

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Plaintiffs

By: Alina Wells (029512006)
Deputy Attorney General
[REDACTED]

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AUG 05 2014

SUPERIOR COURT OF NEW JERSEY
SALEM COUNTY, GENERAL EQUITY

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION,
SALEM COUNTY
DOCKET NO. C-9-14

JOHN J. HOFFMAN, Acting Attorney General
of the State of New Jersey, and STEVE C. LEE,
Acting Director of the New Jersey Division of
Consumer Affairs,

Plaintiffs,

v.

JESSICA DURKIN, d/b/a PRADA PUPPIES;
and JANE and JOHN DOES 1-10, individually
and as owners, officers, directors, shareholders,
founders, managers, agents, employees,
representatives and/or independent contractors of
JESSICA DURKIN, d/b/a PRADA PUPPIES;
and XYZ CORPORATIONS 1-10,

Defendant.

Civil Action

COMPLAINT

Plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey (“Attorney General”), and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs (“Director”), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

PRELIMINARY STATEMENT

1. People purchase pets for many reasons ranging from companionship to providing assistance with disabilities. Disclosures of an animal's disease, illness, or other defect protect unsuspecting consumers from purchasing and becoming attached to animals that may otherwise cause significant emotional distress and expenditure for medical treatment.

2. At all relevant times, Jessica Durkin, d/b/a Prada Puppies ("Defendant"), has been engaged in the sale and/or offer for sale of animals to consumers. In so doing, Jessica Durkin, d/b/a Prada Puppies, violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), and Regulations Governing the Sale of Animals, N.J.A.C. 13:45A-12.1 et seq. ("Pet Regulations") by, among other things: (1) failing to provide an animal history and health certificate containing the name and address of the person from whom the pet dealer purchased the animal; (2) failing to provide an animal history and health certificate containing the breeder's name and address, and the litter number of the animal; (3) failing to provide an animal history and health certificate containing the date the pet dealer took possession of the animal; (4) failing to provide an animal history and health certificate containing the date or dates on which the animal was examined by a veterinarian licensed to practice in the State of New Jersey, the name and address of such veterinarian, the findings made and the treatment course, taken, if any; (5) failing to provide an animal history and health certificate containing the statement of all vaccinations and inoculations administered to the animal, including the identity and quantity of the vaccine or inoculum administered, and the name and address of the person or licensed veterinarian administering the same; (6) failing to provide an animal history and health certificate containing a 10-point bold-face type "WARNING"; (7) failing to maintain a copy of the animal history and

health certificate signed by the consumer for a period of one year following the date of sale; (8) inoculating and/or vaccinating animals without the written authorization of a licensed veterinarian; (9) failing to provide consumers a “KNOW YOUR RIGHTS” statement detailing prior examinations and a “WAIVER OF REEXAMINATION RIGHT” statement; (10) failing to have animals examined by a licensed veterinarian at least three days prior to sale; (11) refusing to refund consumers’ money after selling them sick or defective animals; (12) refusing to refund consumers for the cost of veterinary fees associated with the treatment of the sick animals sold by Defendant; (13) failing to issue consumers an “Unfitness of Animal - Election Of Options” form for animals deemed Unfit for Purchase; and (14) failing to notify the Division no later than five (5) days of receipt of the “Unfitness of Animal - Election Of Options” certificate that the status is contested. Additionally, it appears that Defendant continues to offer for sale and sell animals without complying with the requirements of the Pet Regulations. Thus, the Attorney General and Director submit this Complaint to halt Defendant’s practices and to prevent additional consumers from being harmed.

PARTIES AND JURISDICTION

3. The Attorney General is charged with the responsibility of enforcing the CFA and the Pet Regulations. The Director is charged with the responsibility of administering the CFA and the Pet Regulations on behalf of the Attorney General.

4. By this action, the Attorney General and Director (collectively, “Plaintiffs”) seek injunctive relief and other relief for violations of the CFA and Pet Regulations. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-6, 8-8, 8-11, 8-13 and

8-19. Venue is proper in Salem County, pursuant to R. 4:3-2(b), because it is a county in which Defendant conducts business.

5. Upon information and belief, at all relevant times Jessica Durkin (Durkin”) has been the owner, operator, manager, member, agent, breeder and/or employee of Prada Puppies. Upon information and belief Durkin’s current home address is [REDACTED]

6. Upon information and belief, Prada Puppies is not incorporated in New Jersey or elsewhere and is not registered as trade name in New Jersey. Upon information and belief Prada Puppies maintains a principal business address of [REDACTED].

7. Upon information and belief, John and Jane Does 1 through 10 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, and/or representatives of Defendant who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

8. Upon information and belief, XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

9. Durkin and Prada Puppies are collectively referred to as “Defendant.”

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

10. Upon information and belief, since at least 2012, Defendant has engaged in the advertisement, offer for sale and sale of merchandise, namely dogs, to consumers in this State and elsewhere.

11. Upon information and belief, since at least November 20, 2012, Defendant has sold at least four (4) dogs with illnesses to consumers in the State of New Jersey.

A. Defendant's Advertising, Offering for Sale and Sale of Dogs :

12. At all relevant times, Defendant advertised and offered dogs for sale via the Prada Puppies website, www.pradapuppies.com (the "Prada Puppies Website").

13. At all relevant times, Defendant advertised and offered dogs for sale via the Prada Puppies Facebook page, www.facebook.com/pradapuppies (the "Prada Puppies Facebook Page").

14. At all relevant times, Defendant advertised and offered dogs for sale via the Quality Dogs website, www.qualitydogs.com (the "Quality Dogs Website").

15. At all relevant times, Defendant advertised and offered dogs for sale via the Dogs Now website, www.dogsnow.com (the "Dogs Now Website").

16. At all relevant times, Defendant advertised and offered dogs for sale via the Breeders.net website, www.breeders.net (the "Breeders.net Website").

17. At all relevant times, Defendant advertised and offered dogs for sale via classified advertisements placed in the *South Jersey Times* newspaper.

B. Defendant's Failure to Provide Records of Veterinary Care, Health Records and Other Required Disclosures to Consumers:

18. At all relevant times, Defendant has sold animals within the State of New Jersey without an animal history and health certificate containing the date or dates on which the animal was examined by a veterinarian licensed to practice in the State of New Jersey, the name and address of such veterinarian, the findings made and the treatment, if any, taken or given to the animal.

19. At all relevant times, Defendant has sold animals within the State of New Jersey without an animal history and health certificate containing the statement of all vaccinations and inoculations administered to the animal, including the identity and quantity of the vaccine or inoculum administered, the name and address of the person or licensed veterinarian administering the same.

20. At all relevant times, Defendant has sold animals within the State of New Jersey without an animal history and health certificate containing the name and address of the person from whom the pet dealer purchased the animal.

21. At all relevant times, Defendant has sold animals within the State of New Jersey without an animal history and health certificate containing the breeder's name and address, and the litter number of the animal.

22. At all relevant times, Defendant has sold animals within the State of New Jersey without an animal history and health certificate containing the date the pet dealer took possession of the animal..

23. At all relevant times, Defendant has failed to maintain a copy of the animal history and health certificate signed by the consumer for a period of one year following the date of sale.

24. At all relevant times, Defendant has inoculated and/or vaccinated animals without the written authorization of a licensed veterinarian.

25. At all relevant times, Defendant has sold animals within the State of New Jersey without an animal history and health certificate containing the required 10-point bold-face type "WARNING."

26. At all relevant times, Defendant has sold animals within the State of New Jersey and has failed to have them examined by a licensed veterinarian at least three days prior to sale.

27. At all relevant times, Defendant, has failed to provide consumers a "KNOW YOUR RIGHTS" statement detailing prior examinations and a "WAIVER OF REEXAMINATION RIGHT" statement.

C. **Defendant's Sale of Animals Unfit for Purchase and Refusal to Address Adverse Impact on Consumers:**

28. At all relevant times, consumers paid Defendant between \$300 and \$450 to purchase Jack Russell Terrier, Cavalier King Charles Spaniel, Yorkshire Terrier/Poodle, and Maltese/Poodle puppies.

29. In one instance, a puppy purchased on December 19, 2012, as a family Christmas gift, became ill on December 23, 2012. The puppy was suffering from hypoglycemia, severe diarrhea and anemia, and was nearly comatose upon his arrival at a veterinary clinic on December 24, 2012. On December 27, 2012, the owners elected to euthanize the extremely ill puppy.

30. In another instance, a puppy purchased as a family pet developed a severe cough shortly after purchase. The puppy was treated by a veterinarian for bacterial bronchopneumonia.

31. In another instance, a veterinarian inspecting a puppy one day after it was purchased from Defendant, determined that the puppy had ear mites, a yeast infection of the ears, Giardia parasites and an upper respiratory infection.

32. In another instance, a veterinarian examining a puppy sold by Defendant determined that the puppy, which exhibited vomiting and diarrhea and was persistently shaking his head, suffered from Giardia and Coccidia parasites, as well as ear mites.

33. At all relevant times, Defendant refused to refund consumers' money after selling them sick or defective animals and being presented with Unfit for Purchase certifications.

34. At all relevant times, Defendant refused to refund consumers' money paid for veterinary fees associated with the treatment of the sick animals sold by Defendant which were certified as Unfit for Purchase.

**D. Defendant's Failure to Abide by the Pet Regulations
Concerning the Sale of Animals as Unfit for Purchase:**

35. At all relevant times, Defendant has failed to issue consumers an "Unfitness of Animal - Election Of Options" form for animals deemed Unfit for Purchase.

36. At all relevant times, Defendant has failed to notify the Division no later than five days of receipt of consumers' "Unfitness of Animal - Election Of Options" certificate that the status is contested.

COUNT I

**VIOLATION OF THE CFA BY DEFENDANT
(UNCONSCIONABLE COMMERCIAL PRACTICES)**

37. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 36 above as if more fully set forth herein.

38. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing [] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise . . .

39. The CFA defines “merchandise” as including “any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale.” N.J.S.A. 56:8-1(c).

40. Defendant has engaged in unconscionable commercial practices and misrepresentations including, but not limited to, the following:

- (a) Selling an animal within the State of New Jersey without an animal history and health certificate containing the date or dates on which the animal was examined by a veterinarian licensed to practice in the State of New Jersey, the name and address of such veterinarian, the findings made and the treatment, if any, taken or given to the animal as required by N.J.A.C. 13:45A-12.2(a)(1)(vii);
- (b) Selling an animal within the State of New Jersey without an animal history and health certificate containing the statement of all vaccinations and inoculations administered to the animal, including the identity and quantity of the vaccine or inoculum administered, the name and address of the person or licensed veterinarian administering the same, as required by N.J.A.C. 13:45A-12.2(a)(1)(viii);

- (c) Selling an animal within the State of New Jersey without an animal history and health certificate containing the 10-point bold-face type “WARNING,” as required by N.J.A.C. 13:45A-12.2(a)(1)(ix);
- (d) Failing to provide consumers a “KNOW YOUR RIGHTS” statement detailing prior examinations and a “WAIVER OF REEXAMINATION RIGHT” statement, as required by N.J.A.C. 13:45A-12.3(a)(5);
- (e) Failing to have animals examined by a licensed veterinarian at least three days prior to sale, as required by N.J.A.C. 13:45A-12.3(a)(5);
- (f) Refusing to refund consumers’ money after selling them sick or defective animals, as required by N.J.A.C. 13:45A-12.3(a)(6); and
- (g) Refusing to refund consumers’ money paid for veterinary fees associated with the treatment of the sick animals sold by Defendants, as required by N.J.A.C. 13:45A-12.3(a)(6).

41. Each unconscionable commercial practice by Defendant constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT II

VIOLATIONS OF THE PET REGULATIONS BY DEFENDANT

42. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 41 above as if more fully set forth herein.

43. N.J.A.C. 13:45A-12.1 defines “pet dealer” as “any person engaged in the ordinary course of business in the sale of animals for profit to the public or any person who sells or offers for sale more than five animals per year.”

44. The Pet Regulations, among other things, govern the sale of animals, including the requisite health verification requirements and the disclosures to consumers.

45. Specifically, N.J.A.C. 13:45A-12.2 provides, in relevant part:

(a) Without limiting the prosecution of any other practices which may be unlawful under N.J.S.A. 56:8-1 et seq., the following acts, practices or omissions shall be deceptive practices in the conduct of the business of a pet dealer:

1. To sell an animal within the State of New Jersey without an animal history and health certificate and without providing the consumer with a completed animal history and health certificate. The animal history and health certificate shall be signed by the pet dealer, his agent or employee, and shall contain the following information:

.....
(ii) The name and address of the person from whom the pet dealer purchased the animal;

(iii) The breeder's name and address, and the litter number of the animal;

.....
(v) The date the pet dealer took possession of the animal;

.....
(vii) The date or dates on which the animal was examined by a veterinarian licensed to practice in the State of New Jersey, the name and address of such veterinarian, the findings made and the treatment, if any, taken or given to the animal;

(viii) A statement of all vaccinations and inoculations administered to the animal, including the identity and quantity of the vaccine or inoculum administered, the name and address of the person or licensed veterinarian administering the same, and the date of administering the vaccinations and inoculations; and

(ix) A 10-point bold-face type warning in the following form:

WARNING

The animal which you have purchased (check one) has has not been previously vaccinated or inoculated. Vaccination or inoculation neither guarantees good health nor assures absolute immunity against disease. Examination by a veterinarian is essential at the earliest possible date to enable your veterinarian to insure the good health of your pet.

2. To fail to maintain a copy of the animal history and health certificate signed by the consumer for a period of one year following the date of sale and/or to fail to permit inspection thereof by an authorized

representative of the Division upon two days' notice (exclusive of Saturday and Sunday).

46. The Pet Regulations further govern the disclosure to consumers of health and fitness for sale of animals, specifically, in relevant part, N.J.A.C. 13:45A-12.3 provides that:

(a) Without limiting the prosecution of any other practices which may be unlawful under N.J.S.A. 56:8-1 et seq., it shall be a deceptive practice for a pet dealer to sell animals within the State of New Jersey without complying with the following minimum standards relating to the health of animals and fitness for sale and purchase:

4. A pet dealer shall be permitted to inoculate and vaccinate animals prior to purchase only on the order of a veterinarian licensed to practice in the State of New Jersey. A pet dealer, however, shall be prohibited from representing, directly or indirectly, that he is qualified to engage in or is engaging in, directly or indirectly, the following activities: diagnosing, prognosing, treating, administering, prescribing, operating on, manipulating or applying any apparatus or appliance for disease, pain, deformity, defect, injury, wound or physical condition of animals after purchase for the prevention of, or to test for, the presence of any disease in such animals. These prohibitions include but are not limited to the giving of inoculations or vaccinations after purchase, the diagnosing, prescribing and dispensing of medication to animals and the prescribing of any diet or dietary supplement as treatment for any disease, pain, deformity, defect, injury, wound or physical condition.

5. A pet dealer shall have any animal which has been examined more than 14 days prior to purchase reexamined by a licensed New Jersey veterinarian for the purpose of disclosing its condition at the time of purchase. Such examination shall take place within 72 hours of delivery of the animal to the consumer unless the consumer waives this right to reexamination in writing. The written waiver shall be in the following form and a copy shall be given to the consumer prior to the signing of any contract or agreement to purchase the animal:

KNOW YOUR RIGHTS

To ensure that healthy animals are sold in this State, New Jersey law requires that a dog or cat be examined by a licensed New Jersey veterinarian prior to its sale by a pet dealer and within 72 hours of the delivery of the dog or cat to a consumer who has purchased the animal where the initial

unfitness. The reimbursement for veterinarian's fees shall not exceed two times the purchase price including sales tax of my animal.

4. DEATH OF ANIMAL ONLY. (check one) Receipt of a full refund of the purchase price, including sales tax for the animal, or in exchange an animal of my choice of equivalent value plus reimbursement of the veterinary fees incurred prior to the death of the animal. The reimbursement for veterinarian's fees shall not exceed two times the purchase price including the sales tax of the animal.

Consumer's Name
(Print)

Consumer's Signature

Date

Pet Dealer's or Agent's Name
(Indicate
Title or Position) (Print)

Pet Dealer's or
Agent's Signature

Date

10. A pet dealer shall comply with the consumer's election as required by (a)7i through iv above not later than 10 days following receipt of a veterinary certification. In the event that a pet dealer wishes to contest a consumer's election, he shall notify the consumer and the Director of the Division of Consumer Affairs in writing within five days following the receipt of the veterinarian's certification, and he may require the consumer to produce the animal for examination by a veterinarian of the dealer's choice at a mutually convenient time and place. The Director shall, upon receipt of such notice, provide a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, to determine why the option elected by the consumer should not be allowed.

47. Defendants violated the Pet Regulations by engaging in certain acts including, but not limited to, the following:

- (a) Selling an animal within the State of New Jersey without an animal history and health certificate containing the name and address of the person from whom the pet dealer purchased the animal as required by N.J.A.C. 13:45A-12.2(a)(1)(ii);

- (b) Selling an animal within the State of New Jersey without an animal history and health certificate containing the breeder's name and address, and the litter number of the animal as required by N.J.A.C. 13:45A-12.2(a)(1)(iii);
- (c) Selling an animal within the State of New Jersey without an animal history and health certificate containing the date the pet dealer took possession of the animal as required by N.J.A.C. 13:45A-12.2(a)(1)(v);
- (d) Selling an animal within the State of New Jersey without an animal history and health certificate containing the date or dates on which the animal was examined by a veterinarian licensed to practice in the State of New Jersey, the name and address of such veterinarian, the findings made and the treatment, if any, taken or given to the animal as required by N.J.A.C. 13:45A-12.2(a)(1)(vii);
- (e) Selling an animal within the State of New Jersey without an animal history and health certificate containing the statement of all vaccinations and inoculations administered to the animal, including the identity and quantity of the vaccine or inoculum administered, the name and address of the person or licensed veterinarian administering the same, as required by N.J.A.C. 13:45A-12.2(a)(1)(viii);
- (f) Selling an animal within the State of New Jersey without an animal history and health certificate containing a 10-point bold-face type "WARNING", as required by N.J.A.C. 13:45A-12.2(a)(1)(ix);
- (g) Failing to maintain a copy of the animal history and health certificate signed by the consumer for a period of one year following the date of sale, as required by N.J.A.C. 13:45A-12.2(a)(2);
- (h) Inoculating and/or vaccinating animals without the written authorization of a licensed veterinarian, as required by N.J.A.C. 13:45A-12.3(a)(4);
- (i) Failing to provide consumers a "KNOW YOUR RIGHTS" statement detailing prior examinations and a "WAIVER OF REEXAMINATION RIGHT" statement, as required by N.J.A.C. 13:45A-12.3(a)(5);
- (j) Failing to have animals examined by a licensed veterinarian at least three days prior to sale, as required by N.J.A.C. 13:45A-12.3(a)(5);
- (k) Refusing to refund consumers' money after selling them sick or defective animals, as required by N.J.A.C. 13:45A-12.3(a)(6);

- (l) Refusing to refund consumers' money paid for veterinary fees associated with the treatment of the sick animals sold by Defendants, as required by N.J.A.C. 13:45A-12.3(a)(6);
- (m) Failing to issue consumers an "Unfitness of Animal - Election Of Options" form for animals deemed Unfit for Purchase, as required by N.J.A.C. 13:45A-12.3(a)(9); and
- (n) Failing to notify the Division no later than five days of receipt of the "Unfitness of Animal - Election Of Options" certificate that the status is contested, as required by N.J.A.C. 13:45A-12.3(a)(10).

48. Each violation of the Pet Regulations alleged above also constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that Defendant's acts and omissions constitute multiple instances of unlawful practices in violation of the CFA and the Pet Regulations;
- (b) Permanently enjoining Defendant and her agents, employees, representatives, independent contractors and all other persons or entities directly or indirectly under her control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, and the Pet Regulations, including, but not limited to, the acts and practices alleged in this Complaint;
- (c) Permanently enjoining the Defendant and her agents, employees, representatives, independent contractors and all other persons or entities directly or indirectly under her control, from inoculating or vaccinating any Animals without an order of a veterinarian licensed to practice in the State of New Jersey, in accordance with N.J.A.C. 13:45A-12.3(a)(4);
- (d) Directing the assessment of restitution amounts against Defendant to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and the Regulations Governing the Sale of Animals, N.J.A.C. 13:45A-23.1, et seq., is not the subject of any other action pending in any other court of this State. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Alina Wells
Deputy Attorney General

Dated: August 4, 2014
Newark, New Jersey

RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Alina Wells
Alina Wells
Deputy Attorney General

Dated: August 4, 2014
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General Alina Wells is hereby designated as trial counsel on behalf of Plaintiffs in this matter.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Alina Wells
Alina Wells
Deputy Attorney General

Dated: August 4, 2014
Newark, New Jersey