

STATE OF WISCONSIN,
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No.

Complex Forfeiture: 30109

EDWARD M. ZAPENCKI,
d/b/a Fun Treasure Maps,
3119 14th Avenue
Kenosha, WI 53140,

Defendant.

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d).

COMPLAINT

The State of Wisconsin, by its attorneys, J.B. Van Hollen, Attorney General, and John S. Greene, Assistant Attorney General, on behalf of the Wisconsin Department of Justice and the Department of Agriculture, Trade and Consumer Protection (DATCP), brings this action against the defendant, Edward M. Zapencki, and alleges as follows:

PARTIES

1. Plaintiff, the State of Wisconsin, is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin.

2. Defendant Edward M. Zapencki is an adult resident of the State of Wisconsin residing at 3119 14th Avenue, Kenosha, Wisconsin 53140. He does business as Fun Treasure Maps.

JURISDICTION AND VENUE

3. This action is brought pursuant to Wis. Stat. § 100.18(11)(d) and 100.20(6) to enforce and restrain violations of Wis. Stat. § 100.18(1) and a Special Order entered pursuant to Wis. Stat. § 100.20(3).

4. Venue is proper in Kenosha County because the defendant resides there.

FACTUAL ALLEGATIONS

5. Defendant Zapencki (Zapencki), operating under the name “Fun Treasure Maps,” engages in the business of selling advertising space on custom-drawn maps to small businesses in targeted Wisconsin communities.

6. Zapencki markets his advertising services through face-to-face solicitations at potential customers’ places of business.

7. During the solicitations, Zapencki commonly represents the approximate time required to deliver the finished map, obtains orders for advertisements on the promised map, and collects payment in advance.

8. Upon information and belief, the prices paid for advertisements on Fun Treasure Maps range from \$150 to hundreds of dollars.

9. Based upon complaints by Zapencki’s customers that Zapencki had failed to deliver maps as promised, DATCP issued a Special Order against Zapencki on

April 27, 2007, pursuant to its authority under Wis. Stat. § 100.20(3). A copy of the Special Order is attached as Exhibit 1.

10. The Special Order, to which Zapencki stipulated, requires Zapencki to provide to every purchaser—before entering a purchase agreement and accepting payment—a prescribed Purchase Notice that, among other things, states that the map will be delivered within 15 months of the date of purchase. Exhibit. 1, Attachment A.

11. The Special Order and the Purchase Notice also provide that unless the customer agrees to an extension of the delivery deadline, Zapencki must automatically refund the customer's payment in full within 30 days of the delivery deadline. Exhibit 1, Attachment A.

12. Upon information and belief, Zapencki has failed to provide the mandatory Purchase Notice to any of the hundreds of businesses which have purchased advertising on Fun Treasure Maps since the Special Order was entered.

13. Further, notwithstanding the 15 months allowed for delivery under the Special Order, in order to induce sales Zapencki has specifically promised some prospective purchasers that their map would be delivered in a much shorter timeframe.

14. For example, in January 2009, Zapencki represented to Jacqueline Rohner, the owner of Penny Pinchers in Walworth, Wisconsin, that her map would be delivered in the spring of 2009, despite knowing that it would be virtually impossible to comply with this promise. To date, Zapencki still has not delivered the promised map.

15. Upon information and belief, Zapencki similarly represented to other purchasers that maps would be delivered within a few months, when he knew such representations were false.

16. Upon information and belief, Zapencki has systematically failed to deliver the promised maps to his customers within either the timeframe he promised when soliciting the order, or within the 15-month period allowed under the Special Order.

17. In fact, Zapencki has admitted that—as of October 2010—he had not even yet distributed the 2008 maps, and the 2009 maps were still being drawn.

18. Zapencki has also systematically failed to provide automatic refunds as required under the Special Order.

19. For example, the following table reflects the number of months that have elapsed since businesses complaining to DATCP entered purchase agreements, without Zapencki either delivering the map or providing a refund:

Customer/Complainant	Month of Order	Months Since Order
James Collision Center Roscoe, IL	August 2007	41
Nature's Feed Spring Grove, IL	August 2008	29
Stop Heating & Cooling Salem, WI	August 2008	29
Local Folks Burlington, WI	September 2008	28
Penny Pinchers Walworth, WI	January 2009	24
Paper Trail Wausau, WI	August 2009	17

20. Two other complainants, Dr. Orvis Johnson, D.D.S., and River Haus Bait & Tackle, both of Fond du Lac, Wisconsin, did finally receive maps, but not until the spring of 2010—over 30 months after they placed their orders in August 2007.

21. DATCP has received at least 11 complaints about Zapencki's failure to provide maps and/or provide refunds, most of which also state that Zapencki refuses to return phone calls or communicate in any way with the advertisers.

VIOLATIONS OF LAW

22. The State incorporates by reference and realleges each allegation contained in paragraphs 1-21 of this complaint.

Count 1 (Violation of Special Order – Wis. Stat. § 100.20)

23. On numerous occasions, Zapencki has violated the Special Order entered in April 2007 by failing to provide to prospective purchasers the Purchase Notice required by the Order.

24. On numerous occasions, Zapencki has violated the Special Order by failing to provide automatic refunds to purchasers upon expiration of the prescribed delivery deadline, without obtaining the customer's consent to an extension of the deadline.

Count 2 (Misrepresentation – Wis. Stat. § 100.18(1))

25. On numerous occasions, for the purpose of inducing a sale, Zapencki falsely represented to prospective purchasers that the promised map would be delivered within a specific time frame, when he knew or had reason to know that this would not occur based upon the time it took to produce the maps and his backlog of map orders.

DEMAND FOR RELIEF

WHEREFORE, plaintiff, State of Wisconsin, demands relief against defendant Zapencki as follows:

1. Enjoining Zapencki, his representatives, employees or agents, pursuant to Wis. Stat. § 100.20(6), from conducting business operations in violation of the Special Order, and from misrepresenting anticipated delivery times of his products, pursuant to Wis. Stat. § 100.18(11)(d);

2. Ordering Zapencki to provide refunds to affected customers, pursuant to Wis. Stat. §§ 100.20(6) and 100.18(11)(d);

3. Imposing civil forfeitures of not less than \$100 nor more than \$10,000 for each violation of the Special Order, pursuant to Wis. Stat. § 100.26(6), and imposing forfeitures of not less than \$50 nor more than \$200 for each violation of Wis. Stat. § 100.18(1), pursuant to Wis. Stat. § 100.26(4), plus all applicable statutory assessments;

4. Awarding the Department of Justice and the Department of Agriculture, Trade and Consumer Protection the expenses of investigation and prosecution, including attorneys fees, relating to enforcement of defendant's violations, pursuant to Wis. Stat. § 100.263; and

5. Awarding such other and further relief as this Court deems just and proper.

Dated this _____ day of February, 2011.

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