



September 30, 2014

Mr. James Rice  
President  
Star Markets Company, Inc.  
750 W Center Street  
West Bridgewater, MA 02379

Dear Mr. Rice:

I write to set forth a claim for unfair and deceptive trade practices pursuant to Massachusetts General Laws chapter 93A, the Consumer Protection Act, and to request that you enter into negotiations to settle the claim. The claim is asserted by Craig Kelley on behalf of his minor child Cooper and by the Stop Predatory Gambling Foundation, a national nonprofit organization, with an office in Massachusetts, whose mission is ending the unfairness and inequality created by government-sponsored gambling.

On September 24, 2014, Star Market stores located at Porter Square in Cambridge and Beacon Street in Somerville, sold lottery tickets to Cooper through their lottery instant ticket vending machines. Cooper, who was serving as a tester for the accessibility of lottery tickets to minors, was able to gain access without difficulty and to repeatedly purchase tickets from the lottery instant ticket vending machines in these stores. Each sale of lottery tickets to Cooper by Star Markets was an unfair and deceptive sales practice.

Star Markets lacks effective controls to prevent the sale of scratch tickets to minors, and indeed has positioned the machines in a manner designed to attract them. In each store, the lottery instant ticket vending machine was positioned adjacent to displays of candy, soda and snack foods. Star Markets also positioned its lottery instant ticket vending machines in a manner that made the machines easily accessible by individuals under the age of eighteen years.

Star Markets also appears to have the default setting for each machine's lockout device set at unlocked, and thus each machine is accessible unless a store employee has reason to lock it, e.g., a minor attempting a purchase. Star Markets does not have sufficient personnel resources to make sure that the vending machines are locked when minors attempt a ticket purchase. When Star Market employees are preoccupied with other customer demands, they cannot effectively intervene in the attempts by minor children to purchase lottery tickets from the machines, nor can they effectively determine whether minor children in their later adolescent years are of age to purchase lottery tickets. Thus, both Cooper and other individuals under the age of eighteen years can and have easily purchased lottery tickets at Star Markets stores.

Craig Kelley has standing under G.L. 93A, § 9 to represent Cooper's interests as next friend. Stop Predatory Gambling has organizational standing because its participants and supporters include parents concerned about their children's access to instant ticket lottery vending machines. In particular, there are participants and supporters of SPG who have children whom they wish to shield from gambling activities, who have had access to the insufficiently monitored lottery vending machines and who thus have been subjected to unfair and deceptive sales practices.

Star Markets' sale of lottery tickets to minors through unattended vending machines constitutes an unfair and deceptive sales practice, in contravention of G.L. c. 93A, §2, in several respects. First and foremost, pursuant to the regulations promulgated at 940 CMR 3.16, "an act or practice is a violation of M.G.L. c. 93A, §2 if "[i]t fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare..." G.L. c. 10, §29 provides expressly that "No ticket or share shall be sold to any person under age eighteen." The same prohibition is contained in the Lottery Commission's regulations, promulgated at 961 CMR 2.27(5).

Second, 940 CMR 3.16 provides that "an act or practice is a violation of M.G.L. c. 93A, §2 if "[i]t is oppressive or otherwise unconscionable in any respect." Star Markets' sale of lottery tickets to minors through unattended vending machines is oppressive and unconscionable because it enables and fosters youth gambling. Youth gambling is a grave threat to public health. A recent study by Yale University found that individuals who start gambling with scratch tickets when they are minors are more likely to become problem gamblers in the future. According to the Massachusetts Council on Compulsive Gambling, 68% of males aged fourteen to fifteen have gambled in the last year, and 76% of males aged sixteen to seventeen have gambled in the last year. When averaged, this means that more than seven out of every ten males aged fourteen to seventeen have gambled in the last year. Fifty-three percent of females aged fourteen to fifteen gambled within the last year, and 52% of females aged sixteen to seventeen gambled within the last year. The Council estimates that of the youths (both male and female) who gambled in the last year, 29% gambled by playing lottery games.

Similar evidence is provided in a report written as long ago as July 1994 by then Massachusetts Attorney General Scott Harshbarger. The Harshbarger report recounted that, of 2,127 Massachusetts high school students surveyed in 97 public schools in the state, 47.10% of seventh graders and 74.60% of seniors had purchased lottery tickets and 2.9% of seventh graders and 5.5% of seniors reported that they had purchased lottery tickets between six and nineteen times during the preceding month. A more recent study found that scratch tickets are potentially addictive and apt to induce excessive gambling behavior because of their specific characteristics, such as short payout intervals (brief time lapse between ticket purchase and payout), rapid event frequencies (opportunities to buy tickets are numerous and unconstrained) and near-miss designs (illusion of nearly winning a substantial prize, similar to slot machines).

The problem of youth gambling has only grown worse with the advent of unattended instant lottery vending machines. Unattended lottery vending machines pose a harm to youth similar in kind to the harm posed by cigarette vending machines, which have been universally condemned and removed from venues other than those strictly reserved for adult use, such as bars. Indeed, the Massachusetts Attorney General has previously recognized that the sale of cigarettes through vending machines is a practice that falls within the purview of chapter 93A. *See* Attorney General Regulations, at 940 CMR 21.04(2)(A).

As stated in the company's Sustainability and Social Responsibility webpage, Shaw's and Star Markets pride themselves on their commitment to taking care of the neighbors and the communities in which they operate. This letter serves as our request that your company discontinue offering lottery instant ticket products through vending machines at its stores, or, at a minimum, institute the following controls in all of your stores that offer lottery instant ticket vending machines:

1. Isolate the location of instant ticket vending machines from areas accessible by persons under the age of eighteen (18) years, and place a conspicuous sign on each machine stating that lottery tickets may not be sold to persons under 18.
2. Isolate the location of instant ticket vending machines from areas that are in close proximity to product displays and other vending machines whose use is allowed and intended, at least in part, for individuals under the age of 18. This would include video disc and video game dispensing vending machines; candy, food and beverage displays and vending machines; and entertainment vending machines, such as "Claw" toy and stuffed animal games of skill.
3. Set the default status of instant ticket vending machines to "Locked," rather than the default lock-out setting being set to "Sale," as is the current practice. Prior to remotely unlocking an Instant Ticket Vending Machine and permitting a sale, the sales agents must confirm that the age of consumers purchasing products from an Instant Ticket Vending Machine is at least 18 years of age.
4. Following a sale, an Instant Ticket Vending Machine must automatically reset its locking device to a "Locked" status, thereby requiring age verification for the next Instant Ticket Vending Machine consumer.

In the absence of an amicable resolution, we expect to seek an injunction against the continued operation of lottery instant ticket vending machines in your stores and other equitable relief, the award of statutory damages of \$25 per sale, any appropriate multiplication of that award because of the company's use of unfair and deceptive sales practices, and the reimbursement of attorneys' fees and costs.

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We ask that you respond within thirty (30) days from the date of this letter with a good faith settlement proposal.

Sincerely,  
/s/

Lissy Friedman  
Senior Staff Attorney