

THE STATE OF TEXAS,

Plaintiff

v.

ROCKNEY D. BACCHUS, Individually and  
d/b/a AC EXPERTS,

Defendant

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CAUSE NO. 2006 - \_\_\_\_\_

**PLAINTIFFS’ ORIGINAL PETITION FOR RESTITUTION AND PENALTIES,  
AND APPLICATION FOR TEMPORARY RESTRAINING ORDER,  
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

COMES NOW the STATE OF TEXAS, Plaintiff, complaining of ROCKNEY D. BACCHUS, Individually and d/b/a AC EXPERTS, Defendant, for violating the Texas Deceptive Trade Practices – Consumer Protection Act, TEX. BUS. & COMM. CODE § 17.41 *et seq.* (hereafter DTPA).

The State of Texas, represented by Attorney General Greg Abbott, appears through the Consumer Protection and Public Health Division of the Office of the Attorney General.

**DISCOVERY CONTROL PLAN**

1. The discovery in this case is intended to be conducted under Level 3 pursuant to TEX. R. Civ. P. 190.4.

**JURISDICTION AND AUTHORITY**

2. Under § 17.47 of the DTPA, the Consumer Protection and Public Health Division of the Office of the Attorney General may bring an action whenever it has reason to believe that any

person is engaging in, has engaged in, or is about to engage in any false, misleading or deceptive act or practice in the conduct of any trade or commerce.

3. Under § 17.47(d) of the DTPA the Court may make such orders or judgments as are necessary to compensate identifiable persons for damages or to restore money or property acquired by means of any unlawful act or practice.

### **VENUE**

4. Venue of this suit lies in El Paso County, Texas for the following reasons:

a. Under the DTPA § 17.47(b), venue is proper because Defendant has done business in El Paso County, Texas; and

b. Under TEX. CIV. PRAC. & REM. CODE §15.002(a)(1) venue is proper in El Paso County, Texas because all or a substantial part of the events or omissions giving rise to the claims occurred in El Paso County, Texas.

### **PARTIES**

5. The Attorney General is authorized by the Texas Constitution, Art. 4, § 22, to enforce the laws of Texas. Section 17.47 of the DTPA authorizes the attorney general to bring enforcement actions under the DTPA.

6. Defendant ROCKNEY D. BACCHUS is a resident of El Paso County, Texas, who may be served with process at his business address, 8240 Doniphan Drive, Anthony, Texas 79821.

### **EXHIBITS**

7. The factual allegations in this pleading relating to violations of the DTPA are supported and sworn to in an affidavit by Patricia M. Acosta, Investigator with the Office of the Attorney General of Texas, attached as Exhibit A.

### **PUBLIC INTEREST**

8. The Attorney General has reason to believe that Defendant has engaged in the unlawful practices described below. The Attorney General also has reason to believe that Defendant has caused and will continue to cause injury, loss and damage not only to Texas consumers, but also to legitimate businesses which lawfully conduct trade and commerce in Texas, including those which legally sell air conditioning units. The Consumer Protection Division of the Office of the Attorney General believes that this action is in the public interest.

### **TRADE AND COMMERCE**

9. Defendant has, at all time described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by § 17.45(6) of the DTPA.

### **ACTS OF AGENTS**

10. Whenever it is alleged in this Petition that Defendant did any act, it is meant either that the Defendant performed or participated in the act, or that the Defendant’s officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

### **NOTICE**

11. The Consumer Protection Division did inform Defendant of the alleged unlawful conduct at least seven days prior to filing suit.

### **SUMMARY OF THE CASE**

12. Defendant ROCKNEY D. BACCHUS holds a license as an air conditioning and refrigeration contractor in the State of Texas, and operates a business known as AC EXPERTS, at 8240 Doniphan Drive, Anthony, Texas 79821. At this business, Defendant manufactures air conditioning units (“ACU’s”) under the brand names Freus and Luxaire, and sells these units, along with ACU’s manufactured by others, to the consuming public.

13. Defendant also has crews of employees who deliver the ACUs to the consumers and install them in the consumer's residences.

14. Pursuant to the El Paso City Code, Defendant must obtain a building permit before he can commence installation of an ACU. After the installation is complete, Defendant must notify the City Building Permits and Inspections Department, which will then inspect the work and issue a final inspection report, either approving the installation or requiring corrections so that the installation meets all applicable City Building Code requirements. On numerous occasions, Defendant has done the following:

- a. He has caused ACU's to be installed in residences without first obtaining a building permit; or
- b. He has obtained permits, installed the ACU's, then neglected or refused to ask for a final inspection, with the result that the permit expired or was revoked, leaving the consumer with an unapproved ACU; or
- c. He has obtained permits, installed the ACU's in a faulty manner, then failed to obtain an inspection, knowing that the faulty installation would not pass inspection, leaving the consumer with an unapproved, dangerous ACU.

15. Before an ACU may be sold and installed in a residence, Defendant must have it tested by a testing agency, which then will affix a seal or mark that indicates it has passed the test. On numerous occasions, Defendant has sold ACU's to consumers without submitting them to a testing agency for testing. On some of these occasions, Defendant has himself affixed an unauthorized seal or mark, falsely representing that the ACU has passed the agency's test.

16. On numerous occasions, Defendant has sold to consumers and installed in their residences ACU's that contain used parts, even though Defendant represented that the ACU's were new.

17. Plaintiff has learned that the City of El Paso has notified Defendant that it will not issue building permits to him for at least one year because he has allowed previous permits to expire or be revoked without a final inspection. Defendant continues to sell and install ACU's, knowing they will be done without the benefit of a permit or an inspection. In some instances, he has arranged for another entity to take out permits for work he intended to do.

18. In addition, Plaintiff has received complaints from consumers alleging that Defendant has been doing the following:

- a. Selling larger ACUs than are necessary for the square footage of a house;
- b. Selling ACU's that are not UL approved;
- c. Selling and installing ACU's that he is not authorized by the manufacturer to install;
- d. Installing ACU's that are beyond the electrical capacity of the house, causing electrical systems to trip the circuit or black out;
- e. Advertising ACU's for sale at a certain price in large bold print in a full page ad, with a small disclaimer at the very bottom qualifying the price, when he knows that the qualification will always apply;
- f. Selling an ACU as a particular brand (such as MasterCool), when it is actually another brand, a combination of MasterCool and other brands, or a used ACU, or only partially new.

## **VIOLATIONS**

19. By engaging in the above described conduct, Defendant has violated and is continuing to violate the following provisions of the DTPA:

- 17.46(a) “False, misleading or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful;”
- 17.46(b)(1) “Passing off goods or services as those of another;”
- 17.46(b)(2) “Causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;”
- 17.46(b)(3) “Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;”
- 17.46(b)(5) “Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have;”
- 17.46(b)(7): “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.”
- 17.46(b)(12): “Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.”
- 17.46(b)(24) “The failure 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 disclosed;

## **EQUITABLE RELIEF**

20. The State of Texas asks that the Court temporarily restrain, and after notice and hearing, temporarily and permanently enjoin Defendant from:

- A. Causing ACU’s to be installed in consumers’ residences without first obtaining a building permit;

- B. Obtaining permits, installing the ACU's, then neglecting or refusing to ask for a final inspection, with the result that the permit expires or is revoked, leaving the consumer with an unapproved ACU;
- C. Obtaining permits, installing the ACU's in a faulty manner, then failing to obtain an inspection, knowing that the faulty installation will not pass inspection, leaving the consumer with an unapproved, dangerous ACU;
- D. Selling ACU's to consumers without submitting them to a testing agency for testing;
- E. Affixing an unauthorized seal or mark, thereby falsely representing that the ACU has passed the agency's test;
- F. Selling to consumers and installing in their residences ACU's that contain used parts, even though he represents that the ACU's are new;
- G. So long as the City of El Paso will not issue building permits to him, continuing to advertise, sell and install ACU's;
- H. Arranging for other entities to take out permits from the City of El Paso for work he intends to do;
- I. Selling larger ACUs than are necessary for the square footage of a house;
- J. Selling ACU's that are not UL approved;
- K. Selling and installing ACU's that he is not authorized by the manufacturer to install;
- L. Installing ACU's that are beyond the electrical capacity of the consumers' house, causing electrical systems to trip circuit breakers or brown or black out;
- M. Advertising ACU's for sale at a certain price in large bold print in a full page ad, with a small disclaimer at the very bottom qualifying the price, when he knows that the qualification will always apply;
- N. Selling an ACU as a particular brand (such as MasterCool), when it is actually another brand, a combination of MasterCool and other brands, or a used ACU, or only partially new.

### **OTHER RELIEF**

21. The State of Texas asks the Court to order Defendant to make restitution of sums paid by consumers to Defendant as a result of Defendant's conduct in violation of the DTPA, or, in the alternative, to restore any money or property which may have been acquired by means of any unlawful act or practice.

22. The State of Texas asks the Court to order Defendant to pay a civil penalty, to and for the benefit of the State of Texas, in the amount of \$20,000.00 per violation of the DTPA.

23. The State of Texas asks the Court to order Defendant to pay reasonable attorney fees, pursuant to TEX. GOVT. CODE § 402.006.

### **PRAYER**

24. WHEREFORE, Plaintiff the State of Texas prays that the Court issue a Temporary Restraining Order restraining Defendant as set forth herein, and that Defendant be cited according to law to appear and answer herein; that after reasonable notice and hearing a Temporary Injunction be issued; and upon final hearing a Permanent Injunction be issued, restraining and enjoining Defendant, his successors, assigns, officers, agents, servants, employees and any other person in active concert or participation with Defendant, whether such acts are performed under his own name, under the assumed name "AC EXPERTS," or under any other assumed name or legal entity, from engaging in the following acts or practices:

- 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 Defendant currently or hereafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause;

- b. Causing ACU's to be installed in consumers' residences without first obtaining a building permit;
- c. Obtaining permits, installing the ACU's, then neglecting or refusing to ask for a final inspection, with the result that the permit expired or was revoked, leaving the consumer with an unapproved ACU;
- d. Obtaining permits, installing the ACU's in a faulty manner, then failing to obtain an inspection, knowing that the faulty installation would not pass inspection, leaving the consumer with an unapproved, dangerous ACU;
- e. Selling ACU's to consumers without submitting them to a testing agency for testing;
- f. Affixing an unauthorized seal or mark, thereby falsely representing that the ACU has passed the agency's test;
- g. Selling to consumers and installing in their residences ACU's that contain used parts, even though he represents that the ACU's are new;
- h. So long as the City of El Paso will not issue building permits to him, continuing to advertise, sell and install ACU's;
- i. Arranging for other entities to take out permits from the City of El Paso for work he intends to do;
- j. Selling larger ACUs than are necessary for the square footage of a house;
- k. Selling ACU's that are not UL approved;
- l. Selling and installing ACU's that he is not authorized by the manufacturer to install;

- m. Installing ACU's that are beyond the electrical capacity of the consumers' house, causing electrical systems to trip circuit breakers or brown or black out;
- n. Advertising ACU's for sale at a certain price in large bold print in a full page ad, with a small disclaimer at the very bottom qualifying the price, when he knows that the qualification will always apply;
- o. Selling an ACU as a particular brand (such as MasterCool), when it is actually another brand, a combination of that brand and other brands, or a used ACU, or only partially new.
- p. Representing, directly or by implication, that this Court or the Office of the Attorney General has approved any good or service sold or offered for sale by Defendant, or has approved any business practice of Defendant.

25. In addition, Plaintiff State of Texas respectfully prays that this Court will:

- a. Order Defendant to make restitution of sums paid by consumers to Defendant as a result of Defendant's conduct in violation of the DTPA, or, in the alternative, award actual damages and restore any money or property which may have been acquired by means of any unlawful act or practice;
- b. Adjudge against Defendant civil penalties in favor of Plaintiff State of Texas in the amount of \$20,000.00 per violation of the DTPA;
- c. Order Defendant to pay Plaintiff State of Texas attorney's fees and costs of court pursuant to TEX. GOVT. CODE §402.006(c);

DATED this \_\_\_\_\_ day of June, 2006.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

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First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

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Assistant Attorney General  
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