

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Midway Industries Limited Liability Company, a Maryland limited liability company, also d/b/a Midway Industries, Midway Industries LLC, and Midway Industries of Delray Beach, LLC,
438 Main St., Reisterstown, MD 21136
Baltimore County;

Commercial Industries LLC, a Maryland limited liability company, also d/b/a Commercial Industries, Commercial Industries of Palm Beach LLC, and State Electric & Power LLC,
438 Main St., Reisterstown, MD 21136
Baltimore County;

National LLC, a Maryland limited liability company, also d/b/a National Distributors, National Lighting & Maintenance, National, and National of Delray Beach LLC,
438 Main St., Reisterstown, MD 21136
Baltimore County;

State Power & Lighting LLC, a Maryland limited liability company,
438 Main St., Reisterstown, MD 21136
Baltimore County;

Standard Industries LLC, a Florida limited liability company, also d/b/a Standard Industries, and Standard Industries, LLC, and as successor to Standard Industries LLC, a Maryland limited liability company,
430 NE 5th Ave., Delray Beach, FL 33483;

Essex Industries, LLC, a Maryland limited liability company,

Case No. _____

FILED UNDER SEAL

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

438 Main St., Reisterstown, MD 21136
Baltimore County;

Johnson Distributing Limited Liability Company,
a Maryland limited liability company, also d/b/a
Johnson Distributing, Johnson Distributing MD,
Johnson Distribution, and Johnson Distributors,
438 Main St., Reisterstown, MD 21136
Baltimore County;

Hansen Supply LLC, a Maryland limited liability
company,
135 N. Woodley Ave., Reisterstown, MD
21136, Baltimore County;

Environmental Industries, LLC, a Maryland
limited liability company,
438 Main St., Reisterstown, MD 21136
Baltimore County;

Mid Atlantic Industries LLC, a Maryland limited
liability company,
438 Main St., Reisterstown, MD 21136
Baltimore County;

Midway Management, LLC, a Florida limited
liability company,
430 NE 5th Ave., Delray Beach, FL 33483;

B & E Industries, LLC, a Florida limited liability
company, and as successor to B & E Industries,
LLC, a Maryland limited liability company,
430 NE 5th Ave., Delray Beach, FL 33483;

ERIC A. EPSTEIN, individually and as a
principal of Midway Industries Limited Liability
Company, Commercial Industries LLC, National
LLC, State Power & Lighting LLC, Standard
Industries LLC, Essex Industries, LLC, Johnson
Distributing Limited Liability Company, Hansen
Supply LLC, and Midway Management, LLC,
1216 SW Mulberry Way, Boca Raton, FL
33486; and

BRIAN K. WALLEN, individually and as a principal of Midway Industries Limited Liability Company, Commercial Industries LLC, National LLC, State Power & Lighting LLC, Standard Industries LLC, Essex Industries, LLC, Johnson Distributing Limited Liability Company, Hansen Supply LLC, Environmental Industries, LLC, Mid Atlantic Industries LLC, Midway Management, LLC, and B & E Industries, LLC,
514 Wyngate Rd., Lutherville, MD 21093
Baltimore County,

Defendants.

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act, (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, and the Unordered Merchandise Statute, 39 U.S.C. § 3009, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, and the Unordered Merchandise Statute, 39 U.S.C. § 3009.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 6102(c), and 6105(b).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the Telemarketing Act. In accordance with the Telemarketing Act, the FTC promulgated and enforces the TSR, which prohibits deceptive and abusive telemarketing acts or practices. In addition, the FTC enforces the Unordered Merchandise Statute.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, the TSR, and the Unordered Merchandise Statute, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, 6102(c), and 6105(b).

DEFENDANTS

6. Defendant Midway Industries Limited Liability Company (“Midway Industries”), also doing business as Midway Industries, Midway Industries LLC, and Midway Industries of Delray Beach, LLC, is a Maryland limited liability company with its principal place of business at 438 Main Street, Reisterstown, Maryland 21136. At all times material to this Complaint, acting alone or in concert with others, Midway Industries has initiated outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

7. Defendant Commercial Industries LLC (“Commercial”), also doing business as Commercial Industries, Commercial Industries of Palm Beach LLC, and as State Electric & Power LLC, is a Maryland limited liability company with its principal place of business at 438 Main Street,

Reisterstown, Maryland 21136. At all times material to this Complaint, acting alone or in concert with others, Commercial has initiated outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

8. Defendant National LLC (“National”), also doing business as National Distributors, National Lighting & Maintenance, National, and National of Delray Beach LLC, is a Maryland limited liability company with its principal place of business at 438 Main Street, Reisterstown, Maryland 21136. At all times material to this Complaint, acting alone or in concert with others, National has initiated outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

9. Defendant State Power & Lighting LLC (“State Power”) is a Maryland limited liability company with its principal place of business at 438 Main Street, Reisterstown, Maryland 21136. At all times material to this Complaint, acting alone or in concert with others, State Power has initiated outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

10. Defendant Standard Industries LLC (“Standard Industries”), also doing business as Standard Industries, and Standard Industries, LLC, is a Florida limited liability company with its principal place of business at 430 NE 5th Avenue, Delray Beach, Florida 33483. As the result of a merger, Standard Industries is the successor to a Maryland limited liability company of the same name (Standard Industries LLC). The Maryland entity formerly listed its principal place of business as 438 Main Street, Reisterstown, Maryland 21136. At times material to this Complaint, acting alone or in concert with others, Standard Industries has initiated outbound telephone calls to induce consumers to

purchase goods, and transacts or has transacted business in this District and throughout the United States.

11. Defendant Essex Industries, LLC (“Essex”) is a Maryland limited liability company with its principal place of business at 438 Main Street, Reisterstown, Maryland 21136. At all times material to this Complaint, acting alone or in concert with others, Essex has initiated outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

12. Defendant Johnson Distributing Limited Liability Company (“Johnson”), also doing business as Johnson Distributing, Johnson Distributing MD, Johnson Distribution, and Johnson Distributors, is a Maryland limited liability company with its principal place of business at 438 Main Street, Reisterstown, Maryland 21136. At all times material to this Complaint, acting alone or in concert with others, Johnson has initiated outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

13. Defendant Hansen Supply LLC (“Hansen”) is a Maryland limited liability company with its principal place of business at 135 North Woodley Avenue, Reisterstown, Maryland 21136. At times material to this Complaint, acting alone or in concert with others, Hansen has initiated outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

14. Defendant Environmental Industries, LLC (“Environmental”) is a Maryland limited liability company with its principal place of business at 438 Main Street, Reisterstown, Maryland 21136. At times material to this Complaint, acting alone or in concert with others, Environmental has initiated

outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

15. Defendant Mid Atlantic Industries LLC (“Mid Atlantic”) is a Maryland limited liability company with its principal place of business at 438 Main Street, Reisterstown, Maryland 21136. At times material to this Complaint, acting alone or in concert with others, Mid Atlantic has initiated outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

16. Defendant Midway Management, LLC (“Midway Management”) is a Florida limited liability company with its principal place of business at 430 NE 5th Avenue, Delray Beach, Florida 33483. At times material to this Complaint, acting alone or in concert with others, Midway Management has caused outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

17. Defendant B & E Industries, LLC (“B & E”) is a Florida limited liability company with its principal place of business at 430 NE 5th Avenue, Delray Beach, Florida 33483. On information and belief, B & E is successor to a Maryland limited liability company of the same name, dissolved in May 2014, which formerly had its address at 438 Main Street, Reisterstown, Maryland 21136. At times material to this Complaint, acting alone or in concert with others, B & E has caused outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

18. Defendant Eric A. Epstein (“Epstein”) is and has been an officer, director, or principal of Midway Industries, Commercial, National, State Power, Standard Industries, Essex, Johnson, Hansen, and Midway Management. On information and belief, he is a Florida resident. At all times material to

this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Epstein, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

19. Defendant Brian K. Wallen (“Wallen”) is and has been an officer, director, or principal of Midway Industries, Commercial, National, State Power, Standard Industries, Essex, Johnson, Hansen, Environmental, Mid Atlantic, Midway Management, and B & E. On information and belief, he is a Maryland resident. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Wallen, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

20. Defendants Midway Industries, Commercial, National, State Power, Standard Industries, Essex, Johnson, Hansen, Environmental, Mid Atlantic, Midway Management, and B & E (collectively, “Corporate Defendants”) have operated as a common enterprise while engaging in the deceptive acts and practices and other violations of law alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and office locations, and that commingled funds. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants Epstein and Wallen have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise. Defendants Epstein and Wallen have controlled and have had the authority to control bank accounts used by the Corporate Defendants that

constitute the common enterprise, and have used their control and authority to enrich themselves personally with substantial funds derived from the Corporate Defendants that constitute the common enterprise and from the business practices described below.

COMMERCE

21. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

22. Since at least 2011, and continuing thereafter, the Defendants have engaged in a plan, program, or campaign to sell nondurable office or cleaning supplies, such as light bulbs and cleaning products, through interstate telephone calls.

23. On numerous occasions the Defendants, through their telemarketers, have contacted various organizations or businesses (hereinafter “consumers”) by telephone. Upon contacting consumers’ employees or volunteers, Defendants’ telemarketers have employed several deceptive tactics to sell nondurable office or cleaning supplies.

24. In numerous instances, Defendants’ telemarketers have falsely stated or implied that (1) Defendants had previously done business with consumers; (2) they were calling to “verify,” “confirm,” or otherwise follow up on a previously made purchase or order; (3) they were offering a free sample, free catalog, or free gift; (4) they were seeking the name and contact information of an employee for some purpose other than initiating a sales transaction; or (5) they were merely calling to confirm a shipping or mailing address.

25. Defendants' telemarketers often have failed to identify themselves accurately or to promptly, clearly, and conspicuously disclose that the purpose of the call is to sell nondurable office or cleaning supplies.

26. In numerous instances, following telemarketing calls as described in Paragraphs 23 – 25, Defendants have shipped merchandise to consumers without the consumers' consent or after Defendants' telemarketers have explicitly or by implication misled consumers' employees or volunteers.

27. Many consumers have paid Defendants' invoices under a mistaken belief that someone in the consumer organization or business had expressly ordered the shipped merchandise from Defendants. In many instances, consumers' employees or volunteers who receive Defendants' shipments are not the same individuals who receive or process Defendants' invoices, and Defendants' tactics deceive the individuals who receive or process Defendants' invoices into believing that the merchandise was ordered. The prices of Defendants' products, reflected on the invoices, typically are substantially higher than prices for similar products available on the market.

28. In many instances when consumers do not promptly pay Defendants' invoices, Defendants, directly or through their telemarketers, actively contact consumers and falsely claim that consumers owe payment for unordered merchandise. Many consumers have paid Defendants' invoices under a mistaken belief that they were obligated to do so.

29. Often, when consumers have paid Defendants' invoices under a mistaken belief that they were obligated to do so, Defendants have sent additional unordered merchandise followed by additional invoices and demands for payment.

30. In numerous instances, when consumers have challenged Defendants and have asserted that merchandise was unordered, Defendants, directly or through their telemarketers, have claimed

falsely that the merchandise was ordered. In many instances, Defendants, directly or through their telemarketers, make further attempts to deceive consumers into paying for unordered merchandise. In some instances, Defendants have responded by representing that they have an audio recording of the conversation in which the order was placed. Defendants frequently have refused to produce such an audio recording, however. In other instances, Defendants have insisted on payment but have purported to offer a “discount” that would allow the consumer to pay less than the amount on the original invoice.

31. Hundreds of consumers, from locations across the nation, have filed complaints with the Better Business Bureau of Greater Maryland (“Maryland BBB”). Defendants have often allowed consumers who contact the Maryland BBB to return merchandise, or have issued refunds to such consumers. In numerous instances when Defendants, directly or through their telemarketers, have claimed to have proof of duly authorized orders, Defendants have not provided any such proof to the consumers or to the Maryland BBB.

32. At times material to this Complaint, the Maryland BBB has provided notice directed to each of the individual Defendants, Epstein and Wallen, regarding the Maryland BBB’s observation of a pattern of consumer complaints concerning Corporate Defendants’ deceptive practices. Despite the Maryland BBB’s efforts, the observed pattern of consumer complaints regarding Corporate Defendants’ deceptive practices has continued.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

33. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair and deceptive acts or practices in or affecting commerce.”

34. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

Count I

Misrepresentations to Induce Payment for Defendants' Goods

35. In numerous instances in connection with the marketing, sale, offering for sale, or distribution of nondurable office or cleaning supplies, Defendants have represented, directly or indirectly, expressly or by implication, through, *inter alia*, telephone calls, invoices, packing slips, or shipment of nondurable office or cleaning supplies, that (a) consumers ordered the goods that were to be shipped and/or billed to the consumers by Defendants, (b) Defendants have previously done business with the consumers, or (c) that the Defendants would send only a free sample, free gift, or free product catalog.

36. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 35 of this Complaint, (a) consumers did not order the goods that were shipped and/or billed to them by Defendants, (b) Defendants had not previously done business with the consumers, or (c) Defendants did not send only a free sample, free gift, or free product catalog.

37. Therefore, Defendants' representations as set forth in Paragraph 35 of this Complaint are false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

38. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. The FTC adopted the original TSR in 1995, extensively amended it in 2003, and amended certain sections thereafter.

39. Telephone calls between a telemarketer and a business that involve the retail sale of nondurable office or cleaning supplies are subject to the TSR's prohibitions against deceptive and abusive telemarketing acts or practices. 16 C.F.R. § 310.6(b)(7). In its Statement of Basis and Purpose for the TSR, the Commission stated:

[T]he Commission's enforcement experience against deceptive telemarketers indicates that office and cleaning supplies have been by far the most significant business-to-business problem area; such telemarketing falls within the Commission's definition of deceptive telemarketing acts or practices.

60 Fed. Reg. 43842, 43861 (Aug. 23, 1995).

40. It is a deceptive telemarketing act or practice, and a violation of the TSR, for any seller or telemarketer to make a false or misleading statement to induce a person to pay for goods or services or to induce a charitable contribution. 16 C.F.R. § 310.3(a)(4).

41. The TSR requires telemarketers in outbound telephone calls to induce the purchase of goods or services to disclose promptly, and in a clear and conspicuous manner, that the purpose of the call is to sell goods or services. 16 C.F.R. § 310.4(d)(2).

42. Defendants place "outbound calls" and are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the TSR, 16 C.F.R. § 310.2(v), (aa), (cc), and (dd).

43. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II

**False and Misleading Statements to
Induce Payment in Connection with Telemarketing**

44. In numerous instances, in connection with the telemarketing of nondurable office and cleaning supplies, Defendants have made false or misleading statements, directly or by implication, to induce consumers to pay for goods or services, including, but not limited to, misrepresenting that (a) the consumer ordered the goods that were to be shipped and/or billed to the consumer by Defendants, (b) Defendants have previously done business with the consumer, or (c) that the Defendants would send only a free sample, free gift, or free product catalog.

45. Defendants' acts and practices as described in Paragraph 44 are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(4).

Count III

Failure to Disclose Purpose of Call is to Sell

46. In numerous instances, in connection with the telemarketing of nondurable office and cleaning supplies, Defendants in "outbound telephone call[s]," as that term is defined in the TSR, 16 C.F.R. § 310.2(v), have failed to disclose promptly and in a clear and conspicuous manner to the person receiving the call that the purpose of the call was to sell goods.

47. Defendants' acts and practices described in Paragraph 46 are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(d)(2).

VIOLATIONS OF THE UNORDERED MERCHANDISE STATUTE

48. The Unordered Merchandise Statute, 39 U.S.C. § 3009, generally prohibits sending unordered merchandise, unless such merchandise is clearly and conspicuously marked as a free sample,

or is sent by a charitable organization soliciting contributions. The statute also prohibits sending consumers bills for unordered merchandise or dunning communications.

49. In accordance with Section (a) of the Unordered Merchandise Statute, 39 U.S.C. § 3009(a), a violation of the Unordered Merchandise Statute constitutes an unfair method of competition and an unfair trade practice, in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

Count IV

Sending and Billing for Unordered Merchandise

50. In numerous instances, in connection with the marketing of nondurable office and cleaning supplies, Defendants, who are not a charitable organization soliciting contributions, have shipped nondurable office and cleaning supplies without the prior express request or consent of the recipients, or without identifying the products as free samples, thereby violating subsection (a) of the Unordered Merchandise Statute, 39 U.S.C. § 3009(a).

51. In numerous instances, in connection with the marketing of nondurable office and cleaning supplies, Defendants have sent to the recipients of such goods one or more bills or dunning communications for such goods, thereby violating subsections (a) and (c) of the Unordered Merchandise Statute, 39 U.S.C. § 3009(a) and (c).

52. Defendants' practices, as alleged in Paragraphs 50 and 51, are therefore unfair trade practices that violate Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

CONSUMER INJURY

53. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act, the TSR, and the Unordered Merchandise Statute. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive

relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

54. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

55. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations, including the rescission or reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b; Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b); the Unordered Merchandise Statute, 39 U.S.C. § 3009; and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, temporary and preliminary injunctions, appointment of a receiver, and an order freezing assets;

B. Enter a permanent injunction to prevent future violations of the FTC Act, the TSR, and the Unordered Merchandise Statute by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, the TSR, and the Unordered Merchandise Statute, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

JONATHAN E. NUECHTERLEIN
General Counsel

Dated: July 21, 2014



HARRIS A. SENTURIA (Ohio Bar #0062480)
MARCI FREDRICK (Ohio Bar #0087299)
Federal Trade Commission
1111 Superior Ave., Suite 200
Cleveland, Ohio 44114
Senturia Phone: (216) 263-3420
Fredrick Phone: (216) 263-3414
Fax: (216) 263-3426
hsenturia@ftc.gov
mfredrick@ftc.gov

Attorney for Plaintiff
FEDERAL TRADE COMMISSION

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Federal Trade Commission</p> <p>(b) County of Residence of First Listed Plaintiff <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Harris A. Senturia (216) 263-3420, Marci Fredrick (216) 263-3414, Amy C. Hocevar (216) 263-3409 1111 Superior Ave., Ste. 200, Cleveland, Ohio 44114</p>	<p>DEFENDANTS Midway Industries Limited Liability Company, et al.</p> <p>County of Residence of First Listed Defendant <u>Baltimore County</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>																									
<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<table style="width:100%; border-collapse: collapse;"> <tr> <th style="width:33%;">TORTS</th> <th style="width:33%;">FORFEITURE/PENALTY</th> <th style="width:33%;">BANKRUPTCY</th> </tr> <tr> <td style="vertical-align: top;"> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - 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V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
15 U.S.C. §§ 45(a), 53(b), 57b, 6101-6108; 39 U.S.C. § 3009

Brief description of cause:
Deceptive acts and practices relating to the sale of unordered nondurable office and cleaning supplies

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ CHECK YES only if demanded in complaint. **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE July 21, 2014 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____