-3(b)(1).

COUNT V:
VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT-
MISREPRESENTING RECIPIENTS WERE WINNERS

57. The State realleges Paragraphs 1 through 56 of this Complaint.

58. H&R – by sending Prize Mailings representing and implying the recipient was a “winner” when every recipient received an identical nominal prize and thus was not a “winner” of one of the prizes prominently displayed on the Prize Mailings – committed unfair, abusive, and deceptive acts, omissions, and practices in connection with consumer transactions, violating Ind. Code § 24-5-0.5-3(a).

59. H&R – by sending Prize Mailings representing the recipient was a “winner” when every recipient received an identical nominal prize and thus was not a “winner” of one of the prizes prominently displayed on the Prize Mailings – represented consumer transactions had characteristics or benefits they did not have, which H&R knew or reasonably should have known they did not have, violating Ind. Code § 24-5-0.5-3(b)(1).

COUNT VI:
VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT-
MISREPRESENTING THE PRIZES BEING AWARDED

60. The State realleges Paragraphs 1 through 59 of this Complaint.
61. H&R – by failing to prominently reference the items actually being awarded such as a \$5.00 Walmart gift card, lottery ticket or Turkey rebate coupon, and instead representing or implying recipients had won one of the more valuable prizes prominently displayed on Prize Mailings – committed unfair, abusive, and deceptive acts, omissions, and practices in connection with consumer transactions, violating Ind. Code § 24-5-0.5-3(a).

COUNT VII:
VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT -
MISREPRESENTING VERIFIABLE RETAIL VALUE OF PRIZES

62. The State realleges Paragraphs 1 through 61 of this Complaint.
63. H&R – by representing various prizes, including the MP3 player and Smartwatch, had retail values substantially higher than their actual verifiable retail values – committed unfair, abusive, and deceptive acts, omissions, and practices in connection with consumer transactions, violating Ind. Code § 24-5-0.5-3(a).
64. H&R – by representing various prizes, including the MP3 player and Smartwatch, had retail values substantially higher than their actual verifiable retail values – represented consumer transactions had characteristics or benefits they did not have, which H&R knew or reasonably should have known they did not have, violating Ind. Code § 24-5-0.5-3(b)(1).

COUNT VIII:
VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT-
VIOLATIONS OF THE PROMOTIONAL GIFTS AND CONTESTS ACT

- 65. The State realleges Paragraphs 1 through 64 of this Complaint.
- 66. H&R's violations of the Promotional Gifts and Contests Act referenced in Paragraphs 43 through 46 and 48 constitute Deceptive Acts under Ind. Code § 24-8-6-3.

COUNT IX:
KNOWING VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

- 67. The State realleges Paragraphs 1 through 66 of this Complaint.
- 68. H&R committed the deceptive acts asserted in Paragraphs 52, 53, 55, 56, 58, 59, 61, 63, 64 and 66 with knowledge of its deceptive acts.

COUNT X:
INCURABLE DECEPTIVE ACTS

- 69. The State realleges Paragraphs 1 through 68 of this Complaint.
- 70. The deceptive acts asserted in 52, 53, 55, 56, 58, 59, 61, 63, 64 and 66 are incurable deceptive acts and were committed by H&R as part of a scheme, artifice, or device with intent to defraud or mislead.

V. RELIEF

- 71. The State requests the Court enter judgment against the Defendant, Hopkins and Raines Inc., for the relief described in Paragraphs 72 through 77 of this Complaint.

72. The State seeks a permanent injunction, under Ind. Code § 24-5-0.5-4(c)(1), enjoining Hopkins and Raines Inc., and its owners, agents, representatives, employees, successors, and assigns, from:

72.6. Failing to include the following in any notice mailed to Indiana recipients representing to award a prize, or the chance at a prize, to the recipient:

72.6.1. the name and address of the promoter of the event, H&R;

72.6.2. a statement of the odds of winning each prize in immediate proximity to each listing of a prize in each place it appears on a notice, listed in the same size type and boldness of the prize;

72.6.3. a statement of the verifiable retail value of each prize in immediate proximity to each listing of a prize in each place it appears on a notice, listed in the same size type and boldness of the prize

72.6.4. a disclosure that recipients of notices may be required or invited to hear a sales presentation in order to claim their prize;

72.7. representing the verifiable retail value of a prize as anything more than 1.5 times the amount paid by H&R for each item, unless H&R has documented evidence that a substantial number of the prizes have

been sold at retail by a person or entity other than H&R for a higher price;

- 72.8. representing on prize mailings that a recipient has won a specific prize when the recipient has not;
- 72.9. representing, including in mailings, by telephone, by recording, or on websites, a recipient is a “winner,” or has “won,” unless the recipient has won a prize the majority of other recipients of the same prize mailing did not win;
- 72.10. awarding a prize that is not explicitly and prominently referenced on the front of a prize mailing;
- 72.11. representing a game piece on a prize mailing determines whether a recipient wins a prize, when the game piece is identical for each recipient and does not determine whether the recipient actually wins a prize;
- 72.12. committing any unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction, in violation of Ind. Code § 24-5-0.5-3(a); and
- 72.13. representing that the subject of a consumer transaction has characteristics, uses, or benefits that it does not have, which H&R knows or reasonably should know it does not have, in violation of Ind. Code § 24-5-0.5-3(b)(1).

73. The State seeks consumer restitution, under Ind. Code § 24-8-6-2(2), for all persons who were mailed the Prize Mailings and attended the corresponding Sales Events, in the amount of five hundred dollars (\$500.00) per person, payable to the Office of the Attorney General, for the benefit of those persons.
74. The State seeks costs, under Ind. Code § 24-5-0.5-4(c)(4), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action.
75. The State seeks civil penalties, under Ind. Code § 24-5-0.5-4(g), on Count IX of this Complaint, for H&R's knowing violations of Ind. Code § 24-5-0.5-3(a) and Ind. Code § 24-5-0.5-3(b)(1), payable to the State of Indiana in an amount to be determined at trial.
76. The State seeks civil penalties, under Ind. Code § 24-5-0.5-8, on Count X of this Complaint, for H&R's incurable deceptive acts, payable to the State of Indiana in an amount to be determined at trial.
77. The State seeks all other just and proper relief.

Respectfully submitted,

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