

IN THE BROWN COUNTY CIRCUIT/SUPERIOR COURT

CAUSE NO. _____

STATE OF INDIANA,

Plaintiff,

v.

ABBEY MANAGEMENT INC.,

Defendant.

**COMPLAINT
FOR INJUNCTION, CIVIL
PENALTIES AND COSTS**

I. INTRODUCTION

1. The State of Indiana, by Attorney General Curtis T. Hill, Jr. and Deputy Attorneys General Mark M. Snodgrass and Amanda Jane Lee, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, civil penalties, costs, and other relief.
2. The Defendant, Abbey Management Inc., owns and operates a hotel, Abbey Inn & Suites. Abbey Inn & Suites maintained a written policy stating if a consumer made any negative statement, including in an online comment or review, regarding their stay at Abbey Inn & Suites, the Defendant would charge the consumer an additional \$350.00 and pursue legal action against the consumer. After a consumer's stay, a consumer would typically receive an email requesting the consumer leave an online review sharing information about their stay at Abbey Inn & Suites. In at least one instance, after receiving a request from the Defendant to leave an online review of their stay at Abbey Inn & Suites, a consumer posted online a negative review, and was

subsequently charged an additional \$350.00 by the Defendant and threatened with legal action. The Defendant's actions in maintaining and enforcing this policy are unfair, abusive, and deceptive, and constitute violations of Indiana's Deceptive Consumer Sales Act.

II. PARTIES

3. The Plaintiff, the State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief under Ind. Code § 24-5-0.5-4(c).
4. The Defendant, Abbey Management Inc., is an Indiana corporation engaged in business in the hotel industry renting rooms to consumers, and maintains a principal place of business in Brown County, located at 911 State Rd 46 W., Nashville, IN 47448. Abbey Management Inc. owns and operates Abbey Inn & Suites. At all relevant times, Andrew Szakaly owned Abbey Management Inc. and directed its affairs.

III. FACTS

5. Between at least September 2015 through November 2016, the Defendant maintained the following policy ("the Policy"):

Complaints regarding accommodations must be submitted in writing prior to checkout for consideration by the Manager. Guests agree that if guests find any problems with our accommodations, and fail to provide us the opportunity to address those problems while the guest is with us, and/or refuses our exclusive remedy, but then disparages us in any public manner, we will be entitled to charge their credit card an additional \$350 damage. Should the guest refuse to retract any such public statements legal action may be pursued.

6. The Policy was posted on the Defendant's website, Abbey-Inn.com located on page two of a seven page document.
7. The Policy was not physically posted in individual rooms, nor in common areas at Abbey Inn & Suites.
8. Consumers staying at Abbey Inn & Suites were not provided with a physical copy of the Policy.
9. Consumers were not forced to view the Policy on Abbey-Inn.com prior to registering for their room on the website.
10. Abbey Inn & Suites does not maintain full-time staff. It is not uncommon for a consumer to not encounter an employee during their stay at Abbey Inn & Suites. Packets with keys are often left for consumers checking in and there is a drop box for consumers checking out.
11. Abbey Inn & Suites maintains an overnight phone number for times when an employee is not available on-site to address consumer issues, but signs in each guest room state a consumer must not call overnight phone number unless there is an emergency. The signs further state if a consumer calls the overnight phone number and there was not an emergency, Abbey Inn & Suites will charge the consumer in the amount of \$100.00.
12. As there are often not employees available to resolve consumer issues, consumers may not be able to alert the Defendant of a potential issue encountered during their stay, as required by the Policy, and the Defendant

often may not be in a position to address or resolve problems during a consumer's stay.

13. The Policy also forces consumers to accept the Defendant's final and binding "exclusive remedy" to resolve any situation or issue, regardless of what that remedy entails and whether it actually resolves the situation or issue to the consumer's satisfaction.
14. In the modern hospitality industry, online reviews are often an important factor for consumers when selecting which hotel they will stay at.
15. The Defendant prominently features online customer reviews on Abbey-Inn.com as a sales tool and urges prospective consumers to read reviews posted by prior consumers who stayed at Abbey Inn & Suites.
16. After a consumer completes their stay at Abbey Inn & Suites, the consumer receives an email requesting the consumer leave their own online review of Abbey Inn & Suites. This email does not warn the consumer of the significant consequences potentially imposed by the Defendant if the consumer posts a disparaging or negative review.
17. The Policy not only attempted to limit negative online reviews, thus improperly shielding the Defendant from the consequences of providing consumers with a negative experience or unsatisfactory customer service during their stay, but would also prohibit a consumer from filing a consumer complaint with the Attorney General or Better Business Bureau, filing a

lawsuit, or even a police report, as all could be considered a “disparagement” in a “public manner.”

18. From March 12, 2016 through March 13, 2016, consumer Katrina Arthur was a guest at Abbey Inn & Suites.
19. Ms. Arthur never viewed the Policy on Abbey-Inn.com and was not provided a copy of the Policy at any time during her stay at Abbey Inn & Suites.
20. During her stay, Ms. Arthur, experienced issues with a sewage smell in her room, issues with water pressure, problems with the air conditioner, and an unkempt room.
21. Ms. Arthur attempted to notify Abbey Inn & Suites management of the issues, but there was no employee on site and her calls to the after-hours phone number went unanswered.
22. There was no employee at the front desk when Ms. Arthur checked out on March 13, 2016, to whom she could direct a complaint about the issues encountered during her stay.
23. After checking out, Ms. Arthur received an email sent by or at the behest of the Defendant, requesting Ms. Arthur leave an online review of her stay at Abbey Inn & Suites.
24. Ms. Arthur left an online review recounting the issues she encountered during her stay at Abbey Inn & Suites.
25. On April 2, 2016, Andrew Szakaly, owner of the Defendant, sent a letter to Ms. Arthur stating he is an attorney representing Abbey Inn & Suites. Mr.

Szakaly made no mention he also owned the business or was affiliated with it in any way other than legal representation.

26. In the April 2, 2016 letter, Mr. Szakaly alleged Ms. Arthur published “false statements” which “damaged that business” and that Abbey Inn & Suites had suffered “irreparable injury.” Mr. Szakaly demanded Ms. Arthur remove her online review within one week of receipt of the letter or a lawsuit would be filed against Ms. Arthur for libel.
27. On April 6, 2016, the Defendant charged Ms. Arthur’s credit card in the amount \$350.00 as a direct response to the negative statements she made about her stay at Abbey Inn & Suites in her online review.

IV. CAUSES OF ACTION

COUNT I:

VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

28. The State realleges Paragraphs 1 through 27 of this Complaint.
29. The transaction identified in Paragraph 18 is a “consumer transaction” as defined by Ind. Code § 24-5-0.5-2(1).
30. The Defendant is a “supplier” as defined by Ind. Code § 24-5-0.5-2(3).
31. The Defendant, through use and enforcement of the Policy, violated Ind. Code § 24-5-0.5-3(a) by committing unfair, abusive, and deceptive acts, omissions, and practices in connection with consumer transactions, as asserted in Paragraphs 5 through 27.
32. The Defendant, through its use and enforcement of the Policy, violated Ind. Code § 24-5-0.5-10(b) by committing an unconscionable act, as the Policy

contained terms that were oppressively one sided and harsh, and the terms of which unduly limited a person's remedies, as asserted in Paragraphs 5 through 27.

COUNT II:
KNOWING VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

- 33. The State realleges Paragraphs 1 through 32 of this Complaint.
- 34. The deceptive acts asserted in Paragraphs 31 through 32 were committed by the Defendant with knowledge of its unfair and deceptive acts.

COUNT III:
INCURABLE DECEPTIVE ACTS

- 35. The State realleges Paragraphs 1 through 34 of this Complaint.
- 36. The deceptive acts asserted in Paragraphs 31 through 32 are incurable deceptive acts and were committed by the Defendant as part of a scheme, artifice, or device with intent to defraud or mislead.

V. RELIEF

- 37. The State requests the Court enter judgment against the Defendant, Abbey Management Inc., for the relief described in Paragraphs 38 through 42 of this Complaint.
- 38. The State seeks a permanent injunction, under Ind. Code § 24-5-0.5-4(c)(1), enjoining Abbey Management Inc., and its agents, representatives, employees, successors, and assigns from:


- 38.1. committing an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction, in violation of Ind. Code § 24-5-0.5- 3(a);
 - 38.2. maintaining or utilizing any policy that contained terms that are oppressively one sided or harsh, or which the terms of such policy unduly limit a person's remedies, in violation of Ind. Code § 24-5-0.5-10(b);
 - 38.3. maintaining, utilizing, or enforcing any clause in its policies that prohibits a consumer from making non-defamatory negative statements or reviews regarding their stay at Abbey Management Inc., under the threat of financial penalty;
 - 38.4. initiating any future legal action, or threatening legal action, in the event a consumer makes a non-defamatory negative statement or review of their stay at Abbey Management Inc.
39. The State seeks costs, under Ind. Code § 24-5-0.5-4(c)(4), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action.
 40. The State seeks civil penalties, under Ind. Code § 24-5-0.5-4(g), on Count II of this Complaint, for the Defendant's knowing violations of Ind. Code § 24-5-0.5-3(a) and Ind. Code § 24-5-0.5-10, in the amount of five thousand dollars (\$5,000.00) per violation, payable to the State of Indiana.

41. The State seeks civil penalties, under Ind. Code § 24-5-0.5-8, on Count III of this Complaint, for the Defendant's incurable deceptive acts, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana.
42. The State seeks all other just and proper relief.

Respectfully submitted,

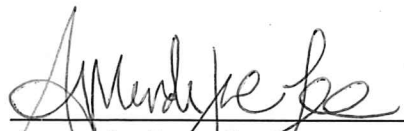
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