

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

In the Matter of:

Attorney General
File No. 2006022494A

**PLOW ONLY;
Doing Business as: CUT ONLY LAWN CARE;
CUT ONLY PLUS;
LAWN CLINIC;
PLOW PLUS SNOW REMOVAL;
SNOW CONTROL;
GOT WEEDS;**

and KEVIN MALARNEY, Individually.

Respondent.
_____ /

**NOTICE OF INTENDED ACTION
AND OPPORTUNITY TO CONFER AND TO CEASE AND DESIST**

TO: Plow Only
d/b/a Cut Only Lawn Care;
Cut Only Plus;
Lawn Clinic;
Plow Plus Snow Removal; and
Snow Control
Attn: Kevin Malarney, President
5123 East Fulton
Ada, MI 49301
Fax: (616) 949-9482

Mr. Kevin Malarney
5123 East Fulton
Ada, MI 49301

Michael A. Cox, Attorney General of the State of Michigan, notifies Plow Only, doing business as Cut Only Lawn Care, Cut Only Plus, Lawn Clinic, Plow Plus Snow Removal, and

Snow Control, and Mr. Kevin Malarney, individually and as President of Plow Only (“Respondent”), of his intent to file a lawsuit in circuit court alleging violations of the Michigan Consumer Protection Act (MCPA) 445.901 *et seq.*, and the Michigan Item Pricing Act 445.351 *et seq.* if the issues summarized in this Notice are not resolved. This Notice is required by Section 5(2) of the MCPA and Section 9(2) of the Item Pricing Act before the Attorney General may file an action in circuit court. Respondent is notified that it may confer with the Attorney General or his representative regarding the allegations summarized below and must immediately address these issues to avoid a lawsuit, in which the Attorney General may seek an injunction compelling Respondent to comply with the law and seeking other relief.

I. FACTUAL ALLEGATIONS

1.1 Respondent is a Michigan corporation with offices located at 5123 East Fulton, Ada, Michigan, 49301.

1.2 Respondent is engaged in trade or commerce in the State of Michigan by advertising and providing lawn care and snow removal services to Michigan consumers for their personal family or household use.

1.3 Upon information and belief, Respondent delivers flyers to households advertising pre-paid snow removal and lawn care service.

1.4 The cost of the snow removal and lawn care services ranges from \$185 per season to \$100 per month.

1.5 Many consumers purchased Respondent’s “Program D: Full Season Full Service” pre-paid services, at a cost of \$80 per month for a period of 1 year.

1.6 Upon information and belief, Respondent failed to provide pre-paid services to many consumers purchasing snow removal and lawn care services.

1.7 Upon information and belief, Respondent failed to refund money to some consumers that requested a refund for pre-paid services that were not provided by Respondent to consumers.

1.8 Respondent's flyers or advertisements imply that they are members of the Better Business Bureau, as indicated by use of the "BBB" logo by Respondent in their advertisements. An example of Respondent's advertisement is attached at Exhibit 1.

1.9 Upon information and belief, Respondent is not currently and was never a member of the Better Business Bureau.

1.10 Respondent entered into an agreement with the Better Business Bureau of Western Michigan to cease and desist using the BBB logo without the permission of the Better Business Bureau in March of 2006. The agreement to cease and desist use of the Better Business Bureau logo, signed by Respondent, is attached at Exhibit 2.

1.11 Upon information and belief, Respondent continued to use the Better Business Bureau logo at least until November 2006 without permission, in violation of the agreement to cease and desist.

II. VIOLATIONS OF LAW

The conduct alleged above constitutes unfair, unconscionable or deceptive methods, acts or practices in the conduct of trade or commerce which is unlawful and in violation of section 3(1) of the Michigan Consumer Protection Act, which provides in part:

Unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as follows:

- (a) Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

* * *

(c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

* * *

(q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided.

* * *

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

* * *

(u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.

* * *

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

The conduct alleged above constitutes untrue, deceptive, and misleading statements or representations made in advertising, which is unlawful and in violation of Section 6(1) of the Michigan Item Pricing Act, which provides in part:

(1) A person shall not knowingly make, publish, disseminate, circulate, or place before the public an advertisement which contains a statement or representation which is untrue, deceptive, or misleading.

III. ATTORNEY GENERAL'S AUTHORITY

The Attorney General proceeds under section 5 of the Michigan Consumer Protection Act, which provides in part:

(1) When the attorney general has probable cause to believe that a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful pursuant to section 3, and upon notice given in accordance with this section, the attorney general may bring an action in accordance with principles of equity to restrain the defendant by temporary or permanent injunction from engaging in the method, act, or practice. The action may be brought in the circuit court of the county where the defendant is established or conducts business or, if the defendant is not established in this state, in the circuit court of Ingham county. The court may award costs to the prevailing party. For persistent and knowing violation of section 3 the court may assess the defendant a civil penalty of not more than \$25,000.00.

(2) Unless waived by the court on good cause shown not less than 10 days before the commencement of an action under this section the attorney general shall notify the person of his intended action and give the person an opportunity to cease and desist from the alleged unlawful method, act, or practice or to confer with the attorney general in person, by counsel, or by other representative as to the proposed action before the proposed filing date. The notice may be given the person by mail, postage prepaid, to his usual place of business or, if the person does not have a usual place of business, to his last known address, or, with respect to a corporation, only to a resident agent who is designated to receive service of process or to an officer of the corporation.

The Attorney General also proceeds under section 9 of the Michigan Item Pricing Act, which provides in part:

(2) A proceeding shall not be instituted for an injunction unless the attorney general has notified the defendant of his intention to seek an injunction if the defendant does not cease and desist or take positive action to cease and desist from continuing to act in violation of this act. The notice shall be given at least 48 hours before the filing of the action. An injunction shall not issue if the defendant has ceased or has taken positive action to cease and desist violating this act, upon receipt of the notice.

**IV. RESPONDENT'S OPPORTUNITY
TO COMPLY WITH MICHIGAN LAW**

4.1 Within ten days of receiving this Notice, Respondent has the opportunity to cease violations of the MCPA and the Michigan Item Pricing Act and to inform the Attorney General in writing of its decision. If Respondent decides to comply with Michigan law, the Attorney General will consider that decision in determining whether to take further action.

4.2 Within ten days of receiving this Notice, Respondent may request an opportunity to confer with a representative of the Attorney General regarding the proposed lawsuit.

4.3 Instead of filing a lawsuit against Respondent, the Attorney General may accept a formal assurance, in accordance with section (6) of the MCPA and section 9(3) of the Item Pricing Act, that Respondent will stop violating the acts. The assurance may provide for payment of the costs of investigation, restitution to aggrieved persons, and other relief.

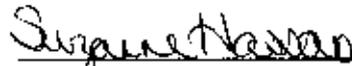
V. CONSEQUENCES OF RESPONDENT'S VIOLATIONS

5.1 After Respondent has been provided with an opportunity to confer, and unless an Assurance of Discontinuance is accepted, or it is determined that there is no cause for action, the Attorney General will be authorized to file a lawsuit.

5.2 A lawsuit under the MCPA may result, among other things, in an injunction and the imposition of civil penalties of up to \$25,000 as provided in section 5 of the MCPA, as well as civil penalties of at least \$1,000 as provided in section 9 of the Item Pricing Act.

5.3 If Respondent decides to exercise its opportunity to confer with the Attorney General or his representative before a lawsuit is filed, Respondent must contact the undersigned Assistant Attorney General within ten days after receiving this Notice.

Michael A. Cox
Attorney General



Suzanne Hassan (P67620)
Assistant Attorney General
Consumer Protection Division
P.O. Box 30213
Lansing, MI 48909
Phone: (517) 335-0855; Fax: 335-1935

Date: February 7, 2007

BBB Mission Statement

"To promote, through self-regulation, the highest standards of business ethics and conduct; and to instill public confidence in responsible businesses through programs of education and action that inform, protect and assist the general public and the business community."

shot via cert. mail
reg. mail - 3-7-06
fax 4:27



Kevin Malarney
Cut Only
5123 East Fulton Street
Ada, MI 49301

March 7, 2006

Subject: Fraudulent use of BBB Name and Logo

Dear Mr. Malarney:

This is not the first time you have had violations at this Better Business Bureau, but I "guarantee you" that your continued misrepresentation will bring the following actions from the BBB-WMI.

- 1) You have until March 10, 2006 at 5:00 p.m. EST to remove "any and all" references from any of your web sites and from "any marketing materials".
- 2) You must sign and return the attached disclaimer acknowledging your misuse of the BBB Name & Logo.
- 3) Failure to eliminate any and all references to the BBB will result in:
 - a. Consumer Alert to every media in 37 counties of our service area, noting your fraudulent and blatant misrepresentation.
 - b. Initiation of formal legal proceedings against you for Name & Logo misuse via our attorneys and the national Council of Better Business Bureaus Legal Division of Arlington, VA. The BBB name/logo is a registered trademark with a 93 year history; we will not lose any legal proceedings!
 - c. I will personally hand carry your BBB file and this violation to the Michigan Attorney General's Consumer Protection office in Lansing with the instructions to process this blatant violation of the Michigan Consumer Protection Act immediately. As we work with the Michigan AG frequently, I would trust they will give us prompt service on this blatant lie.
 - d. We will seek damages in excess of \$10,000 plus any legal costs if we have to begin any legal proceedings.

The "choice" is yours; either "all removed and acknowledged" by 3/10/06 at 5:00 p.m. or we start the process!

Sincerely,

K. Vander Meeden
President

Cc: V. Doran @ CBBB
Jim Peterson @ Miller Johnson, Snell & Cummiskey



Serving
37
Counties

Better Business Bureau of Western Michigan

40 Pearl N.W.

Grand Rapids
Outstate
http://w



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March 7, 2006



Mr. Kevin Malarney

Cut Only

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RE: Unauthorized Use Of Better Business Bureau Name/Logo

As a trademark name/logo violation, the below compliance acknowledgement must be completed and returned to our office by March 10, 2006.

The name "Better Business Bureau," the initials "BBB," and the torch logo are federally registered trademarks owned by the Council of Better Business Bureaus, Inc., and may not be used without proper authorization.

COMPLIANCE ACKNOWLEDGEMENT

I will cease and desist the improper use of the Better Business Bureau name and logo:

Agreed to: Signature _____
Name of Company: _____
Contact Name: _____
Date: _____

I hereby acknowledge I have misused the Better Business Bureau name and logo trademarks and will cease and desist from any further misrepresentations. Initials:



Serving
37
Counties

Better Business Bureau of Western Michigan

40 Pearl N.W.
354 Trust Bldg.
Grand Rapids, MI 49503
Grand Rapids area 616-774-8236
Outstate area 1-800-6 THE BBB
FAX 616-774-2014
<http://www.grandrapids.bbb.org>

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March 7, 2006



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COMPLIANCE ACKNOWLEDGEMENT

I will cease and desist the improper use of the Better Business Bureau name and logo:

Agreed to: Signature [Signature]
Name of Company: Autograph Learning Corp.
Contact Name: _____
Date: 3/9/06

I hereby acknowledge I have misused the Better Business Bureau name and logo trademarks and will cease and desist from any further misrepresentations. Initials: _____



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Kevin Malarney
Cut Only
5123 East Fulton Street
Ada, MI 49301

*Copy
original
corrected*

March 9, 2006



Subject: Confirming our agreement/conversation of 3/09/06

Kevin Malarney (KM) and Ken VanderMeeden (KVM) of the BBB met 3/09/06 @ 11:00 a.m. and agreed to the following:

- 1) KM acknowledged his misuse of BBB name & logo on 2006 flyers. Approximately 300,000 were erroneously printed with various BBB logos; all of which are unauthorized by the BBB.
- 2) KVM acknowledged KM's company was erroneously contacted via telephone in 2005 regarding BBB membership. KVM apologized for the phone call in error and KM acknowledged he was never sent any BBB membership materials.
- 3) KM stated 40,000 out of 300,000 flyers/mailers were distributed already. KVM & KM both agreed that no references to any BBB name or logo was allowed for the remaining 260,000 flyers/mailers and ALL references in these flyers would be OBLITERATED & covered up in some fashion. After 3/09/06 @ 11:30 a.m. NO mention of the BBB would be distributed and/or mailed by KM companies to any potential customers.

Additionally, KVM stated that a current copy of all contracts/promises made for services should be sent to the BBB in order to expedite future complaints which could, perhaps, be processed via e-mail.

Please note, KM's verbal commitment to KVM about not distributing any more flyers with a BBB name or logo. Should ANY copies be distributed after 3/09/06 @ 11:30 a.m. EST, the BBB will protect its name, logo and reputation in a prompt, aggressive fashion. Bottom line, no more materials or references of any kind to the BBB will be done by any KM companies, or the BBB will be forced to begin legal and other proceedings as mentioned in our 3/07/06 letter.

K. Vander Meeden
K. Vander Meeden

Cc. V. Doran @ Council of Better Business Bureaus
J. Peterson @ Miller, Johnson, Snell & Cummsiskey



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