

DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	<p style="text-align: right; color: blue;">DATE FILED: June 12, 2013 9:58 AM</p> <p style="text-align: center;">⚠ COURT USE ONLY ⚠</p>
Plaintiff(s) ST OF COLO v. Defendant(s) FINEST DUCT CLEANING INC et al.	
Case Number: 2013CV32628 Division: 280 Courtroom:	
Temporary Restraining Order	

The motion/proposed order attached hereto: GRANTED.

Entered on June 12, 2013 at 9:58 a.m. This order will expire at midnight, July 12, 2013. A preliminary injunction hearing is set for 8:30 a.m. on July 12, 2013.

Issue Date: 6/12/2013



J ERIC ELLIFF
 District Court Judge

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202</p> <hr/> <p>Petitioners: STATE OF COLORADO <i>ex rel.</i> JOHN W SUTHERS, ATTORNEY GENERAL</p> <p>v.</p> <p>Respondents:</p> <p>THE FINEST AIR DUCT CLEANING, INC; AMERICA'S FINEST DUCT CLEANING, INC.; AMERICAN AIR DUCT CLEANING, INC.; and VACHAGAN GASPARYAN and KRISTINE PETROSYAN, Individually</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
	<p>Case No.:</p> <p>Div:</p>
<p>[PROPOSED ORDER] MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION</p>	

The Court, having reviewed the Complaint, Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction and the supporting Affidavits appended to the Motion, and being fully advised in the premises,

FINDS that a temporary restraining order should be entered for the following reasons:

1. This Court has jurisdiction in the matter presented herein by virtue of Colo. Rev. Stat. § 6-1-110(1) (2013) and Rule 65, C.R.C.P.

2. This Court is expressly authorized to issue a Temporary Restraining Order to enjoin ongoing violations of the Colorado Consumer Protection Act (“CCPA”) by Colo. Rev. Stat. § 6-1-110(1):

Whenever the attorney general or a district attorney has cause to believe that a person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or part 7 of this article, the attorney general or district attorney may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

Colo. Rev. Stat. § 6-1-110(1).

3. Under Rule 65(b), it clearly appears from specific facts shown by affidavit or by testimony that immediate and irreparable injury, loss, or damage will result before the adverse parties or their attorneys can be heard in opposition.

4. Plaintiffs have shown from specific facts by affidavit or by testimony that Defendants’ deceptive practices are injurious to the public and that continued violations, if not enjoined, will cause immediate and irreparable injury, loss or damage. *Baseline Farms Two, LLP v. Hennings*, 26 P.3d 1209, 1212 (Colo. App. 2001); *Lloyd A. Fry Roofing Co. v. State Dept. of Air Pollution*, 553 P.2d 200 (Colo. 1976); *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982). Immediate and irreparable injury to additional consumers will occur without a temporary restraining order because Defendants will continue to make false and misleading statements about their prices and the quality of their services, Defendants will continue to engage in other deceptive conduct such as falsely inducing consumers into spending money on unnecessary services, and Defendants will continue to do work that is incomplete and/or of unacceptably poor quality. As set forth in the Complaint and the affidavits accompanying Plaintiff’s Motion, many consumers have suffered financial loss and inconvenience as a result of Defendants’ deceptive business practices.

5. C.R.C.P. 65(b) allows the entry of a temporary restraining order without written or oral notice to Defendants if it clearly appears from the facts shown by affidavit that immediate and irreparable injury, loss or damage will result from giving said notice. In view of the continuing and serious harm to consumers as outlined in the affidavits and testimony submitted by Plaintiff, the entry of a temporary restraining order without notice to Defendants is necessary and appropriate.

6. Pursuant to C.R.C.P. Rule 65(c), Plaintiff is not required to provide a security bond.

IT IS HEREBY ORDERED PURSUANT TO C.R.S. § 6-1-110(1) AS FOLLOWS:

Defendants and their officers, directors, agents, servants, employees, independent contractors and any other persons in active concert or participation with Defendants who receive actual notice of the Court's order are enjoined from:

- a. Representing or implying that Defendants will complete a residential air duct cleaning for a certain price, unless such price is equal to or greater than the average price Defendants charged for air duct cleanings in the six months immediately preceding the advertisement;
- b. Advertising an air duct cleaning "package" consisting of specific services, unless Defendants' records for the six months immediately preceding the advertisement reflect that a majority of Defendants' air duct cleaning customers received only the services listed in the advertisement and no additional air duct cleaning services;
- c. Representing or implying that Defendants are offering a price reduction, unless such price reduction is a reduction from a verifiable original price that Defendants have routinely charged in the past;
- d. Making any false or misleading statement relating to the prices of Defendants' services;
- e. Representing or implying that Defendants' technicians are certified or licensed, unless all of Defendants' technicians are certified or licensed by a third party authorized by law or an industry-recognized entity to issue such certification or license;

- f. Making false or misleading representations about the quality or characteristics of Defendants' equipment, including their service vehicles and duct cleaning tools and devices;
- g. Making false or misleading representations about the quality or characteristics of Defendants' services or false or misleading representations about the specific services included in any air duct cleaning "package";
- h. Making false or misleading statements about Defendants' experience in the air duct cleaning or Heating, Ventilation, and Air Conditioning ("HVAC") industry, including but not limited to advertising that Defendants have a number of years of experience that exceeds the years of experience held by Defendants;
- i. Making, quoting, or referring to any claim about health effects of dust, debris, or contaminants in ductwork, unless Defendants have verified that such claims have a valid scientific basis; and
- j. Representing that any particular consumer's home contains mold, microbes, bacteria, or other health-endangering contaminants, unless such representation is supported by a scientifically valid test for identifying such contaminants.

3.3 This Court orders Defendants, and any other person under their control or at their direction who receives actual notice of this Order to:

- a. For a period of six (6) months after entry of this Order, clearly and conspicuously disclose, in all Websites controlled by any Defendant, that Defendants' technicians are not HVAC certified (unless all of Defendants' technicians are certified by a third party authorized by law or recognized by the industry to issue such certification);
- b. For each and every residential air duct cleaning job, meet the industry standards set by the National Air Duct Cleaning Association ("NADCA") and specifically described in the most recent publication of "The NADCA Standard." A copy of "The NADCA Standard" for 2013 is attached hereto as **Exhibit A**. Compliance with this paragraph includes, but is not limited to, meeting each and all of The NADCA Standard's requirements for equipment, tools, procedures, services, and protocols.

ENTERED this ____ day of _____, 2013, at ____ o'clock.

In accordance with Rule 65(b) of the Colorado Rules of Civil Procedure, this Order expires by its terms within such time after entry not to exceed fourteen calendar days, as the Court fixes, unless within the time so fixed, the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period.

Subject to the foregoing and unless otherwise directed by the Court, this Order shall expire on _____, 2013 at ____ o'clock.

BY THE COURT:

District Court Judge