

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CA. NO.

NATHAN DYE, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

SCOTT ENERGY COMPANY, INC.,

Defendant.

**PLAINTIFF’S CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiff, Nathan Dye (“Plaintiff” or “Dye”) hereby brings this action on behalf of himself, and all others similarly situated, against Scott Energy Company, Inc. (“Scott” or “Defendant”) for various violations of laws and regulations.

Dye claims that Defendant represented, marketed, and advertised that it sells BioHeat® Plus to its customers, when in fact it supplies regular heating fuel. Dye contends that this scheme has been undertaken in an unfair and deceptive manner, and that such practices violate M.G.L. c. 93A, § 2.

As a result of Defendant’s representation, marketing and advertising practices detailed herein, Dye asserts that reasonable consumers were caused to pay a price premium and/or act differently from the way they otherwise would have acted in relation to purchasing the misrepresented home heating fuel product.

PARTIES

1. Nathan Dye is a resident and citizen of Marblehead, Massachusetts.

2. Defendant, Scott, is a domestic corporation with its principal place of business located at 43 Gloucester Avenue, Gloucester, Massachusetts.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over Scott by virtue of its formation, and operation in the Commonwealth at all times relevant hereto.
4. This Court has jurisdiction over the claims contained herein as they relate to Plaintiff and the putative class because the claims for damages to Plaintiff and all putative class members exceed fifty thousand dollars (\$50,000.00).
5. Venue in this matter is proper as Plaintiff resides in Essex County, as well as Scott's principle place of business being located in Essex County.

FACTUAL ALLEGATIONS

6. Scott is a Massachusetts corporation that advertises that it sells: (a) BioHeat® Plus; (b) Propane; and (c) Diesel.
7. At all times relevant hereto, Scott advertised that it sold "Cleaner Better Fuel".
8. At all times relevant hereto, Scott advertised that it sold BioHeat® Plus.
9. Scott encourages consumers to "[m]ake the switch to Scott Energy's BioHeat® Plus for your home."
10. Scott advertises that "BioHeat® Plus is made from a combination of renewable biodiesel and ultra-low sulfur heating oil."
11. Scott advertises that "[b]y using BioHeat®, you have the satisfaction of knowing your home is kept warm with a fuel that is friendly to the environment, promotes better air quality and produces fewer harmful emissions."
12. Scott advertises that "Scott Energy's BioHeat® Plus blend is *locally* sourced from waste products such as used cooking oil, plants, and other renewable resources."

13. Scott advertises that “not only is BioHeat better for the environment, but it’s better for your existing heating equipment as well. BioHeat® burns cleaner, so your equipment runs with fewer breakdowns and has an extended lifespan.”
14. Scott’s website does not indicate that it sells/sold home heating fuel other than BioHeat® Plus.
15. Scott did not supply Dye with BioHeat® Plus fuel.
16. Scott did not supply other similarly situated consumers with BioHeat® Plus.
17. The heating fuel Scott provided Dye and Class Members was not better for your home than regular heating fuel.
18. The heating fuel Scott provided Dye and Class Members was not made from a combination of renewable biodiesel and ultra-low sulfur heating fuel.
19. The heating fuel Scott provided Dye and Class Members was not friendly to the environment, did not promote better air quality, and did not produce fewer harmful emissions.
20. The heating fuel Scott provided Dye and Class Members was not *locally* sourced from waste products such as used cooking fuel, plants, and other renewable resources.
21. The heating fuel Scott provided Dye and Class Members was not better for the environment.
22. The heating fuel Scott provided Dye and Class Members was not better for their existing heating equipment.
23. The heating fuel Scott provided Dye and Class Members did not burn cleaner.
24. The heating fuel Scott provided Dye and Class Members did not help equipment run with fewer breakdowns.
25. The heating fuel Scott provided Dye and Class Members did not extend the lifespan of their heating equipment.

26. On April 12, 2024, Dye sent a M.G.L. c. 93A, § 9(3) Consumer Demand to Scott addressing the allegations raised by this complaint.
27. The Consumer Demand letter was sent certified mail & regular US mail.
28. Scott received Dye's Consumer Demand letter on April 22, 2024.
29. Scott did not timely respond to Dye's class-wide demand.
30. Scott did not provide a written response to the Consumer Demand letter.
31. Scott's lack of response to Dye's demand was unreasonable.

WHEREFORE, Dye seeks actual and punitive damages, on behalf of himself and other similarly situated consumers, including but not limited to, any and all amounts paid for home heating fuel that was advertised as BioHeat® Plus, when in fact it was standard heating fuel. Dye also seeks to enjoin Scott from the acts and/or omissions complained of herein.

CLASS ALLEGATIONS

32. Plaintiff repeats and re-alleges the allegations set forth above.
33. Plaintiff, on behalf of himself and similarly situated consumers, brings this action as a class action in accordance with Massachusetts Rule of Civil Procedure 23 and M.G.L. c. 93A.
34. The Class Dye seeks to represent shall be defined as:

All Massachusetts Consumers who purchased what was advertised as Scott Energy Company, Inc.'s BioHeat® Plus during the Class Period.
35. The members of the Classes are so numerous that joinder of all members would be impracticable. Upon information and belief, the Class is comprised of hundreds of consumers who purchased a product advertised as BioHeat® Plus.
36. Dye's claims are typical of the claims of other members of the Class, as all members of the Class have been similarly affected by Scott's acts and practices as described herein.

37. Dye will fairly and adequately protect the interests of the Class and is represented by counsel experienced in complex class action litigation.
38. Common questions of law and fact exist and predominate over any questions of law or fact which may affect only individual members of the Class. Common questions of law and fact include:
- A. Whether Scott falsely, deceptively and/or misleadingly misrepresented that it sold BioHeat® Plus to its home heating fuel customers;
 - B. Whether the home heating fuel Scott provided customers met the promises Scott made in its advertising materials;
 - C. Whether the acts and omissions of Scott set forth herein are/were likely to mislead a reasonable consumer;
 - D. Whether Dye and members of the Class were damaged by paying for a product that was not supplied and did not provide the benefits promised;
 - E. Whether Dye and members of the Class were damaged based upon Scott's acts and omissions as set forth herein;
 - F. Whether Dye and members of the Class are entitled to damages;
 - G. Whether the acts and practices of Scott's described herein constitute misrepresentation.
 - H. Whether the Scott violated Massachusetts state laws and regulations;
 - I. Whether the Scott violated M.G.L. c. 93A, § 2;
 - J. Whether the acts and omissions of Scott described herein were committed willfully, knowingly and/or in bad faith;
 - K. Whether Dye and the Class are entitled to compensatory damages, including but not limited to, statutory and/or actual damages (with interest thereon) and/or restitution;

- L. Whether Scott should be required to reimburse and/or disgorge any profits gained as a result of the acts and omissions described herein;
 - M. The applicable statute of limitations to be determined on any or all of the successful causes of action; and
 - N. Whether Scott should be permanently enjoined from continuing the practice which is the subject matter of this civil action.
39. A class action will cause an orderly and expeditious administration of the claims of Dye and the Classes.
40. A class action is the superior method for the adjudication of these claims as it will foster economies of time, effort, and expense to ensure uniformity of decisions, presenting the most efficient manner of adjudicating the claims set forth herein.

COUNT I
BREACH OF CONTRACT
(Dye and the Class v. Scott)

41. Dye repeats and re-alleges the allegations set forth above.
42. Dye entered into a contract whereby Scott promised to provide BioHeat® Plus heating fuel in exchange for a fee.
43. Class Members entered into contracts whereby Scott promised to provide BioHeat® Plus heating fuel in exchange for a fee.
44. Dye and Class Members paid their respective fees for BioHeat® Plus.
45. Dye and Class Members performed under the terms of their respective contracts.
46. The heating fuel that Scott provided to Dye was not BioHeat® Plus.
47. The heating fuel that Scott provided to Class Members was not BioHeat® Plus.
48. Scott breached its contract with Dye by not supplying BioHeat® Plus.

49. Scott breached its contract with Class Members by not supplying BioHeat® Plus.
50. As a direct and proximate cause of Scott's breach of contract, Dye and Class Members have been harmed.
51. As a direct and proximate cause of Scott's breach of contract, Dye and Class Members have suffered damages.
52. As a direct and proximate cause of Scott's breach of contract, Dye and Class Members were not provided the BioHeat® Plus promised.
53. As a direct and proximate cause of Scott's breach of contract, Dye and Class Members were harmed when they paid for a product that was not provided.

WHEREFORE, Dye respectfully requests that this Court enter judgment against Scott for its breach(es) of contract and award damages to adequately compensate Dye and members of the Class; and further, that the Court order Scott to cease and desist the practices complained of herein, and that the Court award damages, court costs, and attorneys' fees.

COUNT II
INTENTIONAL MISREPRESENTATION
(Dye and the Class v. Scott)

54. Dye repeats and re-alleges the allegations set forth above.
55. Dye was a home heating fuel customer of Scott.
56. Scott advertised that it sold BioHeat® Plus to its home heating customers.
57. Dye purchased what he believed to be BioHeat® Plus fuel from Scott.
58. Members of the Class purchased what they believed to be BioHeat® Plus fuel from Scott.
59. Dye purchased what Scott advertised as BioHeat® Plus fuel.
60. Other consumers purchased what Scott advertised as BioHeat® Plus fuel.

61. In connection with advertising and marketing of BioHeat® Plus, Scott made a material, knowing, and/or willful misrepresentation(s) that BioHeat® Plus was a cleaner, better fuel.
62. In connection with advertising and marketing of BioHeat® Plus, Scott made a material, knowing, and/or willful misrepresentation(s) that “BioHeat® Plus is made from a combination of renewable biodiesel and ultra-low sulfur heating oil.”
63. In connection with advertising and marketing of BioHeat® Plus, Scott made a material, knowing, and/or willful misrepresentation(s) that “[b]y using BioHeat®, you have the satisfaction of knowing your home is kept warm with a fuel that is friendly to the environment, promotes better air quality and produces fewer harmful emissions.”
64. In connection with advertising and marketing of BioHeat® Plus, Scott made a material, knowing, and/or willful misrepresentation(s) that Scott Energy’s BioHeat® Plus blend was *locally* sourced from waste products such as used cooking oil, plants, and other renewable resources.
65. In connection with advertising and marketing of BioHeat® Plus, Scott made a material, knowing, and/or willful misrepresentation(s) that “not only is BioHeat better for the environment, but it’s better for your existing heating equipment as well. BioHeat® burns cleaner, so your equipment runs with fewer breakdowns and has an extended lifespan.”
66. Scott knew that it was not supplying Dye BioHeat® Plus heating fuel.
67. Scott knew that it was not supplying other consumers/customers BioHeat® Plus heating fuel.
68. Scott’s misrepresentations listed above constitute false statements of material fact.
69. Dye relied upon Defendant’s misrepresentation(s).
70. Members of the Class relied upon Defendant’s misrepresentation(s).
71. The misrepresentation(s) caused Dye to purchase what Scott advertised as BioHeat® Plus.

72. The misrepresentation(s) caused Class Members to purchase what Scott advertised as BioHeat® Plus.
73. Scott's misrepresentations(s) caused Dye to purchase what he was told was BioHeat® Plus rather than buy another product.
74. Scott's misrepresentations(s) caused Class Members to purchase what they were told was BioHeat® Plus rather than buy another product.
75. In connection with advertising and marketing of BioHeat® Plus to Dye and the Class, Scott made material, knowing, and/or willful misrepresentation(s) as set forth above.
76. Scott knew that it was not selling BioHeat® Plus to Dye and members of the Class.
77. Scott's misrepresentations described above constitute false statements of material fact.
78. Dye and Class Members relied upon Scott's misrepresentations.
79. Scott's misrepresentations caused Dye and Class Members to purchase what was advertised as BioHeat® Plus.
80. Scott's misrepresentations(s) caused Dye and Class Members to act differently and/or buy what they believed to be BioHeat® Plus rather than another product.
81. Dye and members of the Class have suffered damages as a result of Scott's misrepresentations including, but not limited to, financial detriment.
82. Dye and members of the Class have suffered damages as a result of Scott's misrepresentations including, but not limited to, payment for a product that was not supplied and did not provide the benefits promised.
83. Dye and members of the Class have suffered damages as a result of Scott's misrepresentations including, but not limited to, paying a price premium for a product that was not supplied and did not provide the benefits promised.

WHEREFORE, Dye respectfully requests that this Court enter judgment against Scott for its misrepresentation(s) and award damages to adequately compensate Dye and members of the Class; and further, that the Court order Scott to cease and desist the practices complained of herein, and that the Court award damages, court costs and attorneys' fees.

COUNT III
VIOLATIONS OF M.G.L. c. 93A, § 2
(Dye and the Class v. Scott)

84. Dye and the Class repeat and re-allege the allegations set forth above.
85. Dye asserts that the acts and practices of Defendant as described herein constitute violations of M.G.L. c. 93A, § 2.
86. Dye asserts that the acts and practices of Defendant as described herein were committed willfully, knowingly, and/or in bad faith.
87. Scott's advertising and marketing of BioHeat® Plus to Dye and members of the Class was made with material, knowing, and/or willful misrepresentations that BioHeat® Plus was being provided to the customer.
88. Scott's advertising and marketing of BioHeat® Plus to Dye and members of the Class was made with material, knowing, and/or willful misrepresentations that the fuel being sold to Dye and Class Members was not a "Cleaner Better Fuel".
89. Scott's advertising and marketing of BioHeat® Plus to Dye and members of the Class was made with material, knowing, and/or willful misrepresentations that the fuel being sold to Dye and Class Members was not made from a combination of renewable biodiesel and ultra-low sulfur heating fuel.
90. Scott's advertising and marketing of BioHeat® Plus to Dye and members of the Class was made with material, knowing, and/or willful misrepresentations that the fuel being sold to Dye

and Class Members was not friendly to the environment, that did not promote better air quality, and did not produce fewer harmful emissions.

91. Scott's advertising and marketing of BioHeat® Plus to Dye and members of the Class was made with material, knowing, and/or willful misrepresentations that the fuel being sold to Dye and Class Members was not locally sourced from waste products such as used cooking oil, plants, and other renewable resources.
92. Scott's advertising and marketing of BioHeat® Plus to Dye and members of the Class was made with material, knowing, and/or willful misrepresentations that the fuel being sold to Dye and Class Members was not better for the environment.
93. Scott's advertising and marketing of BioHeat® Plus to Dye and members of the Class was made with material, knowing, and/or willful misrepresentations that the fuel being sold to Dye and Class Members was not better for your existing heating equipment.
94. Scott's advertising and marketing of BioHeat® Plus to Dye and members of the Class was made with material, knowing, and/or willful misrepresentations that the fuel being sold to Dye and Class Members did not burn cleaner, so that equipment runs with fewer breakdowns and has an extended lifespan.
95. Dye and members of the Class purchased what was advertised as BioHeat® Plus under the conditions described herein.
96. Dye and members of the Class purchased what they were told was BioHeat® Plus under the conditions described herein.
97. Scott's acts and practices described herein have caused Dye and the Class to suffer damages, including but not limited to the following:
 - A. Financial detriment;

- B. Paying for, but not receiving, a product with the advertised benefits;
- C. Paying a premium price for a product that did not provide the benefits promised;
- D. The purchase price of the product which was advertised and marketed in the manner set forth herein; and
- E. Scott's unjust receipt and retention of all monies collected in connection with the purchase of what was advertised as BioHeat® Plus in the manner detailed herein.

WHEREFORE, Dye respectfully requests that this Court enter judgment against Scott for its violations of M.G.L. c. 93A, § 2 and award damages to adequately compensate Dye and the Class. Dye and the Class also respectfully request that this Court declare that the acts and practices of Scott described herein were committed willfully, knowingly, and/or in bad faith in violation of M.G.L. c. 93A, § 2, and that in accordance with M.G.L. c. 93A, the Court treble the amount of the Judgment and add thereto court costs and attorneys' fees.

COUNT IV
VIOLATION OF M.G.L. c. 93A, § 2
For Violations of 940 CMR 3.02
(Dye and the Class v. Scott)

- 98. Dye and the Class repeat and re-allege the allegations set forth above and assert that the acts and practices of Scott as described herein constitute violations of 940 CMR 3.02 and M.G.L. c. 93A, § 2.
- 99. 940 CMR 3.02 sets forth the acts and/or practices that constitute false advertising in the Commonwealth.
- 100. A violation of 940 CMR 3.02 constitutes a violation of M.G.L. c. 93A, § 2.
- 101. 940 CMR 3.02(2) states in pertinent part:

No statement or illustration shall be used in any advertisement which creates a false impression of the *grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered*, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.

Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception.

940 CMR 3.02(2)(*emphasis added*).

102. Scott's advertising and marketing detailed herein creates a false impression of the grade and quality of the BioHeat® Plus fuel offered.

103. Scott's advertising and marketing detailed herein creates a false impression of the make and quality of the BioHeat® Plus fuel offered.

104. Scott's advertising and marketing detailed herein creates a false impression of the origin and ingredients of the BioHeat® Plus fuel offered.

105. Scott's advertising and marketing practices detailed herein misrepresent the heating fuel provided to Dye and Class Members.

106. Scott's advertising and marketing detailed herein misrepresents the heating fuel it supplies in such a manner that later, on disclosure of the true facts, there is a likelihood that a buyer may be switched from the advertised product to another.

107. A consumers' first contact with Scott's energy, in the manner detailed herein, creates a false impression of the grade, make, and quality of the heating fuel being offered.

108. A consumers' first contact with Scott's energy, in the manner detailed herein, creates a false impression of the origin of the heating fuel being offered.

109. A consumers' first contact with Scott energy, in the manner detailed herein, misrepresents the heating fuel sold in such a manner that later, on disclosure of the true facts, there is a likelihood that a buyer may be switched from the advertised product to another.

110. Dye's and Class Member's first contact with Scott created/creates a false impression of the origin, grade, make, and quality of the heating fuel being offered.

111. Scott's advertising and marketing practices detailed herein created a false impression of the origin, grade, and quality of the heating fuel purchased by Dye and Members of the Class.

112. Scott's advertising and marketing practices detailed herein constitute violations of 940 CMR 3.02(2).

113. Scott's violations of 940 CMR 3.02, set forth herein, constitute violations of M.G.L. c. 93A, § 2.

114. Scott's advertising and marketing practices as detailed herein were made with a material, knowing, and/or willful misrepresentation(s).

115. Dye and Members of the Class purchased what was advertised as BioHeat® Plus under the conditions described herein.

116. Scott's acts and practices described herein have caused Dye and the Class to suffer damages, including but not limited to the following:

- A. Financial detriment;
- B. Paying for, but not receiving, a product with the advertised benefits;
- C. Paying a premium price for a product that did not provide the benefits promised;
- D. The purchase price of the product which was advertised and marketed in the manner set forth herein; and
- E. Scott's unjust receipt and retention of all monies collected in connection with the purchase of what was advertised as BioHeat® Plus in the manner detailed herein.

WHEREFORE, Dye respectfully requests that this Court enter judgment against Scott for its violations of 940 CMR 3.02 and M.G.L. c. 93A, § 2 and award damages to adequately compensate Dye and the Class. Dye and the Class also respectfully request that this Court declare that the acts and practices of Scott described herein were committed willfully, knowingly and/or in bad faith in violation of M.G.L. c. 93A, § 2, and that in accordance with M.G.L. c. 93A, the Court treble the amount of the Judgment and add thereto court costs and attorneys' fees.

PRAYERS FOR RELIEF

WHEREFORE, Dye, on behalf of himself and all others similarly situated, demands judgment against Scott as follows:

- A. An order determining that this action is a proper class action and certifying Dye as representative of the putative Class;
- B. An order appointing Dye's counsel as competent legal representatives of the putative Class in this action;
- C. An order determining that the heating fuel Scott provided Dye and Class Members was falsely, deceptively, intentionally, and/or misleadingly misrepresented;
- D. An order determining the acts and omissions of Scott set forth herein misled reasonable consumers;
- E. An order determining that Dye and members of the Class were damaged by paying a premium price based upon Scott's acts and omissions as set forth herein;
- F. An order determining that Dye and members of the Class were damaged by paying for a product that did not provide the benefits promised based upon Scott's acts and omissions as set forth herein;

- G. An order determining that Dye and members of the Class were damaged based upon Scott's acts and omissions as set forth herein;
- H. An order determining that the acts and practices of Scott described herein constitute intentional misrepresentation;
- I. An order determining the Scott violated Massachusetts state laws and regulations;
- J. An order determining the Scott violated M.G.L. c. 93A, § 2;
- K. An order determining the acts and omissions of Scott described herein were committed willfully, knowingly, and/or in bad faith;
- L. An order determining Dye and members of the Class are entitled to compensatory damages, including statutory and/or actual damages (with interest thereon) and/or restitution;
- M. An order determining Scott should be required to reimburse and/or disgorge any profits gained as a result of the acts and omissions described herein;
- N. The applicable statute of limitations to be determined on any or all of the successful causes of action;
- O. Whether Scott should be permanently enjoined from continuing the practice which is the subject matter of this civil action;
- P. An order awarding Dye and members of the Class any further relief as may be just and appropriate.

DEMAND FOR JURY TRIAL
JURY DEMAND

Dye, on behalf of himself and all other similarly situated individuals hereby demands trial by jury on all counts of this Complaint, which are triable by a jury.

Respectfully submitted,
Plaintiff, by his attorney,

DATED: 6/24/2024

/s/ Kevin J. McCullough

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