

DC
21
31
41
p-13
(6)

NO. 2007-33532

STATE OF TEXAS,
Plaintiff

v.

ASAP MOTORS & PARTS
SYSTEMS, INC., BRIAN
MCCUTCHEON, JOHN SCOTT
SANDELL dba ASAP ENGINES and
dba YOUR ENGINE STORE,
Defendants

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

FILED
HARRIS COUNTY, TEXAS
Theresa Chang
District Clerk

OCT 11 2007
Time: 10/11/07 2:52
Harris County, Texas
By: [Signature] Deputy
215th JUDICIAL DISTRICT

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

On this day came on to be considered the above-entitled and numbered cause in which State of Texas is Plaintiff (hereinafter referred to as "Plaintiff") and ASAP Motors & Parts Systems, Inc., Brian McCutcheon, and John Scott Sandell are Defendants (referred to collectively herein as "Defendants"). All parties, appearing herein, and through their attorneys of record, enter into the following stipulations and agreements contained herein.

It is stipulated that all parties have compromised and settled all claims stated by Plaintiff in this cause without the necessity of a trial. Defendants deny any Texas Deceptive Trade Practices Act violations in this matter but are entering into this Agreed Final Judgment and Permanent Injunction to buy their peace.

The Court then proceeded to read the pleadings and stipulations of the parties, and it appears to the Court that the parties agree to the entry of this judgment and that they have approved entry of this judgment.

State of Texas v. ASAP Motors et al.
Agreed Final Judgment and Permanent Injunction

Page 1 of 11

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

Certified Document Number: 33057924 - Page 1 of 13

1. **IT IS ORDERED, ADJUDGED AND DECREED** that, as used in this Agreed Final Judgment and Permanent Injunction, the following terms are defined as follows:

- A. **“Consumer”** and **“Person”** means an individual, partnership, corporation, or entity of any kind, including this state, or a subdivision or agency of this state who seeks or acquires, by purchase or lease, any goods or services;
- B. **“Defendant(s)”** means ASAP Motors & Parts Systems, Inc., Brian McCutcheon, and John Scott Sandell, their successors, assigns, officers, agents, servants, employees, corporations, and any other persons in active concert or participation with them;
- C. **“Product”** means a good, a service, or intangible property of any kind, including any engine, transmission and/or other motor vehicle part sold or sought to be sold by Defendants;
- D. **“Services”** means work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of a product or good;
- E. **“Sell,” “Market”** or **“Solicit”** means any type of contact with a person or entity for the purpose of requesting, persuading, or seeking any type of contribution, sponsorship, compensation, or anything of value from said person or entity for any reason whatsoever.

2. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendants, ASAP Motors & Parts Systems, Inc., Brian McCutcheon, and John Scott Sandell, their officers, agents, servants, employees, attorneys and any other person in active concert or participation with them, including Dina

Armstrong Hoover, who receives actual notice of this Agreed Final Judgment and Permanent Injunction by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be permanently enjoined from engaging in the following acts or practices:

- 2.1 Representing, expressly or by implication, that a product is a “replacement” or “plug-n-play” or “complete” when such product will require any modification or replacement of any part;
- 2.2 Representing, expressly or by implication, that any product sold is from Japan when it is not, or failing to state in an Order Confirmation form or invoice that the product was either (a) acquired domestically or (b) imported;
- 2.3 Removing, obscuring, or concealing any Vehicle Identification or Serial Number or other identifying number from any product sold;
- 2.4 Failing to disclose to any consumer prior to purchase any odometer readings or mileage indicators from any product when such odometer reading or mileage indicator is provided¹ to Defendants upon initial purchase of the product by Defendants, or failing to state if there is no available odometer reading that such information is unknown;
- 2.5 Representing, expressly or by implication, that a product is of a certain “quality” without an express disclosure to a consumer prior to purchase of factors that are used to measure or guarantee such quality, including, but not limited to, types of testing and inspections performed or to be performed and the specific results of any testing or inspections

¹It is ordered that Defendants have an affirmative duty to request all odometer readings or mileage indicators from any motor or transmission they purchase for resale.

performed by Defendants;

- 2.6 Representing, selling, marketing, promoting, distributing or advertising to consumers, expressly or by implication, that Defendants inspect and test engines or transmissions via run testing, hot run testing, cylinder testing, leak down testing, compression testing, bench testing or any other test or inspection unless such tests or inspections have been or will be performed prior to shipment and documented in writing on every product sold and maintained for a 3-year period;
- 2.7 Representing, selling, marketing, promoting, distributing or advertising to a consumer, expressly or by implication, a mileage estimate on any product sold, with out providing to the consumer a specific description of how that amount or estimation was determined;
- 2.8 Representing, expressly or by implication, that a product is tested or inspected in any way by Defendants without providing an express written description to a consumer or their mechanic prior to purchase that discloses the specific types of tests and inspections performed and what defects, damages, or other problems these tests and inspections have detected;
- 2.9 Representing, expressly or by implication, that a specific product to be sold to a consumer is “low mileage” or has a specific amount of mileage on it without providing to the consumer prior to purchase an express written description of how that amount or estimation was determined;
- 2.10 Representing, expressly or by implication, that a specific product to be sold to a consumer

is a “long block” without providing to the consumer prior to purchase an express written description defining this term, and what parts or components are included in this term;

- 2.11 Representing, expressly or by implication, that a specific product to be sold to a consumer is suitable for placement into the consumer’s vehicle without providing to the consumer prior to purchase written documentation to said consumer confirming that said product can properly be used in said consumer’s vehicle;
- 2.12 Representing, expressly or by implication, that a specific product to be sold to a consumer is sold “as is” without providing to the consumer prior to purchase an express written description defining this term;
- 2.13 Representing, expressly or implication, that a product will be shipped to a consumer on a specific date or range of dates when it is reasonably known to Defendants at the time the representation is made that the product can not be shipped on said date or range of dates;
- 2.14 Representing, expressly or by implication, prior to purchase, that shipping a product to a consumer will cost a specific dollar amount or estimated dollar amount unless that specific dollar amount or estimated dollar amount is provided to the consumer together with the name and contact information for the freight carrier to be used to allow confirmation of the specific dollar amount or estimated dollar amount quoted for freight, or in the alternative disclose to the consumer all known reasons why such specific amount or estimated amount might vary;
- 2.15 Using any warranty that requires a consumer to give up their right to dispute any problem

- with their credit card company or issuer;
- 2.16 Using any warranty that requires a consumer to use any arbitration procedure without requiring the same of Defendants and without informing the consumer in writing prior to purchase that the consumer is giving up and waiving their right to file a claim in any court of law;
- 2.17 Implementing any warranty that begins on any date other than the date on which the consumer receives the product;
- 2.18 Charging a restocking fee of any kind for delivering to a consumer any product that is defective or damaged when a mechanic has inspected and documented such defect or damage, which documentation has been provided to the Defendants by the consumer, or for delivering a product that is not what the consumer ordered;
- 2.19 Communicating to a consumer a threat or threats to file a charge, complaint, or criminal action, of any kind or character, expressly or by implication, against a consumer unless it is clear that the consumer has violated a specific criminal or penal statute or law;
- 2.20 Suing a consumer in a dispute arising out of a sale of motor vehicle parts or other products in a court not located in the county where the consumer resides or is domiciled, or the county where the contract giving rise to the sale is signed by the consumer;
- 2.21 Suing a consumer in any court and demanding or receiving a judgment for attorney fees of any kind without keeping and maintaining written documentation that a specific attorney performed work on that matter;

- 2.22 Suing a consumer in any court without providing in the claim or petition an itemized list of all charges, fees and costs known at the time the claim or petition is filed that are being sought or will be sought in said court;
- 2.23 Making any attempt to collect any monies claimed to be owed from consumers arising out of a sale of motor vehicle parts or other products in a court not located in the county where the consumer resides or is domiciled, or the county where the contract giving rise to the sale is signed by the consumer;
- 2.24 Taking any action to collect or obtain any judgment against a consumer who purchased an engine, transmission, motor vehicle part or other product in any jurisdiction other than where the consumer resided or was domiciled or the county where the contract giving rise to the sale is signed by the consumer;
- 2.25 Failing to require each and every employee to comply with the terms of this injunction;
- 2.26 Failing to disclose all terms of the order confirmation or any refund policy in writing to each consumer prior to receiving remuneration from said consumer, including the specific terms and conditions of refunds, returns, and restocking fees;
- 2.27 Failing to provide, to any person or entity other than the consumer or purchaser, a copy of the warranty and any terms and conditions that would void the warranty, if the product is being delivered to a person or entity other than the consumer or purchaser;
- 2.28 Charging a consumer's credit card or withdrawing any consumer's bank account for any amount of money or type of fee or payment or thing of value for any product, good or

service without receiving said person's express authorization in advance to pay the amount demanded for such product, good or service;

- 2.29 Failing to tender and deliver a written receipt or itemized billing statement to every consumer purchasing products, goods or services from Defendants, or the person or entity receiving such products, goods or services, that reflects all products, goods or services purchased by them and the precise amount paid for each product, good or service;
- 2.30 Failing to give a full refund of money to a consumer, and failing to pay for all shipping costs and restocking fees incurred, upon return of the product or goods sold when the consumer has not been informed, prior to purchase, of any warranty, fee, term, or condition that is being imposed²;
- 2.31 Failing to keep accurate detailed records of all sales, whether completed or not, including down payments or deposits, for a period of not less than two years;
- 2.32 Failing to state in a separate section in the warranty whether any accessories or components that are attached to an engine, transmission or other product are covered by the warranty;
- 2.33 Failing to state in a separate section in the warranty whether or not internal parts are free of defects;

3. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff, the State of

²It is ordered that Defendants are to communicate promptly with any consumer who alleges that they were not informed prior to purchase of any warranty, fee, term, or condition imposed, and who seek to return the products sold them in exchange for a full refund.

Texas, have judgment in the amount of One Hundred Thousand and No/100 Dollars (\$100,000.00) for civil fines and penalties for violations of the Texas Deceptive Trade Practices Act from and against Defendants ASAP Motors & Parts Systems, Inc., Brian McCutcheon, and John Scott Sandell, jointly and severally, which the Court further finds are civil fines and penalties to and for a governmental unit and not for pecuniary compensation and which do not constitute an antecedent debt with respect to this litigation.

4. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff, the State of Texas, have judgment in the amount of Four Hundred Thousand and No/100 Dollars (\$400,000.00) from and against Defendants ASAP Motors & Parts Systems, Inc., Brian McCutcheon, and John Scott Sandell, jointly and severally, to be used in whole or in part, for damages, restoration of money or other property taken from consumers by Defendants as Plaintiff determines appropriate. The State of Texas shall use best efforts to contact consumers who may have been affected by actions complained of in this cause, by sending a letter by regular mail to the last known address advising consumers of the restitution fund. The State of Texas shall disburse any collected restitution herein to consumers as it deems advisable and necessary. In the event any portion of this collected restitution judgment is not able to be distributed to consumers of Plaintiff's choosing, within a reasonable time period as determined by Plaintiff, such amounts shall revert to Plaintiff, State of Texas, as additional attorney fees.

5. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff, the State of Texas, have judgment in the amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) from and against Defendants ASAP Motors & Parts Systems, Inc., Brian McCutcheon, and John Scott

Sandell, jointly and severally, for reimbursement of the State's attorneys' fees, court costs and investigative costs incurred in this case, which sum is for the benefit of the State of Texas, a governmental unit, and which is not compensation for any actual or pecuniary loss and do not constitute an antecedent debt with respect to this litigation.

6. **IT IS FURTHER ORDERED** that Defendants not sell, convey, encumber, transfer, reduce the value of, or fail to fully insure the value of the property and improvements located at 6432 Cunningham Road³, Houston, Texas 77041, until the entire money judgment set forth herein, or by separate settlement agreement, has been fully and timely paid. It is **ORDERED** that all assets held in the name of Defendants ASAP Motors & Parts Systems, Inc., Brian McCutcheon, and John Scott Sandell d/b/a ASAP Engines and Your Engine Store, and Shiloh Investments, which are not otherwise dealt with in this Judgment are completely released from any previous order of this Court, including the temporary injunction dated July 16, 2007.

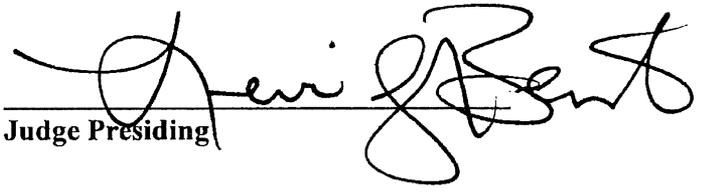
7. **IT IS FURTHER ORDERED** that Plaintiff the State of Texas, shall have all writs of execution and other processes as may be necessary in the enforcement and collection of this Agreed Final Judgment and Permanent Injunction. Defendants, by their signatures below, hereby acknowledge notice of this Judgment and Permanent Injunction and acceptance of same; therefore, no writ need be issued.

8. **IT IS FURTHER ORDERED** that all other costs of court expended or incurred in this cause are taxed against Defendant.

9. All relief not expressly granted herein is denied.

³Per the Harris County Appraisal District, such property's legal description is N 1/2 of Lt 28, Independence Farms

SIGNED this 18 day of Oct 2007.



Judge Presiding

AGREED AS TO BOTH FORM AND CONTENT:

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF ROSE
Deputy First Assistant Attorney General

PAUL CARMONA
Chief, Consumer Protection Division



SCOT CLINTON
Assistant Attorney General
Consumer Protection and Public Health Division
808 Travis, Suite 300
Houston, TX 77002
State Bar No. 24045667
(713)223-5886 ext. 115
(713)223-5821 Fax

ATTORNEY FOR PLAINTIFF



FRANK W. GEROLD
Cokinos, Bosien & Young
1221 Lamar, 16th Floor
Houston, Texas 77010
State Bar No. 07826400
(713) 535-5500
(713) 535-5533 Fax

ATTORNEY FOR DEFENDANTS



**Defendant Brian McCutcheon, individually and on behalf of
Shiloh Investments and ASAP Motors & Parts Systems, Inc.**



State of Texas-v. ASAP Motors et al.

Agreed Final Judgment and Permanent Injunction

**Defendant John Scott Sandell, individually and on behalf of
Shiloh Investments and ASAP Motors & Parts Systems, Inc.**

State of Texas v. ASAP Motors et al.
Agreed Final Judgment and Permanent Injunction

Page 13 of 13



I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date

Witness my official hand and seal of office
this October 23, 2007

Certified Document Number: 33057924 (Total Pages 13)

THERESA CHANG, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com