

IN THE IOWA DISTRICT COURT FOR SIOUX COUNTY

STATE OF IOWA ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA

Plaintiff,

v.

MICHAEL EVAN NOTEBOOM

Defendant.

EQUITY NO. 028533

**ORDER GRANTING STIPULATED
TEMPORARY INJUNCTION**

The Court, having been presented with this Stipulated Temporary Injunction by the State of Iowa ex rel. by Assistant Attorneys General Mariclare Thinnies Culver and William R. Pearson and by Defendant's counsel Steve Hamilton, finds and orders this 6th day of May 2020 as follows:

PARTIES and JURISDICTION

1. Iowa Attorney General Thomas J. Miller is authorized to bring this action on behalf of the State of Iowa by § 714.16(7) of the Iowa Consumer Fraud Act to sue to enforce the Act's prohibitions on unfair and deceptive acts and practices.

2. Defendant Michael Evan Noteboom is an Iowa citizen residing in Orange City, Sioux County, Iowa.

3. The Court has subject matter jurisdiction over this action pursuant to Iowa Code section 714.16(7). Venue is proper in this county pursuant to § 714.16(7).

ALLEGATIONS

4. As set forth in greater detail in the State's April 23, 2020 Petition and Application for Temporary Injunction, under the Iowa Price-Gouging Rule, Iowa Admin. Code ("IAC") 61-

31.1(714), the charging of excessive prices for merchandise needed by victims of disasters constitutes an “unfair practice” under the Consumer Fraud Act, Iowa Code § 714.16, and is subject to all penalties provided therein, including but not limited to injunctive relief.

5. Under the Iowa rule, an “excessive price” is a price not justified by the seller’s actual costs of acquiring, producing, selling, transporting, and delivering the actual product sold, plus a reasonable profit. IAC 61-31.1(714). An excessive price is to be presumed from a substantial increase in the price of any merchandise over the price at which the merchandise was sold or offered for sale in the usual course of business immediately prior to the onset of the emergency, or from a substantial increase in the markup from cost if wholesale prices or costs have increased. IAC 61-31.1(714).

6. A per se violation of the Iowa Consumer Fraud Act exists when it is shown that a person has charged an excessive price for merchandise to be provided to persons within an area declared to be a disaster area during the period of any declaration of emergency and for the subsequent recovery period. IAC 61-31.1(714).

7. Iowa Governor Reynolds issued a State of Iowa Disaster Emergency for the entire state on March 9, 2020 effective March 9, 2020 for 30 days unless sooner terminated or extended. This declaration has been extended and broadened on more than one occasion since March 9, 2020 and remained in effect statewide during the time period of the Defendant’s activities (*See, e.g.*, continuing Public Health Disaster Emergency Proclamations, as well as Presidential Declarations, at https://www.homelandsecurity.iowa.gov/disasters/disaster_proclamations.html).

8. From March 2 to March 27, 2020, the State is presently aware of 272 items listed for sale on eBay by Defendant using eBay seller ID mn65. The 272 items listed for sale constituted merchandise needed by victims of disasters, such as toilet paper, paper towels, wipes, and

disinfecting or sanitizing products.

9. The State claims that Defendant sold the 272 items at excessive prices not justified by his actual costs of acquiring and transporting or delivering the items he sold plus a reasonable profit, which constitutes price gouging and unfair practices under the Iowa Consumer Fraud Act.

10. Defendant denies the Attorney General's allegations and denies he, or (as applicable) his agents, owners, officers, directors, or employees are legally responsible for any conduct in violation of the CFA and the Price-Gouging Rule but agrees to this injunction.

FINDINGS

11. This Stipulated Temporary Injunction, which has been approved by all parties, is intended to resolve the issue of whether a temporary injunction should be issued by this Court following a May 6, 2020 evidentiary hearing on the State's application for injunctive relief.

12. The Court finds that this Stipulated Temporary Injunction should be entered.

IT IS THEREFORE ORDERED pursuant to Iowa R. Civ. P. 1.1501 *et seq.*, the CFA and the Iowa Price-Gouging Rule, that Defendant Michael Evan Noteboom, as well as the Defendant's employees, successors, principals, partners, affiliates, members, agents, servants, representatives, associates, corporations, companies, subsidiaries, assigns, parent or controlling entities, and all other persons, or entities acting in concert or participating with the Defendant who have actual or constructive knowledge of this Stipulated Temporary Injunction, are temporarily enjoined from:

- a. Selling or buying items or merchandise needed by victims of the Covid-19 pandemic, including, but not limited to masks, gloves, toilet paper, paper towels, wipes, disinfectants, sanitizers, water, food, medicines, medical supplies, sanitation supplies, utilities, building materials, and materials, goods, or services for cleanup or repair¹ on

- any online sales platform, including but not limited to eBay, Craigslist, Facebook, Amazon, eBid, Bonanza, Newegg, Your Online Store, eCrater and Etsy, with the sole exception that Defendant is allowed to buy any of the named items or merchandise identified above for personal household consumption only, which items shall not be resold in any form or manner or on any online or paper based buy/sell marketplace or platform;
- b. Selling, in any form or manner, from any site or location, any items or merchandise needed by victims of the Covid-19 pandemic, including, but not limited to masks, gloves, toilet paper, paper towels, wipes, disinfectants, sanitizers, water, food, medical supplies, medicines, sanitation supplies, utilities, building materials, and materials, goods, or services for cleanup or repair.
 - c. To the extent permissible under the Price Gouging Rule and the various newspaper, media, and internet buy/sell marketplaces or platforms, Defendant is permitted to buy and sell grain on the condition that in advance of using such any such newspaper, media or internet platforms or marketplaces to buy and sell grain, he provides advance notification, in writing, to the Attorney General's office of (1) each newspaper, media, platform or marketplace in or on which he intends to buy or sell grain; and (2) each seller or buyer name, seller Id or other identifier or name by or under which he intends to buy or sell grain.

IT IS FURTHER ORDERED that this Stipulated Temporary Injunction shall remain in effect for the duration of any COVID-19-related national and/or state emergency declarations as described in paragraphs 9 and 10 of the State's Petition and Application for Temporary Injunction and for a "subsequent recovery period" of six (6) months from the

date the emergency declarations are lifted, as contemplated by the Price-Gouging Rule, 61 IAC 31.1 (714).

IT IS FURTHER ORDERED that, in the event a COVID-19-related national and/or state emergency is declared after the expiration of this Stipulated Temporary Injunction as described in the preceding paragraph, but during the pendency of this action, the restrictions on Defendant's conduct described in this Stipulated Temporary Injunction shall be in effect for the duration of the additional COVID-19-related national or state emergency declaration and for a "subsequent recovery period" of six (6) months from the date the emergency declarations are lifted, as contemplated by the Price-Gouging Rule, 61 IAC 31.1 (714).

IT IS FURTHER ORDERED that the Defendant shall not participate, directly or indirectly, in any activity to use, form or proceed as a separate entity, trust or corporation for the purpose of engaging in, or benefitting from, acts from within any Iowa location or directed at Iowa consumers that are prohibited by this Order, or for any other purpose which circumvents any part of this Order.

IT IS FURTHER ORDERED that if Defendant violates the Court's temporary injunction during the time period in which it applies and the State, upon motion to the court proves said violation(s) by a preponderance of the evidence, this temporary injunction shall convert into a permanent injunction permanently banning Defendant from engaging in all activities which are the subject of this order.

IT IS FURTHER ORDERED that nothing contained in this Stipulated Temporary Injunction shall be construed to waive any individual right of action by a consumer or a local, state, federal or other governmental entity.

IT IS FURTHER ORDERED that nothing herein diminishes the requirements, duties,

obligations, or powers set forth in the CFA.

IT IS FURTHER ORDERED that, in addition to whatever other legal remedies may be available, a violation of this Stipulated Temporary Injunction constitutes a violation of the Consumer Fraud Act, Iowa Code § 714.16, and each such violation by the Defendant of this Temporary Injunction, if established by a preponderance of the evidence in an enforcement action by the Attorney General, gives rise to all of the remedies provided in the CFA.

IT IS FURTHER ORDERED that the Defendants pay court costs, if any, but not attorney fees. The State does not seek attorney fees or any penalty as part of this Stipulated Temporary Injunction, but reserves the right to pursue all remedies available pursuant to the Iowa Consumer Fraud Act in this action.

SO ORDERED.



State of Iowa Courts

Type: OTHER ORDER

Case Number EQCV028533
Case Title STATE OF IOWA EX REL. V. MICHAEL EVAN NOTEBOOM

So Ordered

A handwritten signature in black ink that reads "Patrick H. Tott". The signature is written in a cursive style and is positioned above a horizontal line.

Patrick H. Tott, District Court Judge,
Third Judicial District of Iowa