

IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO:

SMALL CLAIMS DIVISION

SCOTT D. OWENS, individually,

Plaintiff,

vs.

LUXOTTICA OF AMERICA, an Ohio Corporation,
(d/b/a “LensCrafters”),

Defendant.

COMPLAINT

1. Plaintiff, SCOTT D. OWENS, alleges violations of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 *et seq.* (“FDUTPA”), breach of an express warranty, and a common law claim for unjust enrichment. In sum, Defendant provided Plaintiff with incorrect prescription lenses and then failed to honor its promise of, and Plaintiff’s reasonable request for, a full refund. *See Wright v. Emory*, 41 So. 3d 290, 292–93 (Fla. 4th DCA 2010) (holding a refusal to honor promise to issue refund can constitute a deceptive or unfair act under the FDUTPA).

JURISDICTION AND VENUE

2. This Court has jurisdiction as the amount in controversy is less than \$8,000.00 dollars exclusive of costs, interest, and attorney's fees. Venue in this Circuit is proper because Defendant conducted the business services at issue in this County.

PARTIES

3. Plaintiff, SCOTT D. OWENS (hereinafter, "Plaintiff"), is a natural person, and citizen of the State of Florida, residing in Palm Beach, Florida.

4. Defendant, LUXOTTICA OF AMERICA, INC. (hereinafter, "Defendant"), is an Ohio Corporation, doing business under the trade name "LensCrafters" and whose registered agent in the State of Florida is NRAI Services, 1200 South Pine Island Road, Plantation, Florida 33324.

5. Defendant is an international retailer of prescription lenses, eyewear, and related accessories.

FACTUAL ALLEGATIONS

6. On or about October 1, 2024, Plaintiff went to Defendant's place of business located at Town Center Mall in Boca Raton, Florida.

7. Plaintiff provided Defendant with his current prescription (-8.5 for both left and right eyes) from a Florida-licensed optometrist along with a new pair of eyeglasses frames, to wit: Cutler & Gross Model No. 1386.

8. At this time, Plaintiff paid Defendant \$480.31 dollars for a pair of progressive, high-index (1.74), prescription lenses to be fitted into his eyeglass frames.

9. Defendant could not provide a date certain when said prescription would be completed; hence, Plaintiff waited for a communication from Defendant to notify him of same.

10. During an approximate three-week period, Plaintiff did not receive any communication from Defendant.

11. After three weeks, Plaintiff returned to Defendant's place of business and was informed the eyeglasses were ready and had been there for some unknown period of time.

12. Plaintiff tried on the eyeglasses but was unsure of the quality of his vision and expressed same to Defendant's sales associate.

13. The sales associate informed him that he had "thirty days from today" to try them out and request a full refund if not fully satisfied.

14. After approximately three weeks from the date Plaintiff retrieved his prescription, Plaintiff determined he still could not see well and returned to Defendant's place of business.

15. At this time, Defendant's sales associate made various adjustments to the eyeglass frame and asked Plaintiff to try them on again.

16. Plaintiff said there was some degree of improvement and then inquired whether he would need to make the determination of whether the prescription was acceptable at this time.

17. Defendant's sales associate responded that Plaintiff would be allowed another thirty days to make a determination and request a full refund.

18. After approximately three weeks, Plaintiff returned to Defendant's place of business and requested a full refund because the quality of his vision was not acceptable.

19. A store manager named Yessica Zuniga refused to refund Plaintiff's money and explained the following to Plaintiff: (1) the thirty-day period for a full refund ran from the date of purchase; and (2) the reason for Plaintiff's poor quality of vision was due to Plaintiff's choice in eyeglasses frame, which resulted in visual distortion.

20. Plaintiff related that he was informed by the previous sales associate that he was granted two extensions for a return of the lenses from said previous sales associate and silently questioned the explanation regarding the visual distortion given that he has purchased the identical model Cutler & Gross frames over the years and never experienced any such issue.

21. At that time, Ms. Zuniga informed Plaintiff that that she would check with the other sales associate regarding any such representation regarding an extension and asked Plaintiff to return a few days later.

22. Suspicious of Defendant's explanation regarding the distortion, on December 8, 2024, Plaintiff went to another optometrist (MyEyeDr located on Yamato Road) to have his lens prescriptions professionally measured with a Huvitz Lensmeter.

23. The measurements taken on that day revealed that the lenses provided by Defendant did not match his actual prescription. More specifically, the left lens was -8.00 and the right lens was -8.25.

24. Within a week, Plaintiff returned to Defendant's place of business where he was informed by the sales associate or manager that no one recalled extending Plaintiff's thirty-day full refund period.

25. Plaintiff responded that this statement was false and it should not matter anyway because he had the prescription measured at another facility and it turns out that he was never provided with the proper prescription in the first place.

26. Defendant's employee never sought to measure his prescription lenses, which were on Plaintiff's person, and instead offered an exchange for single vision lenses.

27. Moreover, Defendant, through its employee, refused to provide Plaintiff with a full refund.

28. After this conversation, Plaintiff had the identical prescription filled by MyEyeDr (also a Cutler & Gross Model No. 1386 eyeglasses frame) and they are in Plaintiff's opinion "working just perfectly" and he has no visual issues whatsoever.

COUNT I
VIOLATIONS OF FLORIDA'S DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT

29. Plaintiff re-alleges Paragraphs 1 – 28.

30. In accordance with Fla. Stat. §§ 501.201 *et seq.*, Plaintiff seeks to recover damages from Defendant for deceptive, unfair, and unconscionable business practices in violation of Fla. Stat. § 501.204, which include the following acts on part of Defendant: (1) providing Plaintiff with the incorrect prescription lenses; and (2) not honoring Defendant's verbal commitments with regard to obtaining a full refund, and; (3) providing Plaintiff with the incorrect prescription lenses and refusing to provide a refund for same.

31. Defendant, by or through its actions (or those of its employee or agent) as detailed above, caused Plaintiff to sustain damages.

32. FDUTPA provides for actual damages, attorney's fees, and costs of litigation. *See generally*, Fla. Stat. § 501.211(2).

WHEREFORE, Plaintiff, SCOTT D. OWENS, requests that the Court enter a judgment in his favor for:

- a. Actual Damages in the amount of \$480.31;
- b. Attorney's fees, litigation expenses and costs of the instant suit;
and
- c. Such other or further relief as the Court deems proper.

COUNT II
BREACH OF EXPRESS WARRANTY

33. Plaintiff re-alleges Paragraphs 1 – 28.

34. Defendant sold the prescription lenses to Plaintiff as set forth above and subject to the express warranty that they would meet the specific requirements and characteristics of his prescription.

35. Defendant breached that warranty by selling Plaintiff prescription lenses that did not match his prescription and thus were not in conformity with Defendant's express warranty.

36. Plaintiff provided notice to Defendant that it breached its express warranty by providing prescription lenses that did not meet the specific requirements and characteristics of his prescription and thus were not in conformity with Defendant's express warranty.

37. Plaintiff has sustained damages as a result of Defendant's breach of its express warranty, including damages resulting from the money paid to Defendant

for the non-confirming goods, costs of obtaining the goods from a different merchant, time spent determining the goods sold by Defendant were not in conformity with its express warranty, and attempting to obtain from Defendant the refund Plaintiff was promised and owed.

WHEREFORE, Plaintiff, SCOTT D. OWENS, requests that the Court enter a judgment in his favor for:

- a. Actual Damages in the amount of \$480.31;
- b. Attorney's fees¹, litigation expenses and costs of the instant suit; and
- c. Such other or further relief as the Court deems proper.

COUNT III
UNJUST ENRICHMENT

38. Plaintiff alleges Count III in the alternative to Counts I and II.

39. Plaintiff re-alleges Paragraphs 1 – 28.

40. Plaintiff has conferred a monetary benefit upon Defendant.

41. Defendant has knowledge of the aforesaid benefit.

42. Defendant has voluntarily accepted or retained the benefit conferred.

43. The circumstances are such that it would be inequitable for Defendant

to retain the monetary benefit.

¹ Plaintiff incorporates by reference any written agreement permitting for the recovery of attorney or legal fees.

WHEREFORE, Plaintiff, SCOTT D. OWENS, requests that the Court enter a judgment in his favor for:

- a. Actual Damages in the amount of \$480.31;
- b. Litigation expenses and costs of the instant suit; and
- c. Such other or further relief as the Court deems proper.

Dated: February 20, 2025

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