

CAUSE NO. D-1-GV-09-002143

STATE OF TEXAS,

Plaintiff,

v.

INTERCEPT, LLC.
d/b/a Shopcartusa.com,
d/b/a Diduprice.com,
d/b/a Flyingprices.com,
d/b/a Digitalsaver.com, and
d/b/a Pricingdepot.com,

Defendant.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419th JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION
AND REQUEST FOR INJUNCTIVE RELIEF**

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott, complains of INTERCEPT, LLC. (hereinafter "Intercept") Defendant, and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to Tex. R. Civ. Proc. 190.2(b)(3); 190.3(a).

JURISDICTION

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest under the authority granted him by Section 17.47 of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. Section 17.41 *et seq.* (Vernon 2002 and Supp 2008)

("DTPA"), upon the ground that the Defendant has engaged in false, deceptive and misleading acts and practices in the course of trade and commerce, as defined in and declared unlawful by Sections 17.46(a) and (b) of the DTPA.

DEFENDANT

3. Defendant is a corporation based and incorporated in New York and doing business in this State. Defendant's principal place of business is at 73 Wortman Avenue, Brooklyn, NY 11207. Intercept, LLC. may be served with process by serving its [REDACTED] at his place of residence located at [REDACTED].

VENUE

4. Venue for this cause of action lies in, and is proper in Travis County, Texas, because, under §17.47(b) of the DTPA, Defendant has done business in the county of suit.

PUBLIC INTEREST

5. Because Plaintiff State of Texas has reason to believe that Defendant has engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff State of Texas has reason to believe that Defendant has caused, and will continue to cause damage to residents of the State of Texas, and cause adverse effects to legitimate business enterprises which conduct their trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

6. Defendant has at all times described below engaged in conduct which constitutes trade and commerce as those terms are defined in the DTPA Section 17.45(6).

ACTS OF AGENTS

7. Whenever it is alleged in this Petition that Defendant did any act, it is meant that:
- A. Defendant performed or participated in the act, or
 - B. Defendant's officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

NOTICE BEFORE SUIT

8. The Consumer Protection Division informed Defendant of the alleged unlawful conduct described below at least seven (7) days before filing suit, as required by DTPA Section 17.47(a).

STATEMENT OF FACTS

9. The Defendant owns and operates the price-comparison Web sites Shopcartusa.com, Diduprice.com, Digitalsaver.com, Flyingprices.com, and Pricingdepot.com and advertises its Web sites worldwide, including in Travis County, Texas. Price-comparison Web sites such as Defendant's sites consolidate the price-comparison search into one Web site, simultaneously displaying the prices of a particular good or service from multiple merchants. Consumers rely on price-comparison Web sites to provide an unbiased and truthful representation of the merchants and the goods that are offered.

10. The State alleges that Defendant misrepresents the reliability and trustworthiness of many of the merchants by providing false endorsements. Defendant falsely represents that its merchants are "Sponsored," "Customer Certified," "Rated Best Place to Shop," and "Lowest Legitimate Price." Moreover, Defendant has endorsed merchants despite knowing that such entities have received numerous consumer complaints regarding their business practices.

VIOLATIONS OF THE DTPA

11. The State adopts by reference the information contained in paragraphs 1-10 and alleges that Defendant, in the course and conduct of trade and commerce, has directly and indirectly engaged in false, misleading, and deceptive acts and practices declared to be unlawful by the DTPA Section 17.46(a) and 17.46(b), including the following:

- A. Defendant, as alleged and detailed above, has engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce. TEX. BUS. & COM. CODE ANN. §§ 17.46 (a);
- B. Defendant, as alleged and detailed above, has caused confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services. TEX. BUS. & COM. CODE ANN. §§ 17.46 (b)(2);
- C. Defendant, as alleged and detailed above, has represented that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection which he does not. TEX. BUS. & COM. CODE ANN. §§ 17.46 (b)(5); and
- D. Defendant, as alleged and detailed above, has represented that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, when they are of another. TEX. BUS. & COM. CODE ANN §§ 17.46 (b)(7).

APPLICATION FOR PERMANENT INJUNCTION

12. Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated and will continue to violate the laws of the State of Texas as alleged in this Petition. Unless enjoined by this Honorable Court, Defendant will continue to violate the laws of the State of Texas and cause loss and damage to the people of this State. Therefore, Plaintiff requests a

Permanent Injunction be issued.

PRAYER FOR RELIEF

13. WHEREFORE, Plaintiff prays that Defendant be cited according to law to appear and answer herein; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, Defendant's successors, assigns, officers, agents, servants, employees, and any other person in active concert or participation with Defendant from engaging in false, misleading, or deceptive acts or practices, including the following:

- A. Engaging in false, misleading, or deceptive acts or practices in the conduct of trade or commerce;
- B. Causing confusion or misunderstanding as to the sponsorship, approval, or certification of goods or services;
- C. Misrepresenting or Assisting Others in misrepresenting that goods or services have sponsorship or approval which they do not have;
- D. Misrepresenting or Assisting Others in misrepresenting that goods or services are of a particular standard, quality or grade, if they are another;
- E. Misrepresenting that Defendant's price-comparison services are unbiased or neutral;
- F. Misrepresenting or Assisting Others in misrepresenting that goods or services are of a particular standard, quality, or grade, including but not limited to misrepresenting any merchant or business as "Sponsored," "Customer Certified," "Rated Best Place to Shop," and "Lowest Legitimate Price," unless Defendant has conducted an independent review of the merchant and such endorsements have been substantiated through Consumer reviews or other verifiable method of substantiation; and

- G. Failing to permit Consumers to post negative merchant reviews.
14. In addition, Plaintiff State of Texas respectfully prays that this Court will:
- A. Adjudge civil penalties in favor of Plaintiff State of Texas of not more than \$20,000 against the Defendant per violation of the DTPA pursuant to TEX. BUS. & COM. CODE §17.47(c);
- B. Award such relief as this Court finds necessary to redress injury to consumers resulting from Defendant's violations of the DTPA, including but not limited to reformation or rescission of contracts, disgorgement of ill-gotten gains, and cancellation of purported debts.
- C. Award the State of Texas attorney's fees and costs pursuant to TEX. GOVT. CODE §402.006(c) for bringing this action, as well as such other and additional equitable relief as this Court may determine to be just and proper.

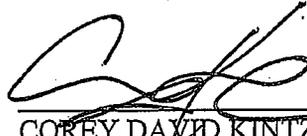
Respectfully submitted,

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