



The Ohio Consumer Sales Practices Act: What is it and Does it Apply to Me?

By Trey Pauley of Faruki, Ireland & Cox LLP. Reprinted with permission.

The Ohio Consumer Sales Practices Act (“OCSPA”) (Ohio Rev. Code § 1345.01 et seq.) is a set of laws that aim to protect consumers from sales practices that are deceptive, unfair, or unconscionable. While the OCSPA serves a legitimate need of protecting consumers, its impact on businesses can be profound. Many Ohio businesses (especially smaller ones) simply do not realize that their actions are subject to the OCSPA. What’s more, although many well-intentioned business owners know that the OCSPA lurks, they fail to take the time and effort necessary to ensure that they are in compliance.

Remedial Law

Before getting into the meat of the OCSPA, one first needs to understand its purpose. The OCSPA is a remedial law that is “designed to compensate for traditional consumer remedies” and, as such, is “liberally construed” by Ohio courts.[i] Its objective is to make private enforcement

more appealing to consumers “who otherwise might not be able to afford or justify the cost of prosecuting an alleged CSPA violation, which, in turn, works to discourage CSPA violations in the first place via the threat of liability for damages and attorneys fees.”[ii] In some ways, then, the OCSPA is similar to class action lawsuits in that it is designed in a manner to make it easier and more attractive for consumers to bring lawsuits that they would otherwise have little incentive to bring.

Does it Apply to Me?

How does a business determine whether the OCSPA applies? First, it must look to Ohio Rev. Code §§ 1345.02 and .03. Ohio Rev. Code § 1345.02(A) prohibits a supplier from committing “unfair or deceptive” acts in a “consumer transaction.” Deceptive or unfair acts are “those that mis-

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Hamilton County Law Library

Hamilton County
Courthouse
1000 Main Street
Room 601
Cincinnati, OH 45202
T:513.946.5300
F:513.946.5252

Open Monday-Friday 8 - 4

[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

Tech Tip: Don't want to create a form from scratch? Forms and templates are available in our computer lab.

By: Julie Koehne, Systems Librarian



**Check out the
template topics we
have available!**

***Follow these steps
to open the desired
form:***

- + Open Microsoft Word.
- + Click on File, then Open.
- + Go to the L drive in the lab.
- + Open "Library PC"
by double clicking.
- + Open "Lawyer Templates"
by double clicking.
- + Select the form from our list.

-  Appellate Entries
-  Bond Entries
-  Death Penalty
-  Document Themes
-  DUI
-  Employee Dismissal
-  Experts Entries
-  Ham Cty Domestic Relations
-  Inmate Entries
-  Legal Blank Forms
-  Motions
-  ODJFS
-  Ohio Close Corporation
-  Ohio Family Law
-  Ohio Municipal Law
-  oucc
-  Pre-Trial Entries
-  Public Defender
-  Sentencing Entries
-  SmartArt Graphics
-  Trial Entries
-  Word Legal Guide
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-  TP030004239

Free CLE

Free to subscribers; \$35 for non-subscribers

To register, call 513.946.5300 or via email reference@cms.hamilton-co.org

WestlawNext CLE

Thursday, March 21

Noon-1pm

1.0 hour of general CLE in Ohio

CCH Intelliconnect Training

Tuesday, April 9

1-2pm

Law Library subscribers have access to CCH in the law library's computer lab. Join us for tips on navigating and searching. CCH contains handbooks, treatises, newsletters, and other information on topics such as:

- Banking and Securities Law
- Bankruptcy
- Employee Benefits
- Financial and Estate Planning
- Government Contracts
- Health Care compliance and Reimbursement
- Human Resources
- Intellectual Property
- Labor and Employment Law
- Pension
- Product Liability
- State and Federal Taxes

To register, call 513/946.5300 or email [reference @cms.hamilton-co.org](mailto:reference@cms.hamilton-co.org).

Ipad Boot Camp

Thursday, March 28

1-2pm

As mentioned in our February issue, thanks to a grant from Ohio's Consortium of County Law Library Resources Boards, we now have six iPads available for daytime use. The iPads are preloaded with various legal apps. Current Law Library subscribers may check out an iPad for the duration of the day upon presentation of a current photo ID. Join us for a hands on training on March 28. You will learn the basics of using the iPad and get an introduction to the legal apps we have available. To register, call 946-5300 or email reference@cms.hamilton-co.org



Library Board Meeting

The next regularly scheduled meeting of the Hamilton County Law Library Resources Board will be held at 1:00 p.m. on April 4, 2013 in the Robert E. Kraft Board Room. Meetings of the board are open to the public. Minutes of past meetings are available at <http://www.hamilton-co.org/cinlawlib/about/trustees.html>

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lead consumers about the nature of the product they are receiving.”[iii] A non-exhaustive list of representations considered to be deceptive can be found in Ohio Rev. Code § 1345.02(B). For example, representing to someone that what they are buying is new or unused, when in fact it is not, is considered deceptive.[iv] The Ohio Attorney General has also adopted rules expressly defining various practices that violate Ohio Rev. Code § 1345.02.[v] For example, it is considered deceptive (and thus a violation of the OCSPA) when a supplier uses the word “free” with respect to a transaction, when in reality the costs of the “free” offer are passed to the consumer by raising the price of the goods or services that must be purchased in conjunction with the “free” offer. Ohio Admin. Code § 109:4-3-04.

Similarly, Ohio Rev. Code § 1345.03(A) prohibits suppliers from committing “an unconscionable act or practice in connection with a consumer transaction.” Unconscionable acts are those that “relate to a supplier manipulating a consumer’s understanding of the nature of the transaction at issue.”[vi] Although “unconscionable” is not expressly defined in the statute, businesses may look to Ohio Rev. Code § 1345.03(B), which provides various factors to be considered when determining whether a supplier has knowingly taken unfair advantage of a consumer (for example, did the supplier knowingly give a misleading opinion on which the consumer was likely to rely?).

Am I a Supplier?

The obvious next step, then, is to determine whether one is a “supplier.” Ohio Rev. Code § 1345.01(C) defines a supplier as “a seller,

lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer.” Straightforward enough, right? Clearly, the definition of “supplier” is very broad and likely covers many businesses that just don’t realize they are subject to the act. A good follow-up step is to determine whether the transaction qualifies as a consumer transaction. A consumer transaction, essentially, is one that involves an exchange of goods or services for personal purposes, as well as any solicitation to do so:

“‘Consumer transaction’ means a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things.”

Ohio Rev. Code § 1345.01(A).

So, if one is a supplier and is involved with consumer transactions, then the OCSPA applies. As noted above, what constitutes an unfair, deceptive, or unconscionable act is not limited to the provisions of the OCSPA (Ohio Rev. Code § 1345.01 et seq.). Such acts have also been enumerated by the courts as well as the Ohio Attorney General. It is imperative that businesses – especially smaller ones – educate themselves and their employees as to how to comply with the Act. Discussion with an attorney well-versed in this area of law is a good place to start.

Stay tuned for my second blog piece on the OCSPA, which will focus on the hefty damages and other provisions of the Act that

combine to make violations incredibly costly (and thus a huge headache) for businesses.

[i] Whitaker v. M.T. Automotive, Inc., 111 Ohio St. 3d 177, 2006-Ohio-5481, 855 N.E.2d 825, at ¶11 (citation omitted).

[ii] Id. (Citation omitted).

[iii] Whitaker, 2006-Ohio-5481 at ¶10 (citation omitted).

[iv] Ohio Rev. Code § 1345.02(B)(3).

[v] Ohio Admin. Code § 109:4-3.

[vi] Whitaker, 2006-Ohio-5481 at ¶10.

For more information, contact Trey Pauley (jpauley@ficlaw.com.)

New Employee

We are pleased to announce that we have hired a library assistant, Vanessa Reams. Vanessa will start in mid-March. She has worked as a secretary for River City Correctional Center since 2008, supporting meeting needs, maintaining records, preparing letters and reports, greeting visitors, and answering phones. Previous work experience includes positions at International College Preparatory Academy and Fort Hayes High School in the Columbus City Schools system.

As our library assistant, Vanessa will provide reception and administrative support. She will be the friendly voice on reminder calls regarding borrowed materials and upcoming events. Vanessa will process new subscriber applications, maintain CLE and Lexis for Solo Attorneys records, order supplies, announce events, register people for our programs, and generally keep the library humming along. Please join us in giving Vanessa a warm welcome later this month.

Legal Research Competencies

Mary Jenkins, Law Librarian & Director

I'm serving on a task force charged with the development of strategies for promoting recently established legal research principles and standards as the "gold standard" of research competency within the American Association of Law Libraries and for the legal community, generally.

Here are the standards:

A successful legal researcher:

- possesses fundamental research skills;
- gathers information through effective and efficient research strategies;
- critically evaluates information;
- applies information effectively to resolve a specific issue or need; and,
- distinguishes between ethical and unethical uses of information, and understands the legal issues associated with the discovery, use, or application of information.

Competence in efficient, effective legal research is a key to success, so we hope that our efforts will help to "foster best practices in law school curriculum development and design; to inform law firm planning, training and articulation of core competencies; to encourage bar admission committee evaluation of applicants' research skills; to inspire continuing legal education program development; and for use in law school accreditation standards review" (as noted by the AALL Executive Board). We will work cooperatively with law schools, bar examiners, the ABA Section on Legal Education, other law librarians, and additional stakeholders this spring.

Do you have concerns about the state or complications of legal research? Might you offer me any suggestions about implementing research competencies for the legal community? It would be my pleasure to meet with you.

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters

You and the Legal System: Income Tax

Attorney Robert Porter is our next speaker in the *You and the Legal System* series for the public. Mr. Porter will discuss Income Taxes on Friday, March 15 at noon at the Law Library. Mr. Porter will discuss what's new in Tax Law for this year.

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513-946-5302.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

Save the date for the next event in the *You and the Legal System* series: Scott Knox will discuss Gay and Lesbian Legal Issues on Friday, April 19.



Online Tax Resources

April 17 is coming up fast! Did you know that the Law Library has a variety of online tax resources for our subscribers? Here is a sampling of what we have available. If you have any questions about how to access these, or any other library resources, please contact us.

On Site Access

BNA

US Income Portfolios
 Estates, Gifts and Trusts portfolios
 Federal and State Tax Cases
 Tax Forms, Tables, Charts and Lists
 Tax Management Weekly Report
 Tax Management Memorandum
 Tax Management Portfolios
 Estates, Gifts and Trusts Journal
 Internal Revenue Code
 Treasury Regulations

CCH

State Tax Reporters
 Multistate Corporate Tax Guide
 US Master Tax Guide
 Standard Federal Tax Reporter
 Tax Research Consultant
 Federal Excise Tax Reporter
 IRS Letter Rulings & IRS Positions
 IRS Penalties Handbook
 State and Federal Tax Archives

Remote Access

ALI-ABA

Practical Tax Lawyer

Aspen/LoisLaw

Estate and Gift Tax Handbook
 S Corporation Tax Guide
 Tax Planning for Troubled Corporations

CCH Newsletters

Federal Taxes Current Features and Journals
 State Tax Current Features and Journals

EBSCO

Easy Ways to Lower Your Taxes
 Every Landlord's Tax Deduction Guide
 Home Business Tax Deductions
 Stand Up to the IRS
 Surviving an IRS Tax Audit
 Tax Deductions for Professionals
 What Every Investor Needs to Know About Business & Taxes.

Ohio Sunshine Law Resources

Did you know March 10-16 is Sunshine Law Week? Check out the links below for resources on Ohio Sunshine Laws.

Ohio Open Meetings Law-

<http://codes.ohio.gov/orc/121.22>

Open Open Records Law-

<http://codes.ohio.gov/orc/149.43>

Ohio Attorney General Sunshine Law Page-

<http://www.ohioattorneygeneral.gov/legal/sunshine-laws>

Attorney General Sunshine Law Manual-

<http://www.ohioattorneygeneral.gov/Files/Publications/Publications-for-Legal/Sunshine-Laws/2012-Sunshine-Laws-Manual.aspx>

National Freedom of Information's Ohio Sunshine Law Page-

<http://www.nfoic.org/ohio-foi-resources>

Ohio Coalition for Open Government-

<http://www.ohionews.org/legislative/open-government/>

OSBA Sunshine Laws Pamphlet-

<https://www.ohioabar.org/ForPublic/Resources/LawYouCanUse/Pages/LawYouCanUse-191.aspx>

Upcoming Events:

March 15 :You and the Legal System: Income Tax

March 21: WestlawNext CLE

March 28: iPad Boot Camp

April 9: CCH Intelliconnect Training



March 2013 Law Library Newsletter

- INSIDE THIS MONTH**
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