

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

IN THE MATTER OF:
A-PLUS DRIVING SCHOOL
and PETER SCHMIRLER,

Respondents.

Docket No. 10-C-04

COMPLAINT

Pursuant to Wis. Stat. § 100.20(4), the Wisconsin Department of Justice, by J.B. Van Hollen, Attorney General, and Kevin Potter and Gwendolyn J. Cooley, Assistant Attorneys General, hereby petitions for a special order, issued under Wis. Stat. § 100.20(3), enjoining the respondents A-Plus Driving School and Peter Schmirler (collectively, "A-Plus"), from engaging in unfair trade practices, as prohibited by Wis. Stat. § 100.20(1). The basis for the complaint is as follows:

JURISDICTION

1. Respondent A-Plus Driving School is a Domestic Limited Liability Company that operates a driving school, and has its principal offices in Ozaukee County at W63 N643 Washington Avenue, Post Office Box 111, Cedarburg, Wisconsin 53012. It is engaged in the business of providing professional driver's education to individuals, including high school students, who are seeking to obtain a Wisconsin driver's license.

2. A-Plus Driving Schools operates in Grafton, Ozaukee County; Cedarburg, Ozaukee County; and Mequon, Washington County, Wisconsin.

3. Respondent Peter Schmirler is the owner and operator of A-Plus Driving School and resides in Washington County at 750 Summit Drive, West Bend, Wisconsin 53905-3857. The acts of Schmirler, as alleged herein, are also the acts of A-Plus Driving School.

4. JustDrive Driving School is a business that also provides professional driver's education to individuals, including high school students, who are seeking to obtain a Wisconsin driver's license. It operates in Grafton, Ozaukee County; Cedarburg, Ozaukee County; and Germantown, Washington County, Wisconsin, and is a direct competitor of A-Plus Driving Schools.

5. Precision Driving School, Inc. is a business that also provides professional driver's education to individuals, including high school students, who are seeking to obtain a Wisconsin driver's license. It operates in Grafton and Port Washington, Ozaukee County, Wisconsin, and is a direct competitor of A-Plus Driving Schools.

GENERAL ALLEGATIONS

6. On June 3, 2009, Schmirler spoke by telephone with Jason Brandenburg, owner of the JustDrive driving school franchise, and suggested that Schmirler, Brandenburg, and their companies could raise their prices to a fixed, agreed-upon level so that parents and students purchasing driver's education instruction within the Grafton, Cedarburg, and Germantown markets would begin to select a provider on the basis of available instruction times, rather than price.

7. On July 27, 2009, Respondent Schmirler spoke with Jason Brandenburg again and discussed Schmirler's idea about pricing, including how they and their companies could all maximize their profits by agreeing on a price for their driver's education services and/or working

out an agreement not to compete against one another in the same town, in order to divide the territory.

8. On July 27, 2009, during the Schmirler conversation with Brandenburg, Schmirler proposed that Schmirler and A-Plus Driving School provide driver's education instruction in Cedarburg and that Brandenburg and JustDrive Driving School provide driver's education instruction in Grafton.

9. On July 27, 2009, Peter Schmirler told Brandenburg that he made no profit on his sales in Grafton, and that he was operating there as a loss or investment. He threatened to continue doing so until Brandenburg and JustDrive agreed with his proposal to fix prices.

10. Upon information and belief, Schmirler spoke with Peirina T. Chmiel, owner of Precision Driving School, and told her that if JustDrive had not opened, perhaps Schmirler, Chmiel, and their businesses could have reached some agreement that Schmirler would operate solely in Cedarburg and Chmiel/Precision Driving School would operate only in Grafton.

11. In his July 27, 2009, phone call to Brandenburg, Schmirler admitted to doing anything it takes to stay ahead and try to put Precision Driving School out of business.

FIRST SPECIFIC ALLEGATION: PRICE-FIXING

12. By soliciting a direct competitor to fix prices, Peter Schmirler and A-Plus Driving School cause harm to consumers through potentially higher prices.

13. By soliciting a direct competitor to divide territory, Peter Schmirler and A-Plus Driving School cause harm to consumers through potentially higher prices.

14. By engaging in conduct that harms, and threatens to harm, consumers, Schmirler and A-Plus Driving School have engaged in unfair methods of competition in business and unfair trade practices in business in violation of Wis. Stat. § 100.20(1).

SECOND SPECIFIC ALLEGATION: MARKET ALLOCATION

15. By soliciting a direct competitor to allocate markets, Peter Schmirler and A-Plus Driving School cause harm to consumers through potentially higher prices.

16. By soliciting a direct competitor to allocate markets, Peter Schmirler and A-Plus Driving School cause harm to consumers through potentially higher prices.

17. By engaging in conduct that harms, and threatens to harm, consumers, Schmirler and A-Plus Driving School have engaged in unfair methods of competition in business and unfair trade practices in business in violation of Wis. Stat. § 100.20(1).

THIRD SPECIFIC ALLEGATION: UNFAIR METHOD OF COMPETITION

18. By threatening a rival with predatory pricing or pricing below cost, Peter Schmirler and A-Plus Driving School gain a competitive advantage over businesses that price above cost to comply with Wis. Stat. § 100.30. This harms, and threatens to harm, consumers.

16. By engaging in conduct that harms, and threatens to harm, consumers, Schmirler and A-Plus Driving School have engaged in unfair methods of competition in business and unfair trade practices in business in violation of Wis. Stat. § 100.20(1).

REQUEST FOR RELIEF

WHEREFORE, the Department of Justice asks the Department of Agriculture, Trade and Consumer Protection to:

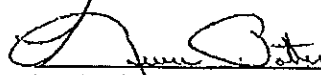
1. Issue a special order against Mr. Peter Schmirler and A-Plus Driving School under Wis. Stat. § 100.20(3) to cease all contact with direct competitors, including to cease soliciting direct competitors to fix prices or allocate territory and to cease threatening rivals with pricing below cost.

2. Grant any other relief that the Department of Agriculture Trade and Consumer Protection deems necessary.

Dated this ____ day of December, 2009.

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General



KEVIN POTTER
Administrator, Legal Services Division
State Bar #1001775

GWENDOLYN J. COOLEY
Assistant Attorney General
State Bar #1053856

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 261-5810
(608) 267-2778 (Fax)
cooleygj@doj.state.wi.us