

NO. _____

STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
vs.	§	
	§	
BRANDON OLSON, and	§	
DEBRA OLSON, d/b/a	§	_____ JUDICIAL DISTRICT
THE FAMILY EXCHANGE,	§	
OLSON POWERSPORTS,	§	
BIG TIME POWERSPORTS,	§	
BIG TIME ATV, and	§	
STAR POWER,	§	
Defendants.	§	COMAL COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR EX PARTE
TEMPORARY RESTRAINING ORDER, AND ASSET FREEZE,
TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, STATE OF TEXAS, acting by and through Attorney General of Texas, GREG ABBOTT, and complains of and files this Original Petition and Application for an Ex Parte Temporary Restraining Order and Asset Freeze, Temporary and Permanent Injunction, complaining of and against BRANDON OLSON and DEBRA OLSON, dba THE FAMILY EXCHANGE; OLSON POWERSPORTS; BIG TIME POWERSPORTS; BIG TIME ATV and STAR POWER (Olson). In support thereof, Plaintiff respectfully shows unto the Court the following:

I. DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under a Level 2 discovery control plan, pursuant to Texas Rules of Civil Procedure 190.

II. AUTHORITY

2. This action is brought by the Attorney General of Texas, GREG ABBOTT, through the Consumer Protection and Public Health Division, in the name of the STATE OF TEXAS and in the public interest, under the authority granted by Section 17.47 of the Texas Deceptive Trade

Practices Act, TEX. BUS. & COMM. CODE §§ 17.41 *et seq.* (hereafter “DTPA”), upon the grounds that Defendants have 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 17.46(b) of the DTPA. The DTPA permits the Texas Attorney General to bring an action to restrain, by Ex Parte Temporary Restraining Order, Temporary and Permanent Injunction, the use of any method, act, or practice declared to be unlawful by Section 17.46 of the DTPA, where such proceedings are in the public interest.

III. DEFENDANTS

3. Defendant BRANDON OLSON is Manager, Co-Owner and/or Operator, of The Family Exchange; Olson Powersports; Big Time Powersports; Big Time ATV and Star Power and does business as olsonpowersports.net (<http://www.olsonpowersports.net>), thefamilyexchange.com (<http://www.thefamilyexchange.com>), atvfun.net (<http://www.atvfun.net>) and bigtimeatv.com (<http://www.bigtimeatv.com>). Defendant does business in Texas as alleged herein, and may be served with process by serving him at **his place of business: 664 South Seguin Avenue, New Braunfels, Texas 78130 or his place of residence: 41 Sauder Drive, New Braunfels, Texas 78130.**

4. Defendant DEBRA OLSON is Manager, Co-Owner and/or Co-Operator, of The Family Exchange; and does business as The Family Exchange (<http://www.thefamilyexchange.com>). Defendant does business in Texas as alleged herein, and may be served with process by serving her at **her place of business: 664 South Seguin Avenue, New Braunfels, Texas 78130 or her place of residence: 41 Sauder Drive, New Braunfels, Texas 78130.**

IV. VENUE

5. Venue of this action lies in Comal County, Texas pursuant to Section 17.47(b) of the DTPA and Section 15.002 of the Texas Civil Practices and Remedy Code, as the transactions

and events giving rise to this action occurred in Comal County and/or because Defendants have done or are doing business in Comal County, Texas.

V. PUBLIC INTEREST

6. Plaintiff, has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, and Plaintiff has reason to believe that Defendants have, by means of these unlawful acts and practices, caused damage to and acquired money from persons in and out of this State, and caused and will continue to cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Attorney General of Texas has reason to believe that these proceedings are in the public interest.

VI. ACTS OF AGENTS

7. When it is alleged that Defendants did any act, it is meant that Defendants performed or participated in the act, or Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

VII. TRADE AND COMMERCE

8. Defendants have, at all times described below, engaged in conduct which constitutes trade and commerce, as those terms defined by Section 17.45(6) of the DTPA.

VIII. NOTICE BEFORE SUIT NOT GIVEN

9. The Plaintiff has good cause to believe that immediate and irreparable injury, loss, or damage would occur as a result of a delay in obtaining a temporary restraining order to enjoin Defendants from continued violations of the DTPA. If Defendants are not immediately restrained, they will continue to engage deceptive acts and thereby cause immediate and irreparable injury, loss, or damage to persons who purchase their services. As such, the

Consumer Protection Division filed this lawsuit without notice to Defendants, as authorized by *State v. Brandon Olson, et al.*

Section 17.47(a) of the DTPA.

IX. SPECIFIC FACTUAL ALLEGATIONS

10. The Defendants sell of all terrain vehicles (ATVs), mopeds, Go-Karts, dirt bikes, utility vehicles, motorcycles and scooters to consumers over the internet as well as from the physical location located at 664 South Seguin Avenue, in New Braunfels, Texas, in violation of the DTPA. To wit, they:

- A. advertise on their internet site and represent to consumers over the phone that ATV's, scooters, and mopeds will be shipped within 5-7 business days of purchase, were in stock or would be delivered within a specific period of time. Often the consumers were personally guaranteed, by the Defendants, delivery by a specific date so the vehicles would arrive in time to be given as birthday and Christmas gifts for the consumers' children or grandchildren. Consumers are told payment must be received prior to delivery of their order and are encouraged to wire the money directly to the Defendant's bank account. However, once payment is received Defendants does not ship the vehicles as promised. Vehicles that are shipped, arrive after the promised delivery dates and sometimes weeks and months after the promised date. A large majority of the consumers complain that no deliver of the vehicle took place or was even attempted by the Defendants. See State's Exhibits 1 - 13.
- B. advertise on their internet site and represent to consumers "top notch" customer service and a "100% satisfaction guarantee" however, once the consumer encounters a problem with their order, such as failure of delivery, a warranty issue, or the need to inquire about their order, consumers complain their numerous phone calls and emails are ignored by Olson. The consumers complain

the Defendants are unreachable and unresponsive, and that they do not return messages, emails or inquiries regarding the delivery of their vehicle or a refund of the money paid.

(i) If a consumer inquires about non-delivery of their order through the Defendant's tracking department a promise is made that "emails are answered within 1-2 business days". However, consumers complain no response is sent once they inquire into the delivery of their order. Or if a response is received it is in the form of a computer generated response stating the vehicle just re-stocked and that it will ship within 10 days. The consumers complain however, that the vehicles are not delivered as promised. Additionally, if consumers again inquire about their delivery, an identical response is received with the same promise to deliver within 10 days from the date of the request. The majority of consumers complain they do not receive their vehicles and are left without a way to contact the Defendants to request a refund of the monies paid or inquire into the delivery of their vehicle. See State's Exhibits 1- 9.

(ii) When a consumer attempts to complain that Defendants shipped the wrong or damaged vehicle the Defendants do not respond to the customer inquiries and do not attempt to remedy the consumers' problems relating to their order. In some of those cases, consumers were shipped a vehicle with damaged parts or batteries or the wrong vehicle model was shipped. The consumer however did not receive a refund or exchange. In some cases, Defendants shipped the wrong color vehicle or a vehicle missing the advertised accessories/parts. Defendants would not exchange the vehicle or accept a return of the vehicles but instead would promise to ship replacement parts/accessories

which would then arrive weeks or months later, and in some instances, they never receive the promised parts. See State's Exhibits 10, 12-13.

C. advertises on their internet site and over the phone that the vehicles include "a Free 3 Year Engine and Powertrain Warranty". Some consumers complain the vehicles would not initially start and once they were able to start the vehicles, the vehicles failed to operate after they had been driven for 100 miles or less. Some complained about leaking fuel lines, damaged carburetors and damaged brakes. In some cases, defendants shipped replacement parts but the vehicles failed shortly after the carburetors were replaced. The Defendants would sometimes suggest the consumer send the vehicle to the Defendants shop in New Braunfels, Texas at the consumer's expense. However, after having the vehicle for an extended period of time, the Defendants would not fix the vehicle as the warranty guaranteed. See State's Exhibits 10, 12-13.

D. Consumers also complain that upon delivery the vehicles and their component parts appear worn, deteriorated, or not new. Some consumers complain the vehicle they received appeared to be used or a showroom model. Additionally, some vehicles required warranty service before the vehicle was even used by the consumer. See State's Exhibits 11-12.

X. VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

11. Defendants, as alleged above and detailed below, have in the course of trade and commerce engaged in false, misleading, deceptive or unconscionable acts and practices declared unlawful in Sections 17.46(a) and (b)(2),(5),(6),(7),(9),(10),(20) & (24) of the DTPA. Such acts included:

A. engaging in false, misleading, or deceptive acts or practices in the conduct of any

trade or commerce, as alleged more specifically herein, in violation of Section 17.46(a) of the DTPA;

- B. causing confusing or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, as alleged more specifically herein in violation of Section 17.46(b)(2) of the DTPA;
- C. representing that the 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 have, as alleged more specifically herein, in violation of Section 17.46(b)(5) of the DTPA;
- D. representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand, as alleged more specifically herein, in violation of Section 17.46(b)(6) of the DTPA;
- E. representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another in violation of Section 17.46(b)(7) of the DTPA;
- F. advertising goods or services with the intent not to sell them as advertised in violation of Section 17.46(b)(9) of the DTPA;
- G. advertising goods or services with the intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity, in violation of Section 17.46(b)(10) of the DTPA;
- H. representing that a guarantee or warranty confers or involves rights or remedies, including but not limited to a full refund, which it does not have or involve, in violation of Section 17.46(b)(20) of the DTPA; and

- I. failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been in violation of Section 17.46(b)(24) of the DTPA.

XI. INJURY TO CONSUMERS

12. Defendants have, by means of these unlawful acts and practices, obtained money from identifiable persons to whom such money should be restored, or who, in the alternative, are entitled to an award of damages.

XII. REPATRIATION OF ASSETS

13. After due notice and a hearing, the Court should order that all of Defendants' assets situated outside the jurisdiction of this Court be deposited into an appropriate financial institution within the jurisdiction of this Court.

XIII. DISGORGEMENT

14. All of the Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains, benefits, profits and real property that resulted from Defendants fraudulently advertising and misrepresenting their products and services. Defendants should be ordered to disgorge all monies fraudulently taken from individuals and businesses, together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

XIV.

NECESSITY OF IMMEDIATE RELIEF TO PRESERVE DEFENDANTS ASSETS

15. Plaintiff, requests immediate relief, by way of an ex parte temporary restraining order

and asset freeze, to preserve and protect Defendants' assets from dissipation so that victims of Defendants' actions can receive the restitution to which they are entitled. Defendants receive large sums of money from their fraudulent business practices, as described herein, and utilize these sums almost immediately for personal gain. Defendant's assets are subject to dissipation for the following reasons:

- A. defendants have a significant cash flow from the sale of the ATVs and other vehicles, which is the fruit of ill-gotten gains from their false, deceptive and misleading business practice, as described herein. The complaints filed with the Office of the Attorney General and the Better Business Bureau total over \$56,000 in funds provided to Defendants for delivery of a product never received;
- B. of the 87 complaints received by the Office of the Attorney General and the Texas Better Business Bureau, 57 consumers did not receive the vehicle. Consumers paid for the vehicles with check by phone or a wire transfer directly into Defendants bank account. However, once Defendants receive the payment the consumer is unable to reach Defendant to inquire about the order. Defendants also make the assertion to the Office of the Attorney General and to the Texas Better Business Bureau that the complaints have been remedied and a vehicle shipped when in fact they still have not been shipped; See State's Exhibit 16 - 17.
- C. defendants refuse to refund monies to consumers after they seek to cancel an order that was never delivered or when a damaged product is returned to the Defendants;
- D. defendants utilize funds from the Chase Bank, Bank of America, Wellsfargo, and First State Bank account through debit cards, withdrawals, and transfers, which contain payments deposited from consumers and which funds are directly

obtained from online sale of Defendants ATVs. These funds are then utilized almost immediately for Defendants' personal use and gain;

E. defendants maintain, and are signatories on the following known accounts;

- (i) Bank of America account numbers: XXXXXXXX5982 and XXXXXXXX8688, standing in the name of dba Olson Powersports, Brandon Olson Sole Prop.;
- (ii) Wellsfargo Bank account numbers: XXXXXXXX7709 and XXXXXXXX9697, standing in the name of Brandon Olson dba Olson Powersports; XXXXXXXX7832 and XXXXXXXX8442, standing in the name of Brandon Olson dba Big Time Powersports;
- (iii) First State Bank account number XXXXXX5406, standing in the name of Brandon R. Olson dba Olson Powersports; and
- (iv) JPMorgan Chase Bank account numbers: XXXXXX5917 and XXXXXX7425, standing in the name of Brandon Olson dba Olson Powersports and XXXXXX9465, standing in the name of The Family Exchange.

For the reasons stated above, the assets of Defendants are subject to dissipation and secretion and therefore, should be frozen pending final trial of this cause so that restitution can be made and so that full and final relief can be awarded at final trial.

XV. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

16. Plaintiff, request leave of this Court to conduct telephonic, oral, written, and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendant's answer date. There are a number of victims and other witnesses who reside out of

state/or subpoena range who may need to be deposed prior to any scheduled injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys, if known.

XVI. TRIAL BY JURY

17. Plaintiff, herein requests a jury trial and tenders the jury fee to the Comal County District Clerk's office, pursuant to Texas Rule of Civil Procedure 216 and Section 51.604 of the Tex. Government Code Annotated.

XVII. APPLICATION FOR EX PARTE RESTRAINING ORDER, TEMPORARY AND PERMANENT INJUNCTIONS

18. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the laws of the State of Texas as alleged in this Petition. Unless enjoined by this Honorable Court, Defendants will continue to engaged in business in violation of the DTPA, as alleged herein, and will cause immediate, irreparable injury and harm to the State of Texas and to the general public. Therefore, Plaintiff requests that an Ex Parte Temporary Restraining Order, Asset Freeze, Temporary Injunction and a Permanent Injunction be issued.

XVIII. PRAYER

19. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice to Defendants and hearing, a TEMPORARY INJUNCTION be issued; and that on final trial of this cause, a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' successors, assigns, officers, agents, servants, employees, and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices or making representations including:

A. transferring, concealing, destroying, or removing from the jurisdiction of this

Court any books, records, documents, invoices or other written or computer generated materials relating to the business of Defendants currently or hereafter in their possession, custody, or control except in response to further orders or subpoenas in this cause;

- B. transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing, or allowing the transfer, removal, or withdrawal from any financial institution or from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in the possession or custody of, standing in the name of, or claimed by Defendants without further order of this court;
- C. falsely advertising and making deceptive, misleading, and/or false claims to consumers inside and outside of the State of Texas, expressly or by implication, that goods are in stock and available for shipping when in fact Defendants are not in possession of the goods;
- D. falsely advertising or making deceptive, misleading, and/or false claims to consumers inside and outside the State of Texas, expressly or by implication, that goods will be shipped on a date certain and/or received on a date certain date;
- E. falsely advertising or making deceptive, misleading, and/or false claims to consumers inside and outside the State of Texas that vehicles are new of in fact they have been previously owned, driven, or used;
- F. falsely advertising or making deceptive, misleading, and/or false claims to consumers inside and outside the State of Texas that vehicles will be covered by a warranty;

- G. accepting orders for various models of vehicles and colors of vehicles from consumers but fulfilling the orders by shipping different models of vehicles and different colors of vehicles than what were ordered;
 - H. making deceptive, misleading, and/or false claims to consumers inside and outside the State of Texas that parts will be shipped to repair vehicles when the parts are not in stock or delivery of the parts is not likely to take place for weeks or months;
 - I. failing to provide replacement parts for vehicles that have been damaged during shipping or were received in damaged condition from the manufacturer;
 - J. failing to deliver products for which payments have been made; and
 - K. failing to provide and remit partial or full refunds to consumers that were initially promised or who requested such refunds.
20. In addition, Plaintiff, STATE OF TEXAS, respectfully prays that this Court will:
- A. adjudge against Defendants civil penalties in favor of Plaintiff in an amount of not more than \$20,000 per violation of the DTPA (Tex. Bus. & Com. Code § 17.47(c)(1));
 - B. adjudge against Defendants civil penalties in favor of Plaintiff in the amount of \$250,000 for violations of the DTPA (Tex. Bus. & Com. Code § 17.47(c)(2));
 - C. order Defendants to restore all money or other property taken from identifiable people by means of unlawful acts or practices;
 - D. order Defendants to pay Plaintiff's, attorneys' fees, investigative fees and court costs pursuant to Section 401.006(c) of the Texas Government Code;
 - E. order Defendants to pay prejudgment interest on all awards of restitution, damages, civil penalties and attorney fees as provided by law;

- F. order disgorgement of all monies taken by Defendants as a result of their deceptive sale of motor vehicles;
- G. Adjudge that all Defendants are jointly and severally liable for all fines, penalties, restitution, and attorneys fees.

21. FURTHER , Plaintiff, STATE OF TEXAS, respectfully prays for all other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

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VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

Before me, the undersigned Notary Public, on this day personally appeared JAMES E. CUSTER, who, after being duly sworn, stated under oath that he is counsel for Plaintiff in this action, that he has read the above petition, and that every statement contained in the petition is true and correct and within his personal knowledge or within the personal knowledge of the affiants as indicated in the affidavits attached to Plaintiff’s Original Petition and Application for Ex Parte Temporary Restraining Order with Asset Freeze, Temporary Injunction, and Permanent Injunction.

JAMES E. CUSTER

SUBSCRIBED AND SWORN TO before me, on the ____ day of December, 2010 to certify which witness my hand and official seal.

Notary Public, State of Texas