

CONSUMER PROTECTION DIVISION
OFFICE OF THE ATTORNEY GENERAL
OF MARYLAND,

Proponent,

v.

MARYLAND SPEED, L.L.C., *et al.*,

Respondents.

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IN THE CONSUMER
PROTECTION DIVISION
THE OFFICE OF
THE ATTORNEY GENERAL
OF MARYLAND
CPD Case No. 18-039-301364
OAG-CPD-01-18-29149

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FINAL ORDER BY CONSENT

The Consumer Protection Division of the Office of the Attorney General (the “Agency” or the “Proponent”)¹ hereby orders Respondents Brandon Farthing and Maryland Speed, L.L.C. (referred to collectively as the “Respondents”) to cease and desist from violating the Consumer Protection Act and take affirmative action pursuant to § 13-403(b)(1) of the Consumer Protection Act as described herein.

Parties

1. The Proponent in this proceeding is the Consumer Protection Division of the Office of the Attorney General of Maryland. This proceeding is brought by the Proponent to redress violations to date and to prevent future violations of Maryland’s Consumer Protection Act, Md. Code Ann., Com. Law, §§ 13-101 through 13-501 (2013 Repl. Vol. and 2018 Supp.).

2. Respondent Maryland Speed, L.L.C. (“Maryland Speed”) is a Maryland corporation. Maryland Speed offers and sells auto parts online to consumers from its principal

¹ The Consumer Protection Division acting in its capacity as a quasi-judicial agency is referred to herein as the “Agency,” while the Consumer Protection Division acting as the Proponent in the instant matter is referred to as “Proponent.”

office at 44178 Airport View Dr., Hollywood, MD 20636-1300.

3. Branden Farthing is an officer and an owner of Maryland Speed. As an owner and officer of Maryland Speed, Respondent Farthing possessed and exercised the authority to control the policies and trade practices of Maryland Speed; was responsible for creating and implementing the alleged unfair or deceptive policies and trade practices of Maryland Speed that are described herein; participated in the alleged unfair or deceptive trade practices that are described herein; directed or supervised those employees of Maryland Speed who participated in the alleged unfair or deceptive trade practices that are described herein; and knew or should have known of the unfair or deceptive trade practices that are described herein and had the power to stop them, but rather than stopping them, promoted their use.

The Proponent's Allegations

4. The Respondents are online retailers who sold auto parts, but failed to provide the purchased parts. The Respondents have repeatedly misled consumers concerning their willingness or ability to provide purchased auto parts or to pay refunds. When consumers do not receive the parts they have ordered, the Respondents misled them regarding the cause of the delay in shipping parts, failed to deliver the purchased auto parts, and refused to refund consumers' payments.

5. The Respondents engaged in the offer and sale of consumer goods in the State of Maryland, including the offer and sale of automobile parts.

6. The Respondents sold auto parts to consumers residing in Maryland and in other states through their website or over the telephone from their principal office in Hollywood, Maryland. The Respondents almost exclusively accepted electronic payments from consumers,

by credit card or debit card.

7. Consumers purchased auto parts from the Respondents for installation into their vehicles used for personal, family, and household purposes.

8. The Respondents represented to consumers that most of their orders ship in days or a few weeks from the date the orders were placed, and that only in “remote cases” were orders delayed because they were made to order or shipped from overseas. In fact, if the Respondents fulfilled consumers’ orders for parts, in many instances, the Respondents took months to complete consumers’ orders.

9. In many instances, after accepting consumers’ payments, the Respondents failed to order the consumers’ parts from suppliers or manufacturers, failed to arrange for the delivery of the purchased parts to consumers, and refused to refund consumers’ payments.

10. After taking orders and collecting payments from consumers for parts, the Respondents did not disclose to inquiring consumers that the Respondents were either unable or unwilling to fulfill consumers’ orders. Instead, when consumers inquired about the status of their orders, Respondents gave them false excuses for the delays or falsely assured them that their parts had been ordered and would soon be delivered.

11. After failing to deliver consumers’ parts, Respondents refused to accept consumers’ cancellation requests and would not return consumers’ payments.

12. The Respondents’ misrepresentations and material omissions of fact constituted unfair or deceptive trade practices that violated the Consumer Protection Act.

13. Respondent Farthing personally participated in each of the foregoing practices and/or knew of the foregoing practices and had the authority to stop them but, rather than

stopping them, helped to bring them about.

14. The Proponent has identified at least 671 consumers who placed orders with the Respondents, but never received their purchased parts. At least 235 of those consumers are owed refunds of at least \$220,877.14.

Respondents' Declaration

15. Prior to consenting to the entry of this Final Order, Respondents provided the Proponent with a Financial Declaration under oath concerning their income and assets. The Proponent has relied on the Respondents' Financial Declaration in agreeing to the terms of this Consent Decree. If any of the declarations that have been made by the Respondents concerning their income and assets are untrue, the Proponent may seek to set aside this Final Order By Consent and pursue its Statement of Charges against the Respondents.

Cease and Desist Provisions

16. The provisions of this Final Order shall apply to Respondent Maryland Speed, L.L.C., and its officers, employees, agents, successors, assignees, affiliates, merged or acquired entities, parent or controlling entities, wholly-owned subsidiaries, and all other persons acting in concert or in participation with Maryland Speed, L.L.C.

17. The provisions of this Final Order shall also apply to Branden Farthing and any partnership, corporation or entity in which he, individually, currently, or in the future, has an ownership interest, control, or for which he establishes policy or has the authority to establish policy.

18. The Respondents shall not make any misleading oral or written statements that have the capacity, tendency, or effect of deceiving or misleading consumers.

19. The Respondents shall not fail to state any material fact, the omission of which would have the capacity, tendency, or effect of deceiving or misleading consumers.

20. The Respondents shall not represent that they have an authorized dealer status, or any other approval, status, affiliation, or connection that they do not have.

21. The Respondents shall not misrepresent their ability or willingness to deliver any consumer goods or services they offer to consumers.

22. The Respondents shall not refuse to refund payments to consumers for purchased goods or services that the Respondents are unable to deliver within a reasonable time.

23. The Respondents shall not make any misrepresentations to consumers regarding the status of any order for a consumer good or service.

24. The Respondents shall not mislead consumers regarding their ability to cancel any order for a consumer good or service.

25. The Respondents shall provide consumers the opportunity to cancel any order for a good or service if the Respondents are unable to deliver the good or service within thirty (30) days of the consumers' purchase of the good or service and the Respondents shall notify consumers of their right to cancel when the order has been pending for 30 days. Any election by the consumer not to cancel in response to the notice shall not waive their ability to cancel their order at a later date if the Respondents are unable to deliver the purchased good or service.

26. The Respondents shall refund all payments made by consumers who cancel their orders for any good or service that has not been delivered within one (1) week of such cancellation.

27. The Respondents shall not sell any parts for which they do not have a supplier at

the time of the sale to the consumer.

28. The Respondents shall not take any advance payments, deposits, or other consideration from consumers prior to selling, providing, or assisting in providing any consumer goods and/or services in Maryland unless they provide the Proponent with a surety bond (the “Bond”), in a form acceptable to the Proponent, in the amount of One Hundred Thousand Dollars (\$100,000.00), that meets the following conditions:

- a. The Bond shall be issued by a surety licensed to do business in Maryland (the “Surety”) and shall provide that Respondents and the Surety are held and firmly bound to consumers who suffer any damages or loss in connection with Respondents’ offer, sale and/or provision of consumer goods and/or services.
- b. The Bond shall permit any consumer who suffers any damages or loss in connection with Respondents’ offer, sale and/or provision of any goods and/or services to file a claim for their damages or loss with the Surety and, if the claim is not paid, to bring an action based on the Bond in a court of competent jurisdiction, and recover against the Surety any damages or loss suffered by the consumer in connection with Respondents’ offer, sale and/or provision of goods and/or services, as well as the costs of the legal action.
- c. The Bond shall also permit the Proponent to file a claim with the Surety for any damages or loss suffered by a consumer in connection with Respondents’ offer, sale and/or provision of any goods and/or services and, if the claim is not paid, to bring an action based on the Bond, in a court of competent jurisdiction, and recover against the Surety any damages or loss suffered by the consumer in

connection with Respondents' offer, sale and/or provision of any goods and/or services, as well as the costs of the legal action.

- d. The Bond shall also permit the Proponent to file a claim with the Surety for costs and expenses it incurs in connection with its enforcement of this Final Order and, if the claim is not paid, to bring an action based on the Bond, in a court of competent jurisdiction, for the costs and expenses incurred by the Proponent in connection with its enforcement of this Final Order.
- e. The Bond posted by the Respondents pursuant to this paragraph shall remain in effect until five (5) years from the date the last claim is made against them, or if no claims are made, five (5) years from the date it is first posted.
- f. The Respondents shall provide the Proponent with a copy of the Bond and shall maintain accurate records of any premium payments made on it or claims or payments made from it. Commencing ninety (90) days from the date of the entry of this Final Order and annually thereafter for the duration of the Bond, the Respondents shall provide the Proponent with copies of all such records maintained by the Respondents concerning the Bond.
- g. If a claim is filed with the Surety by the Proponent, notice shall be given to the Respondents by mailing a copy of the claim to the Respondents. Any notice to the Respondents that is made under this or any other subparagraph shall be made consistent with paragraph 37.

Restitution/Penalties/Costs

- 29. The Respondents are jointly and severally liable for all payments due under this

Final Order.

30. The Respondents shall pay restitution to the Division equal to the sum of all monies they collected from consumers for automotive parts that they did not deliver and that they have not refunded to consumers directly or through any merchant account they maintained (the "Restitution Amount"). The Respondents and Proponent agree that the Restitution Amount shall be at least Two Hundred and Twenty Thousand and Eight Hundred and Seventy Seven Dollars (\$220,877.14). The payment required under this paragraph shall be made to the Division consistent with the payment terms contained in paragraph 36.

31. Within thirty (30) days of the date of the entry of this Final Order, the Respondents shall provide the Proponent with a list of all consumers who paid any money to the Respondents for automotive parts and/or services (the "Consumer List"). For each consumer whose name is contained on the Consumer List, the Respondents shall provide the following information, in the form of an electronic spreadsheet with each item in a separate field:

- a. the consumer's first name;
- b. the consumer's last name;
- c. the consumer's address;
- d. the consumer's telephone number;
- e. the consumer's email address;
- f. the date(s) consumers purchased the goods;
- g. the goods and/or service purchased;
- h. the goods delivered and/or services provided;
- i. all amounts the consumer paid the Respondents; and
- j. the amount of any refund already issued to the consumer by the Respondents, directly or through their merchant account.

The Respondents shall preserve all data and documents that they possess that contain information that may be used to compile the Consumer List, and shall, upon the Proponent's

request, make such data and documents available to the Proponent for inspection within a reasonable time from the request.

32. The Division shall use the restitution payment it receives from the Respondents to pay restitution to consumers harmed by the Respondents' practices that are alleged to be unfair and deceptive herein.

33. If there are insufficient funds collected to provide full restitution to each victim, benefits shall be distributed to consumers on a *pro rata* basis.

34. At the conclusion of any claims process conducted by the Proponent, any part of the Restitution Amount that has not been distributed to consumers may, at the discretion of the Attorney General, be (a) held in trust for consumers by the State or (b) used in accordance with State law, for consumer education or other purposes permitted by State law.

Costs and Penalties

35. The Respondents shall pay the Division the amount of One Hundred Thousand Dollars (\$100,000.00) for penalties and its costs. The payment required under this paragraph shall be made to the Division consistent with the payment terms contained in paragraph paragraph 36.

Payment Terms

36. The Respondents shall pay the restitution amount required under paragraph 29 and the costs and penalty amount due under paragraph 35 as follows:

- a. At the time of the entry of this Final Order, the Respondents shall have paid the Division Twenty-Five Thousand Dollars (\$25,000.00).
- b. Commencing January 1, 2019, Respondents shall pay the remaining amounts due

under this Final Order in monthly payments in the amount calculated pursuant to subparagraph d of this paragraph (the “Installment Payments”).

- c. By April 30th of each year, or within two weeks of the filing of the tax returns, whichever occurs sooner, the Respondents shall provide to the Division their federal tax returns (hereafter referred to as the “Tax Returns”). With respect to Brandon Farthing, the Tax Returns shall consist of a joint tax return for him and his wife or, if they file individually, the individual tax returns for him and his wife.
- d. The amount of each monthly Installment Payment that the Respondents shall make pursuant to this Final Order shall be the greater of Two Thousand Five Hundred Dollars (\$2,500.00) or one percent (1%) of their prior year’s net income reported on the Tax Returns of Brandon Farthing and his wife plus any positive income obtained from the corporate Respondent or, in the case of the final Installment Payment, the remaining balance due hereunder.
- e. All payments received by the Division shall be used first to pay restitution to consumers harmed by the Respondents’ unfair and deceptive trade practices.
- f. If the Respondents fully pay the Restitution Amount by timely making all payments due under this Final Order, and if the Respondents fully comply with all provisions of the Final Order, the Division shall waive all but Twenty Five Thousand Dollars (\$25,000.00) of the civil penalties and costs that the Respondents are required to pay under paragraph 35 of this Final Order.
- g. If the Respondents fail to make any Installment Payment within thirty (30) days

of the date such payment is due under the terms of this Final Order, or make an assignment for the benefit of their creditors, file or have filed against them any proceedings under any reorganization, bankruptcy act or similar law, are adjudicated bankrupt, or become insolvent, then the full combined amount of the Restitution Amount and the civil penalties and costs due under the Final Order shall be immediately due and owing to the Division, less any amounts already paid by the Respondents, along with interest of 10% per annum on the unpaid amount, calculated from the date of the Final Order.

Notice

37. Whenever notice is required under this Final Order, notice shall be provided in writing.

Notice to the Division shall be directed to:

Philip D. Ziperman
Consumer Protection Division
200 St. Paul Place, 16th Floor
Baltimore, MD 21202
(410) 576-6417
pziperman@oag.state.md.us.

Notice to the Respondents shall be directed to:

A. Shane Mattingly, Esq.
POB 1906
Leonardtown, MD 20650
shane.mattingly@verizon.net

Any party may change its designated notice recipients by written notice to the other parties.

Enforcement

38. The Chief of the Consumer Protection Division, or his designee, shall resolve any disputes concerning this Final Order and enter any supplemental orders needed to effectuate its

purpose.

39. The Respondents understand that this Final Order is enforceable by the Consumer Protection Division pursuant to the Consumer Protection Act and that any violation of this Final Order is a violation of the Consumer Protection Act.

40. The Respondents agree that any violations of this Final Order or future violations of the Consumer Protection Act similar to those in the Proponent's Allegations shall constitute a subsequent violation of the Consumer Protection Act for purposes of Consumer Protection Act §13-410, and shall be subject to the penalty provisions for subsequent violations contained therein.

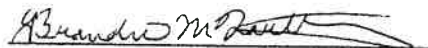
AGREED AS TO FORM AND SUBSTANCE,

Consumer Protection Division
Office of the Attorney General

By:



Philip Ziperman
Assistant Attorney General




Brandon Farthing, individually and
on behalf of Maryland Speed, L.L.C.

SO ORDERED,
CONSUMER PROTECTION DIVISION

Entered: 12/3/18

By:



William D. Gruhn
Chief

