

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPT.
CIVIL ACTION NO. _____

CRAIG KELLEY, on behalf of his son
Cooper Kelley,

:

and

:

STOP PREDATORY GAMBLING
FOUNDATION

:

:

:

:

Plaintiffs

:

v.

:

STAR MARKETS COMPANY, INC.,

:

:

:

Defendant

:

COMPLAINT

Introduction

1. This is a civil action brought by the plaintiffs Craig Kelley, on behalf of his minor child Cooper Kelley as next friend, and the Stop Predatory Gambling Foundation, a national non-profit organization committed to ending the unfairness and inequality created by government-sponsored gambling. By this complaint, the plaintiffs seek damages and equitable relief against the defendant, Star Markets Company, Inc., for its violation of M.G.L. 93A, the Consumer Protection Act, for its unfair and deceptive sales practice of selling minors lottery tickets from Lottery Ticket Vending Machines located in its stores and positioning them in a manner that entices minors.

Parties

2. Plaintiff Craig Kelley and his son Cooper Kelley are individuals residing in Cambridge, Middlesex County, Massachusetts. Craig Kelley has standing under G.L. 93A, § 9 to represent Cooper Kelley's interests as next friend.

3. Plaintiff Stop Predatory Gambling Foundation is a national non-profit organization with a place of business in Lawrence, Massachusetts. Stop Predatory Gambling has organizational standing because its participants and supporters include parents concerned about their children's access to Lottery Ticket Vending Machines. In particular, there are participants and supporters of SPG who have children whom they wish to shield from gambling activities, who have had access to the insufficiently monitored Lottery Ticket Vending Machines and who thus have been subjected to unfair and deceptive sales practices under G.L. 93A, § 9.

4. Defendant Star Markets Company, Inc. is a Massachusetts corporation with its principal place of business located in West Bridgewater, Plymouth County, Massachusetts, which has stores located in Cambridge and Somerville, Middlesex County, Massachusetts.

Jurisdiction and Venue

5. Jurisdiction is proper in this Court because G.L. 93A, §9(1) allows consumers seeking relief from unfair or deceptive sales practices to file their claim in Superior Court. Plaintiff Craig Kelley and his minor son Cooper Kelley reside in Middlesex County, and the defendant sold the lottery tickets to Cooper Kelley in stores it maintains in Middlesex County.

Statement of Facts

6. On September 24, 2014, Star Market stores located at Porter Square in Cambridge and Beacon Street in Somerville, sold lottery tickets to Craig Kelley's minor son, Cooper Kelley through their Lottery Ticket Vending Machines.

7. Cooper Kelley, who with his father's consent was serving as a tester to assess the accessibility of lottery tickets sold to minors from vending machines, was able to gain access without difficulty and repeatedly purchase tickets from the Lottery Ticket Vending Machines in these stores.

8. On September 24, 2014, at approximately 6:30 PM, Cooper Kelley entered the Star Market store located at 275 Beacon Street, Somerville, Massachusetts with the intention of purchasing a lottery ticket from the Lottery Ticket Vending Machine. He entered the Star Market and walked directly toward the Lottery Ticket Vending Machine. He then withdrew money from his pocket and inserted it into the Lottery Ticket Vending Machine. He selected and purchased a "Mega Millions" lottery ticket. After the "Mega Millions" lottery ticket was dispensed to him, he walked out of the store without inquiry from Star Markets personnel.

9. On September 24, 2014 at approximately 6:50 PM, Cooper Kelley entered the Star Market located at 49 White Street, Cambridge, Massachusetts. He entered the Star Market and walked directly toward the Lottery Ticket Vending Machine. He then withdrew money from his pocket and inserted it into the Lottery Ticket Vending Machine. He selected and purchased a "\$500 Frenzy" ticket. After the "\$500 Frenzy" ticket was dispensed to him, he walked out of the store without inquiry from Star Markets personnel.

Statement of Claims

10. Star Markets' sale of lottery tickets to minors through unattended Lottery Ticket Vending Machines constitutes an unfair and deceptive sales practice, in contravention of G.L. c. 93A, §2, in at least three respects.

Count I – Per Se Violation of Public Health and Safety Law

11. The plaintiffs reallege and incorporate herein the allegations of paragraphs 1-10.

12. Pursuant to the regulations promulgated at 940 CMR 3.16(3), “an act or practice is a violation of M.G.L. c. 93A, §2 if . . . [i]t fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public’s health, safety, or welfare...” G.L. c. 10, §29, which governs lottery tickets and which is a statute meant for the protection of public health, safety and welfare, provides expressly that “No ticket or share shall be sold to any person under age eighteen...” The same prohibition is contained in the Lottery Commission’s regulations, promulgated at 961 CMR 2.27(5), which state that “A Sales Agent shall not sell a ticket to any person under the age of 18 years unless otherwise permitted by law...”

13. Each sale of lottery tickets to Cooper Kelley by Star Markets constitutes an unfair and deceptive sales practice that violates G.L. c. 93A, §2 because it violated both G.L. c. 10, §29 and 961 CMR 2.27(5).

14. As a result of this unfair and deceptive trade practice, the plaintiffs suffered injury and are entitled to an award of injunctive relief and damages.

Count II – Inadequate Control to Prevent Lottery Ticket Sales to Minors

15. The plaintiffs reallege and incorporate herein the allegations of paragraphs 1-14.

16. Star Markets lacks effective controls to prevent the sale of lottery tickets from Lottery Ticket Vending Machines to minors in at least the following respects:

a. Star Markets positions its Lottery Ticket Vending Machines in a manner that makes the machines easily accessible by individuals under the age of eighteen years.

b. Minors’ access to the Lottery Ticket Vending Machines is unrestricted.

c. The default setting for the lockout device on each Lottery Ticket Vending Machine in Star Markets is set at unlocked, and thus each Machine in Star Markets is accessible unless a

store employee has reason to lock it.

d. Star Markets does not have sufficient personnel resources to make sure that each Lottery Ticket Vending Machines is locked when minors attempt a ticket purchase.

e. Star Markets does not have sufficient personnel to effectively determine whether minor children in their later adolescent years are of age to purchase lottery tickets.

16. Star Markets' failure to establish effective controls to prevent the sale of lottery tickets from vending machines to minors is an unfair and deceptive practice that violates G.L. c. 93A, §2 and G.L. c. 10, §29.

17. As a result of this unfair and deceptive trade practice, the plaintiffs suffered injury and are entitled to an award of injunctive relief and damages.

Count III – Unconscionable Positioning of Lottery Ticket Vending Machines

Next to Displays That Are Attractive To Minors

18. The plaintiffs reallege and incorporate herein the allegations of paragraphs 1-17.

19. Pursuant to the regulations promulgated at 940 CMR 3.16(1), “an act or practice is a violation of M.G.L. c. 93A, §2 if “[i]t is oppressive or otherwise unconscionable in any respect.”

20. Encouraging or facilitating youth gambling is oppressive and unconscionable, and in contrast to the legislature's and society's desire to debar them from gambling while they are of minor age. Youth gambling is a grave threat to public health. A recent study by Yale University found that individuals who start gambling with scratch tickets when they are minors are more likely to become problem gamblers in the future. According to the Massachusetts Council on Compulsive Gambling, 68% of males aged fourteen to fifteen have gambled in the last year, and 76% of males aged sixteen to seventeen have gambled in the last year. When averaged, this means that more than seven out of every ten males aged fourteen to seventeen have gambled in

the last year. Fifty-three percent of females aged fourteen to fifteen gambled within the last year, and 52% of females aged sixteen to seventeen gambled within the last year. The Council estimates that of the youths (both male and female) who gambled in the last year, 29% gambled by playing lottery games.

21. Similar evidence is provided in a report written in July 1994 by then Massachusetts Attorney General Scott Harshbarger. The Harshbarger report recounted that, of 2,127 Massachusetts high school students surveyed in 97 public schools in the state, 47.10% of seventh graders and 74.60% of seniors had purchased lottery tickets and 2.9% of seventh graders and 5.5% of seniors reported that they had purchased lottery tickets between six and nineteen times during the preceding month. A more recent study found that scratch tickets are potentially addictive and apt to induce excessive gambling behavior because of their specific characteristics, such as short payout intervals (brief time lapse between ticket purchase and payout), rapid event frequencies (opportunities to buy tickets are numerous and unconstrained) and near-miss designs (illusion of nearly winning a substantial prize, similar to slot machines).

22. The problem of youth gambling has only grown worse with the advent of unattended Lottery Ticket Vending Machines. Unattended Lottery Ticket Vending Machines pose a harm to youth similar in kind to the harm posed by cigarette vending machines, which society has universally condemned and removed from venues other than those strictly reserved for adult use, such as bars. The Massachusetts Attorney General has previously recognized through regulations promulgated at 940 CMR 21.04(2)(A) that the sale of cigarettes through vending machines is a practice that falls within the purview of chapter 93A.

23. The defendant Star Markets places its Lottery Ticket Vending Machines in locations that are near displays that are meant to attract the attention of minors.

24. In each store Cooper Kelley entered, the Lottery Ticket Vending Machine was positioned adjacent to displays of candy, soda and snack foods. For instance, the vending machine Cooper Kelley used to purchase a lottery ticket at the Star Market grocery store located at 49 White Street, Cambridge, Massachusetts, was placed next to a large display of Halloween candy.

25. Star Markets' sale of lottery tickets to minors through unattended vending machines is oppressive and unconscionable 1) because its vending machines are located near displays that the store knows will be attractive to minors, and 2) because this form of enticement, combined with the unimpeded access to the machines described in Count II, enables and fosters youth gambling.

26. Star Markets' sale of lottery tickets from vending machines to minors is oppressive and unconscionable, in violation of G.L. 93A, §2, as further elucidated in 940 CMR 3.16(1).

27. As a result of this unfair and deceptive trade practice, the plaintiffs suffered injury and are entitled to an award of injunctive relief and damages.

Failure to Tender Acceptable Settlement

28. More than thirty days prior to the filing of this action, a written demand for relief, identifying the plaintiffs and reasonably describing the defendant's unfair or deceptive acts or practices and the injuries suffered, was mailed or delivered to the defendant. Within thirty days thereafter, the defendant failed to make a written tender of settlement acceptable to the plaintiffs.

Request For Relief

WHEREFORE, plaintiffs pray for judgment against the defendant as follows:

1. Granting injunctive relief ordering the defendant to discontinue selling lottery ticket products through vending machines at its stores.

2. In the absence of an order to cease the use of Lottery Ticket Vending Machines, an order requiring the defendant to:

- a. Set the default status of each Lottery Ticket Vending Machine to “Locked,” rather than the default lock-out setting being set to “Sale,” as is the current practice. Prior to remotely unlocking a Lottery Ticket Vending Machine and permitting a sale, Star Market personnel must confirm that the age of any consumer purchasing products from a Lottery Ticket Vending Machine is at least 18 years of age.
 - b. Following a sale, each Lottery Ticket Vending Machine must automatically reset its locking device to a “Locked” status, thereby enabling age verification for the next Lottery Ticket Vending Machine consumer.
 - c. Isolate the location of all Lottery Ticket Vending Machines from areas accessible by persons under the age of eighteen (18) years.
 - d. Isolate the location of Lottery Ticket Vending Machines from areas that are in close proximity to product displays and other vending machines whose use is allowed and intended, at least in part, for individuals under the age of 18. This would include video disc and video game dispensing vending machines; candy, food and beverage displays and vending machines; and entertainment vending machines, such as “Claw” toy and stuffed animal games of skill.
3. Awarding damages to the plaintiffs in at least the statutory damages amount of \$25 per lottery ticket sale.
 4. Awarding to the plaintiffs an appropriate multiplication of a damages award.
 5. Awarding to the plaintiff all costs of this action, including attorney fees and costs; and

6. Granting such other relief as the Court deems just and proper.

For the plaintiffs,

/s/ Andrew Rainer

Andrew Rainer (BBO #542067)
Lissy Friedman (BBO #564355)
Meredith Lever (BBO #691953)
Public Health Advocacy Institute
360 Huntington Avenue, 117 CU
Boston, MA 02115
617-304-6052