

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

MARION CIRCUIT COURT

JEFF KOEHLINGER and JEFF FRAZER,)
individually and as representatives)
of a class of all similarly situated persons,)

Plaintiffs,)

vs.)

CAUSE NO. 49C 0107 CT 730

THE STATE LOTTERY COMMISSION)
OF INDIANA,)
dba THE HOOSIER LOTTERY,)

FILED JANUARY 5, 2007

[Jury Trial Requested]

Defendant.)

PLAINTIFFS' CLASS ACTION COMPLAINT

I. Introduction

1. This case seeks money damages for the class of individuals who purchased the Hoosier Lottery's Cash Blast tickets in 2005 and 2006 when the Lottery was misrepresenting to the public the number and amount of prizes available in the game.

II. Jurisdiction and Venue

2. This court has general jurisdiction over the state claims stated in this lawsuit.
3. Venue is proper in this court and county under Trial Rule 75(A)(5) because the principal office of the defendant is located in Marion County, Indiana.

III. Parties

4. Plaintiffs Jeff Koehlinger and Jeff Frazer are adult residents of Indiana. They bring this suit in their individual capacities and as representatives, under Indiana Trial Rule 23, of a class of

all other similarly situated persons who purchased nonwinning tickets in the Hoosier Lottery's Cash Blast game (Instant Game No. 743) from May, 2005 up until July 7, 2006, when the Lottery was publically misrepresenting the number and amount of prizes available in that game.

5. Pursuant to its enabling statute, Indiana Code 4-30-3-1, Defendant, The State Lottery Commission of Indiana, dba the Hoosier Lottery (the "Lottery"), is a "body politic and corporate separate from the state." The Lottery's principal office is located in Marion County, Indiana.

IV. Facts

6. On December 17, 2004, the Lottery began offering for sale tickets for its Cash Blast scratch off ticket game.
7. The Cash Blast tickets were sold for \$10 each, and the Lottery offered five million of them to the public.
8. The Lottery promotes its games, including its Cash Blast Game, by advertising the number and amount of prizes available, updating these figures regularly.
9. The Lottery advertises the number and amount of prizes available in its instant games to induce members of the public to buy the tickets.
10. The Lottery publishes its representations about the number and amount of prizes available in its instant ticket games in materials displayed at Lottery retailers where the tickets are sold, and on the Lottery's website.

11. Beginning sometime in May, 2005, and continuing until July, 7, 2006, (“the relevant period”), the Hoosier Lottery repeatedly misrepresented to the public the number and cash value of prizes still available in the Cash Blast game.
12. For many months of the relevant period, the Lottery represented that seven (7) top prizes of \$250,000 each and tens of thousands of other cash prizes, ranging from \$50 to \$10,000, were still available to those who purchased instant game #743 (“Cash Blast”) tickets, when the actual number of such prizes was substantially lower.
13. During the relevant period, Plaintiff Jeff Koehlinger purchased at least 247 non-winning Cash Blast Tickets at \$10 each, spending a total of \$2,470.
14. During the relevant period, Plaintiff Jeff Frazer purchased no fewer than 4,000 non-winning Hoosier Lottery scratch off Cash Blast tickets at \$10 each, spending more than \$40,000.
15. Other class members purchased the remaining non-winning tickets for this game sold during the relevant time.
16. In July, 2006, the Lottery abruptly changed its representations about the number of prizes still available. Over sixty thousand prizes previously listed as still available totaling more than eight million dollars, (including six potential top prizes of \$250,000 each), immediately disappeared from the Lottery’s available prize representations.¹

¹ A comparison of the number of prizes remaining as listed on the Hoosier Lottery’s website on June 22, 2006, and on July 7, 2006, when the overstatement was corrected, is reflected in the following table:

Prize Amount	Number of Prizes Listed as Available: June 22, 2006	Number of Prizes Listed as Available July 7, 2006
\$250,000	7	1
\$10,000	75	10

17. Simultaneously, the Lottery admitted that it had wrongly advertised the number of all such prizes in the materials it had disseminated to the public.
18. In a written statement, the Lottery acknowledged:
- The Hoosier Lottery has discovered an overstatement concerning the amount of prizes remaining for game 743 - \$250,000 Cash Blast. Please note the following information concerning game 743:
 - Due to a printing problem by the Hoosier Lottery's scratch-off game vendor, Scientific Games, Inc., 2.5 million of the 5 million tickets printed for game 743 were potentially defective.
 - The Hoosier Lottery and Scientific Games assessed the situation and reprinted the 2.5 million potentially defective tickets, including all prizes contained in the potentially defective tickets.
 - Though the total amount of prizes from the potentially defective tickets were replaced, prizes from replaced tickets were not subtracted from internal Hoosier Lottery reports. This discrepancy led to the overstatement of prizes on the Lottery's website and our retailers' game information materials.
 - The odds of game 743 were never changed nor compromised from that of the original odds stated in the rules of game 743.

(From <http://www.in.gov/hoosierlottery/games/prizecorrection.asp> (as of September 5, 2006).)

\$1,000	689	47
\$500	1,156	95
\$200	8,150	657
\$100	27,738	2,165
\$50	27,733	2,215
TOTALS	65,570	5,197

The total value of the 60,373 prizes (65,570 - 5,197) advertised as available but actually unavailable, based upon the information in this table, would be \$8,654,300.

19. When the Lottery revealed that it had been overstating the number and amount of available prizes, numerous putative class members wrote to the Lottery and demanded their money back.
20. The Lottery's stock response to these complaining class members completely ignored the fact that the Lottery's representations about the number and cash value of prizes remaining were false, and had induced consumers to purchase Cash Blast tickets.
21. The Lottery was the only source of information regarding the number and amount of prizes remaining in the instant games, and it was reasonable for the plaintiffs and the class to rely upon those representations.
22. Plaintiffs Jeff Koehlinger and Jeff Frazer both relied upon the Lottery's representations and both complained directly to the Lottery, and both were denied any relief.
23. Specifically, on July 10, 2006, Mr. Koehlinger complained in writing via e-mail to the Hoosier Lottery (playersupport@hoosierlottery.com) complaining about the Lottery's misrepresentation of the number of top prizes available for Cash Blast.
24. On July 13, 2006, the Lottery responded in writing via email to Mr. Koehlinger, offering an apology but no relief or refund.
25. On July 9, 2006, Mr. Frazer sent a similar written e-mail correspondence to the Lottery.
26. On July 13, 2006, Mr. Frazer received from the Lottery a response identical to that sent to Mr. Koehlinger.
27. On August 29, 2006, Mr. Koehlinger sent a second written e-mail letter to the Lottery specifically asking the Hoosier Lottery to refund the money he spent on 231 non-winning Cash Blast tickets as a result of the misinformation regarding the number of top prizes

- available. In this communication, Mr. Koehlinger specifically requested initiation of any Lottery administrative procedures or remedies for this purpose.
28. On August 30, 2006, the Lottery responded to Mr. Koehlinger by return e-mail denying a refund and representing that no administrative remedies were available.
 29. The Lottery's promotional materials during the relevant period represented that its Cash Blast game had characteristics or benefits it did not have and which the Lottery reasonably should have know that it did not.
 30. The Lottery's promotional materials during the relevant period represented that its Cash Blast game was of a particular standard or quality which it was not and which the Lottery reasonably should have know it was not.
 31. These deceptive representations were made in the consumer materials distributed by the Lottery to Lottery retailers, and on the Lottery's website.
 32. On October 5, 2006 the plaintiffs, on their own behalf and on behalf of the class, served the Lottery with a "Notice of Deceptive Act Claims," pursuant to Ind. Code 24-5-0.5-2 (Indiana's Deceptive Consumer Sales Act).
 33. On December 8, 2006, the Lottery denied the plaintiffs' claims under the Deceptive Sales Act, and failed to offer any cure to the individual plaintiffs or the class.
 34. The Lottery is authorized by statute to advertise and promote its games, but such advertisements "shall be consistent with the dignity and integrity of the state." Ind. Code 4-30-1-2.
 35. Promoting a game with highly inflated and misleading prize figures is inconsistent with the integrity of the state of Indiana.

36. The plaintiffs and the class of similarly situated persons they represent have been financially harmed by the Lottery's misrepresentations.
37. By purchasing non winning Cash Blast tickets during the relevant time period, the plaintiffs and the Class have conferred a measurable benefit on the Lottery under circumstances in which the Lottery's retention of the benefit would be unjust.
38. The amount of damages equals at least the money spent by consumers on non-winning Cash Blast game tickets during the relevant period in 2005 and 2006 when the Lottery was misrepresenting the number and amount of prizes available to those who purchased tickets, plus interest.
39. The plaintiffs and class are also entitled to statutory damages for the Lottery's uncured deceptive sales acts, pursuant to Indiana's Deceptive Consumer Sales Act, Ind. Code 24-5-0.5-2.

V. Claims

40. The Lottery's misrepresentations constitute intentional or negligent misrepresentation, negligence, breach of contract, fraud, money had and received, restitution, unjust enrichment, and deceptive sales practices actionable pursuant to Indiana's Deceptive Consumer Sales Act, Ind. Code 24-5-0.5-2.

VI. Jury Trial Demand

41. The plaintiffs and the class request a jury trial on their claims.

VII. Request for Relief

42. The plaintiffs and the class respectfully request all available remedies under the law, including common law and statutory damages, and a common fund from which all class members can claim their damages, and from which attorney fees and costs can be paid.

Respectfully submitted,

Dated: January 5, 2007

/s/ Richard A. Waples

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