SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

ROY L. PEARSON, JR.	:	
Plaintiff,	:	
v.	:	Civil Action No. 4302-05 Calendar #7 - Judge Bartnoff Next Court Event: None Scheduled
SOO CHUNG, *et al*.	:	
Defendants.	:	

PLAINTIFF'S MOTION FOR RECONSIDERATION

> An advertisement that mentions a "Satisfaction Guarantee" or a similar representation should disclose, with such clarity and prominence as will be noticed and understood by *prospective* purchasers, any material limitations or conditions that apply to the "Satisfaction Guarantee" or similar representation.
> -16 CFR § 239.3 (underlining added)

Plaintiff, pursuant to Super. Ct. Civ. Rules 52(b) and 59, moves for reconsideration of this court's *Findings Of Fact And Conclusions of Law* ("Order") and *Judgment* of June 25, 2007.

The case this court heard on June 12-13, 2007, was based on six prohibitions contained in the D.C. Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901, *et al*., as well as the common law tort of fraud.

The premise on which the court based its June 25th Order, rejecting each of plaintiff's claims, is manifestly in error. The court effectively substituted a guarantee of satisfaction with "reasonable" limits and preconditions for the unconditional and unambiguous guarantee of satisfaction the defendant-merchants chose to advertise for seven years. That was a fundamental legal error. It eliminated an essential basis (the defendants' false or deceptive representation) for each of plaintiff's claims and required the entry of judgment for the defendants.

The consumer right that the CPPA and the tort of fraud safeguard is *the consumer's* right to know and decide whether he or she will elect to do business with a merchant under *fully*

disclosed and clear terms for a merchant's services. The CPPA and the tort of fraud make the merchant's failure to fully and clearly disclose those terms, in advance of a transaction, the *basis* for liability. Construing unambiguous, or even ambiguous terms, so as to add the very limitations and conditions the merchant failed to clearly disclose, defeats the purpose of the disclosure requirements in both the CPPA and the common law of fraud.

Similarly, the fact that a consumer may make a bogus claim if the merchant's promise of "Satisfaction Guaranteed" is given its plain meaning in no way alters or is relevant to the definition of the term "Satisfaction Guaranteed." Under the CPPA, and the law of fraud, the permissible way for a merchant to prevent bogus claims is by adding to the words "Satisfaction Guaranteed," some words of limitation or pre-condition that will exclude bogus claims. For example: "Satisfaction Guaranteed, **IF** we agree your dissatisfaction is legitimate and we agree to the compensation you demand." As the owners of the advertisement, the defendants were in a position, for almost seven years, to make it read precisely as they intended. As between consumer and merchant, the CPPA, and the tort of fraud, place the consequences of a merchant's failure to add words of limitation to his sign on the merchant.

Plaintiff also requests reconsideration of this court's ruling that "plaintiff presented no evidence that the defendants did not make same day service available . . ." *Order* at 2 n.1. Finally, plaintiff requests that Plaintiff's Exhibit 15(D) be admitted into evidence, as the court implicitly ruled in observing that Plaintiff's Exhibit 11(H) was largely duplicative of Plaintiff's Exhibit 15(D). Plaintiff's Exhibit Summary Sheet does not reflect the subsequent admission into evidence of Plaintiff's Exhibit 15(D), as plaintiff and the court intended.

WHEREUPON, plaintiff respectfully requests that the court: (1) reconsider its analysis; (2) conclude, as has every other court facing the issue, that it must give effect to the unambiguous words the defendants used in their advertisement; (3) compare defendants' actual words with the individual prohibitions in the CPPA and the elements of the tort of fraud, (4)

vacate the Order and judgment entered on June 25, 2007; (5) admit Plaintiff's Exhibit 15(D) into evidence, if it has not already been admitted; and (6) amend or replace its findings and enter judgment for plaintiff on each of his claims on the undisputed facts that establish the defendants' liability in this case.

Respectfully submitted,

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Counsel for Plaintiff

CERTIFICATE OF DILIGENCE

I hereby certify that, despite diligent efforts, I could not obtain the consent of counsel for defendants to the relief sought by this motion

Roy L. Pearson, Jr

Roy L. Pearson, Jr. #955948

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Plaintiff files this *Motion For Reconsideration* because the June 25, 2007 Order in this case is based on a fundamental and far reaching error. That fundamental error lies in the failure to give the words "Satisfaction Guaranteed" their plain and unambiguous meaning. Uniformly around the United States, and in the District of Columbia, a court cannot effectively substitute a guarantee with undisclosed and "reasonable" limits and preconditions for the unconditional guarantee of consumer satisfaction a merchant has actually advertised. In this case the evidence established that the defendant-merchants chose to advertise "Satisfaction Guaranteed" even after: (1) they were advised in August 2002 that the very law under which they are now being sued made it illegal to continue to advertise "Satisfaction Guaranteed" if they did not intend to offer an unconditional guarantee of customer-determined satisfaction and (2) they lifted their July 2002 ban on the plaintiff's patronage of their business in apparent agreement with plaintiff on the sign's meaning.

Because the June 25th Order effectively absolved the defendants of responsibility for the plain meaning of their own advertisement, and absolved them of their apparent concurrence in

that plain meaning since August 2002, it simultaneously absolved the defendants of liability for their violation of six prohibitions in the CPPA, and the tort of fraud.

II. The Plain Meaning Of "Satisfaction Guaranteed"

To demonstrate the Order's error plaintiff details why the actual words used by the defendants in their advertisement must be given their plain meaning. Plaintiff then shows how, when "Satisfaction Guaranteed" is given its plain and unambiguous meaning, as a matter of law each defendant is liable to plaintiff on each claim in this case.

The first of plaintiff's claim is addressed in considerable detail, below, because the analysis of it incorporates plaintiff's showing that the June 25th Order conflicted with binding District of Columbia law, and uniform law around the United States, when it failed to accord the words "Satisfaction Guaranteed" their plain and well established meaning.

A. D.C. Code § 28-3904(a)

D.C. Code § 28-3904(a), the basis for plaintiff's first claim, is a very simple and straightforward statutory prohibition. It states in its entirety:

> **§ 28-3904. Unlawful trade practice**
>
> It shall be a violation of this chapter, ***whether or not any consumer is in fact misled, deceived or damaged thereby***, for any person to:
>
> (a) **represent**[1] that goods or **services** have a source, sponsorship, approval, **certification**, accessories, **characteristics**, ingredients, uses, **benefits**, or quantities that they do not have; . . . (emphasis supplied)

The language of this subsection could not be plainer**:** a merchant violates § 28-3904(a), and commits an unlawful trade practice, if he or she ***represents*** that his or her service(s) has some certification, characteristic or benefit that the service does not have.

[1] The plain meaning of the word "represent," in this context, is: "7. To describe as having a specified character or quality . . ." Merriam-Webster's Collegiate Dictionary at 990 (10th Ed. 2002).

This prohibition does not require proof that defendants' "representation" was "material" (i.e., that it would have influenced a consumer's decision to utilize the defendant's services). *See Banks v. D.C. Dept. of Consumer & Regulatory Affairs*, 634 A.2d 433 (D.C. 1993) (affirming violation of 28-3904(a) when merchant's unauthorized practice of law was plainly of no importance to complaining party, who was aware merchant was not an attorney).

This contrasts with the inclusion of a "materiality" requirement in D.C. Code §§ 28-3904(e), (f) and (g). *See Russello v. United States*, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed. 2d 17 (1983) ("where congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion").

Factually, it was undisputed at trial that since at least June 7, 2002, the defendants have represented to one and all, through a prominently posted sign in their business, that the services they offered came with the customer's "SATISFACTION GUARANTEED." Those words, in plain English, represent that defendants' services have a "certification," "characteristic" or a "benefit" (a guarantee, without any disclosed conditions, exceptions or limitations, of customer-determined satisfaction), that the defendants' services admittedly never had. The defendants admitted in both pretrial admissions, and through the trial testimony of Soo Chung, that in fact they did not guarantee their customers would be satisfied. Like cleaners that do not advertise "Satisfaction Guaranteed," they simply did what they thought reasonable and appropriate where

the services they offered and customer complaints were concerned. Plaintiff's Exhibit 3(A), 3(B) & 3(C).[2]

Thus, it is irrelevant what the standard of proof is for demonstrating that the defendants represented that their services had a certification/characteristic/benefit that it did not have. Whether one uses the "preponderance of the evidence" standard, the "clear and convincing evidence" standard, or the "beyond a reasonable doubt" standard of proof, you reach the same result. And you reach that result because the defendants have admitted (and this court has ruled)

[2] Because the fact that the defendants did not honor their posted unconditional guarantee of satisfaction is undisputed (indeed defense counsel readily conceded it at trial and it is the basis for the June 25th Order) plaintiff need not marshal additional evidence on this point. However, if conclusive evidence was needed the *written* conditions defendants subsequently led their customers to believe applied are set forth on the reverse side of the receipt given each customer (*after* they entered into a transaction with the defendants):

CONDITIONS

NOT RESPONSIBLE FOR ORDERS LEFT OVER 30 DAYS.

Cleaning – We will use such process which, in our opinion, is best suited to texture and conditions, but *cannot be responsible* for weak, tender, defective or adulterated materials – not obvious prior to processing. *Not responsible* for trimmings, buckles, belts, beads, buttons, or valuables.

Laundry – Errors *must* be reported within 48 hours, accompanied by this invoice. Unless your list accompanied bundle, our count *must* be accepted. *Liability shall not exceed* 10 times laundry charge, unless higher value declared and owner agreed to additional charges. *No guarantee* on colors, curtains, shrinkage, or synthetics.

If labels are removed or missing, all work will be done at *customer's risk*.

Thank you. We appreciate your business.

The June 25th Order asserts that the above are not conditions. The federal courts, however, have instructed that a court view the document handed by merchants to customers from the perspective of the customer. *Montgomery Ward Co. v. FTC*, 379 F.2d 666 (7th Cir. 1967). No customer who views a document that is handed to them by the defendants, and that has the caption "CONDITIONS" and includes a reference to "[**n]o guarantee**," is going to conclude that the listing of restrictions that follows are *not* conditions on an otherwise unqualified guarantee of satisfaction. Particularly when the text of the document repeatedly sets forth limitations with respect to the fact and amount of defendants' liability. *See also Plaintiff's Post-Trial Response To Unanswered Questions Regarding "Satisfaction Guaranteed"* (June 15, 2007) (listing defendants' undisputed and undisclosed oral pre-conditions and after-the-fact conditions on honoring their guarantee of customer satisfaction). Because § 28-3904(a) does not have a materiality requirement, plaintiff need only show that the above written and oral information about defendants' services, that was not conspicuously disclosed by them, caused their "Satisfaction Guaranteed" sign to represent that defendants' services had a certification, characteristics or benefits it did not have.

that the defendants do not even *contend* that they intended to honor the unconditional guarantee of customer satisfaction they advertised.[3]

Why then was judgment not entered in favor of the plaintiff on his claim based on § 28-3904(a)?

The reason is that the June 25th Order does not give the representation "Satisfaction Guaranteed" the plain and unambiguous meaning the law requires.[4]

The plain meaning of a "guarantee" or "satisfaction" representation or standard is well established in all areas of the law. The D.C. Court of Appeals has enforced the plain meaning of the words in contract cases. *See Aronoff v. The Lenkin Company & Lerner Enterprises Ltd. Partnership*, 618 A.2d 669, 676 &678 (D.C. 1992) (contract that provided for third person satisfaction does not subject that determination of satisfaction to review for correctness or objective reasonableness by the court); *Fowler v. A & A Company*, 262 A.2d 344, 347 (D.C. 1970) (guarantee in contract was "clearly a promise to do whatever is necessary").

Both federal and state courts have uniformly enforced the plain meaning of a satisfaction guarantee in consumer cases as well. *E.g., Courtney v. Bassano*, 733 A.2d 973 (Me. 1999)

[3]As a consequence of offering an unconditional guarantee of satisfaction a merchant is required to satisfy a consumer's demand for lawful compensation (for example, for any amount of money). However, if the merchant fails to do so, as a practical matter he or she can only be sued for actual or statutory ($1,500 for each violation of an unfair trade practice) damages under the CPPA. D.C. Code § 28-3905(k)(1). Thus, regardless of the consumer's demand for satisfaction, except in the unusual case (*e.,g,* when an unfair trade practice has gone on for seven years, in intentional disregard of the law, is ratified by co-owners of the business, and impacts tens of thousands of consumers) the consumer will only be able to recover $1,500 plus his or her attorneys' fees from the merchant. There is no reason to believe – particularly on this record – that a consumer will demand more than the consumer believes reasonably necessary to remedy the loss of or damage to his or her clothing. However, if a merchant resists acknowledging his or her liability, under the CPPA a consumer may be entitled to damages for any resulting discomfort or inconvenience. *See Bank of New Orleans And Trust Company v. Phillips*, 415 So.2d 973, 976 (4th Cir. 1982). As the June 25th Order noted, one elderly witness for the plaintiff increased her actual damages from $198 to $500 as a result of having to futilely argue with Soo Chung about compensation for damage to her dress suit. *Order* at 16 n.13.

[4] The primary meaning of "satisfaction" is: "1a. The fulfillment or gratification of a need, desire or appetite. B. Pleasure derived from such gratification." Webster's II New College Dictionary at 1005 (3rd Ed. 2005). The definition of a "guarantee" is "Something that ensures a particular outcome or condition . . . 2. A promise or assurance . . ." Webster's II New College Dictionary at 504 (3rd Ed. 2005). When an individual's satisfaction is guaranteed, that necessarily means that the desires or gratification of the individual are assured.

(deceptive to advertise guarantee of customer satisfaction while intending to condition the guarantee upon merchant's determination of reasonableness); *Capp Homes v. Duartee*, 617 F.2d 900, 902 (1st Cir. 1980) (standard for determining satisfaction is not objective, but whether consumer was actually personally satisfied). *See also* National Consumer Law Center, *Unfair and Deceptive Acts and Practices* § 5.2.7.3.1 (6th ed. 2004) (collecting dozens of federal and state cases in which merchants were found liable for misrepresenting the status of guarantees).

It is precisely because, by definition, a "Satisfaction Guarantee" has no limitations, that federal courts construing the Federal Trade Commission Act's prohibition against unfair and deceptive practice, 15 U.S.C.A. § 45, have required that any material conditions or limitations on a guarantee of satisfaction be disclosed. The Federal Trade Commission has codified that case law in a federal Guideline that unmistakably requires that the term "Satisfaction Guaranteed" be given its obvious *unconditional* meaning. And reflecting relevant case law, any limitations on that unconditional meaning must be prominently disclosed in *advance* of any transaction a merchant enters into with a prospective consumer:

> An advertisement that mentions a "Satisfaction Guarantee" or a similar representation should disclose, with such clarity and prominence as will be noticed and understood by <u>*prospective*</u> purchasers, any material limitations or conditions that apply to the "Satisfaction Guarantee" or similar representation.

16 CFR § 239.3(b) (underlining added).[5]/[6]

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[5] The failure to contemporaneously and clearly disclose the limitations on a SATISFACTION GUARANTEED advertisement also violates the CPPA because it violates D.C. common law. *Borzillo v. Thompson,* 57 A.2d 195 (1948) (Though one may be under no duty to speak as to a matter, if he undertakes to do so, either voluntarily or in response to inquiries, he is bound not only to state truly what he tells, but also not to suppress or conceal any facts within his knowledge which materially qualify those stated); *District Cablevision Limited Partnership v. Bassin*, 828 A.2d 714, 722-723 (D.C. 2003) (any violation of D.C.'s common law by a merchant is a CPPA unfair trade practice).

[6] The other subsection of this Guideline is 16 CFR § 239.3(a). Plaintiff agrees with the statement in the June 25th Order that 16 CFR 239.3(a) "provides some guidance on the reasonable interpretation of the 'Satisfaction Guaranteed' sign . . ." *Order* at 22. 16 CFR 239.3(a) states: "A seller or manufacturer should use the terms 'Satisfaction Guarantee,' 'Money Back Guarantee,' 'Free Trial Offer,' or similar representations in advertising only if the seller or manufacturer, as the case may be, refunds the full purchase price of the advertised product <u>*at the purchaser's request*</u>." (continued on next page . . .)

The plain and unambiguous meaning of the term "Satisfaction Guaranteed" is therefore well established under District of Columbia law, and throughout the federal and state courts. Indeed, the courts have held that an advertisement that stated a product was "guaranteed," or "fully guaranteed," but that did not disclose there was a service charge of a ***single*** dollar for handling and postage by the seller, was a deceptive practice. *Benrus Watch Co. v. FTC*, 352 F.2d 313, 321 (8th Cir. 1965), *cert. denied*, 384 U.S. 939 (1966). Obviously then, ***any*** limitation (including "reasonable" limitations) on a merchant's liability, or on the amount of a consumer's recovery, must be disclosed.

The June 25th Order does not cite to any case or commentary that comes to a different conclusion about the unambiguous and well established meaning of the term "Satisfaction Guaranteed." The Order, instead, cites to two non-binding cases that dealt with terms that were (at least at the time of the respective decisions) not well established in the law: *Alicke v. MCI Communications Corp*., 111 F.3d 909 (D.C. Cir. 1997) and *Rossman v. Fleet Bank Nat'l Ass'n*, 280 F.3d 384, 391 (3rd Cir. 2002). Those cases can have limited relevance to a determination of the well established meaning of "Satisfaction Guaranteed" in the law.

The June 25th Order cites *Alicke* for the proposition that "a claim of unfair trade practice properly is considered in terms of how the practice would be viewed and understood by a reasonable consumer." *Order* at 19. However, as a subsequent court stated about *Alicke*: "The *Alicke* court held that the plaintiff could not have reasonably relied on the alleged misrepresentations by the defendant . . . *Burlington Insurance Co. v. Okie Doie, Inc*., 329

The Guideline does not impose any pre-condition *except* a request by the consumer – leaving the merchant's liability entirely up to the consumer. Thus the nine written and four oral preconditions the defendants imposed in this case on the guarantee they advertised clearly violates this Guideline. *See* footnote 2, *supra*.

Similarly the defendants' admitted retaliation (banning plaintiff from their business) for plaintiff's exercise of his right to satisfaction in July 2002 violated 16 CFR 239.3(a)'s requirement that defendants clearly and prominently disclose any material limitations or conditions on their "Satisfaction Guarantee."

F.Supp.2d 45, 49 (D.D.C. 2004). As these comments explain, the *Alicke* court focused on provisions of the CPPA that required a plaintiff to prove misrepresentation and reasonable reliance. Specifically, the *Alicke* court held that: "to state a claim based upon an unfair trade practice, the plaintiff must allege that the defendant made a **material** misrepresentation or omission that has a **tendency to mislead**. D.C. Code § 28-3904(e) and (f)." *Id*. at 912 (emphasis supplied). As its citation to § 28-3904(e) and (f) reveals, and the decision in *Burlington* confirms, *Alicke* limited its analysis to the two prohibitions in the CPPA that have a requirement that the consumer prove a material misrepresentation or omission and a tendency to mislead: D.C. Code § 28-3904(e) and (f).

Thus *Alicke* does not address four of the six prohibitions on which this case is based, and in particular D.C. Code § 28-3904(a).[7] And it is of no relevance when considering a term that is as clearly defined in the law as "Satisfaction Guaranteed."

Rossman v. Fleet Bank Nat'l Ass'n, 280 F.3d 384, 391 (3rd Cir. 2002), the second case cited in the June 25th Order, is a Truth in Lending case. The issue in *Rossman*, relevant to this case, was how the statement "no annual fee" in a credit card solicitation should be interpreted with respect to its duration. The 3rd Circuit did not find it necessary to rule on the plaintiff's

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[7] See *Umana v. Swidler & Berlin, Chartered*, 669 A.2d 717, 720 (D.C. 1995) ("If a court in reaching a decision has not considered a particular point, then 'the connection of the decision with that point is not a connection of effect and cause, but is purely accidental, and as to that point the decision is no authority whatever.'") (citation omitted).

Alicke is not a binding decision of the D.C. Court of Appeals, but is instead a decision of the U.S. Court of Appeals for the D.C. Circuit. *M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971) (decisions of the U.S. Court of Appeals for the D.C. Circuit are not binding on the D.C. Superior Court and the D.C. Court of Appeals if handed down after February 1, 1971). Additionally, the decision in *Alicke* was reached before the CPPA was amended, effective October 19, 2000, to require that "The [CPPA] shall be construed and applied liberally to promote its purpose[s]." D.C. Code § 28-3901(c). One purpose of the CPPA is to "assure that a just mechanism exists to remedy <u>all</u> improper trade practices . . ." By anyone's reckoning it is an improper/unfair trade practice to advertise that you guarantee each customer's satisfaction while intending solely to guarantee your own as a merchant. That practice hurts both consumers *and* competing businesses that honestly advertise their services.

The remaining purposes of the CPPA are to: "(2) promote, through effective enforcement, fair business practices throughout the community; and (3) educate consumers to demand high standards . . ." It clearly furthers those purposes to end the improper/unfair trade practice of a merchant advertising that he guarantees his customer's satisfaction while *admittedly* intending only to guarantee his own.

argument that the term implied no time limit. It did not have to reach that issue because it concluded that a reasonable consumer would, at any rate, be entitled to assume that the solicitation meant the issuer (by advertising an "annual" fee) would refrain from imposing an annual fee for at least one year. *Id.* a 394.

Alicke and *Rossman,* therefore, are relevant at best to cases involving a term that is ambiguous, or instances when a merchant is ***not*** under a common law duty to affirmatively disclose all facts within his knowledge that materially qualify his representation. That assuredly is not our case.

If there were any ambiguity about the meaning of the words "Satisfaction Guaranteed" -- and there is not – it is settled law that advertising claims, such as this, will be construed as *deceptive* if they are capable of conveying misleading impressions "'even though other nonmisleading interpretations may also be possible.'" *Chrysler Corp. v. FTC*, 561 F.2d 357, 363 (D.C. Cir. 1977) (citation omitted); *National Comm'n on Egg Nutrition v. FTC*, 88 F.T.C. 84, 185-86 (1976) ("An otherwise false advertisement is not rendered acceptable merely because one possible interpretation of it is not untrue"), *aff'd as modified*, 570 F.2d 157 (7th Cir. 1977), *cert. denied*, 439 U.S. 821 (1978); *Resort Car Rental System, Inc. v. F.T.C.*, 518 F.2d 962, (9th Cir. 1975), *cert. denied*, 423 U.S. 827 ("Advertising capable of being interpreted in a misleading way should be construed against the advertiser."); *Moretrench Corp. v. Federal Trade Commission*, 127 F.2d 792, 795 (2d Cir. 1942) (Federal Trade Commission may "insist upon the most literal truthfulness" in advertisements). *Rossman v. Fleet Bank Nat'l Ass'n*, 280 F.3d 384, 394 (3rd Cir. 2002) (when a consumer statute requires that words provide clear information to consumers ambiguities should be resolved in favor of the consumer).

The decision of the D.C. Court of Appeals in *Banks v. D.C. Dept. of Consumer & Regulatory Affairs*, 634 A.2d 433, 438 (D.C. 1993), confirms and adopts the uniform rule of law

that a representation by a merchant that is capable of a misleading impression will be construed as deceptive even though another nonmisleading interpretation may also be possible.

Over a vigorous dissent, the D.C. Court of Appeals in *Banks* affirmed a ruling by the D.C. Department of Consumer and Regulatory Affairs ("DCRA") that a non-lawyer merchant violated D.C. Code §§ 28-3904(a), (d) and (e) by representing his services contained qualities they did not have. The complaining party in the case admitted that he did not believe that the non-lawyer was a lawyer, and that the non-lawyer made clear he was not a lawyer. Nonetheless, the Court of Appeals affirmed DCRA's finding that the non-lawyer misrepresented himself as an advocate with skills equivilant to those of a lawyer. Clearly, DCRA could have concluded that because the non-lawyer coupled his statement that he had skills equivilant to a lawyer, with the disclosure that he was not a lawyer, the first representation did not give a nonmisleading interpretation. The DCRA and the Court of Appeals reasoned that the fact one of his statements, taken alone, *was* capable of a misleading interpretation placed him in violation despite the nonmisleading statement he coupled it with.

So, even if this case involved an ambiguous term, and not the long-defined term "Satisfaction Guaranteed," its meaning would be construed favorably to plaintiff-consumers and unfavorably to the defendant-merchants.

As a final point, the June 25th Order appears to argue that 16 C.F.R. § 293.3 is not instructive because: (1) it applies to print and broadcast advertising and (2) the concern underlying it is that customers not be lured from *outside* a store based on advertised promises that turn out to be limited by additional conditions that are not revealed until the customer comes *into* the store. However, the text of 16 C.F.R. § 293.3 applies to all "advertisements," and not just printed advertising. The examples given, which state that they are merely illustrative, just happen to involve print and broadcast advertisements. Further, the suggestion that the sign in this case could not be seen from outside the defendants' store is plainly wrong.

A sign inside a store is an "advertisement." The definition of an "advertisement" includes: ". . . 2: a public notice . . ." Merriam-Webster's Collegiate Dictionary at 17 (10th Ed. 2002).

As Plaintiff's Exhibits 2(E) and 2(F) establish, the words "Satisfaction Guaranteed" inside the defendants' store could clearly be seen from outside the store during daylight hours. Indeed, as Plaintiff's Exhibits 2(E) and 2(F) also demonstrate, during warm weather the defendants swung open the outside doors to their cleaners wide open to ensure maximum exposure of the "Satisfaction Guaranteed" advertisement.

* * *

This court's June 25, 2007 Order does not address: (1) the unambiguous dictionary definition of "Satisfaction Guaranteed;" (2) case law that is binding on this court [*e.g., Borzillo v. Thompson*, 57 A.2d 195 (D.C. 1948); *District Cablevision Limited Partnership v. Bassin*, 828 A.2d 714, 722-723 (D.C. 2003) and *Banks v. D.C. Dept. of Consumer & Regulatory Affairs*, 634 A.2d 433, 438 (D.C. 1993)], or (3) the uniform case law construing the term "satisfaction guaranteed" handed down by federal and state courts across the United States and collected at National Consumer Law Center, *Unfair and Deceptive Acts and Practices* § 4.2.4.1 (6th ed. 2004).

Plaintiff therefore requests that the June 25th Order be reconsidered.

When one gives "Satisfaction Guaranteed" is required meaning, liability under D.C. Code § 28-3904(a), and with respect to every other claim in this case, must follow because the defendants admit they neither conducted their business, nor intended to conduct their business, in accordance with the unqualified guarantee of satisfaction they advertised for seven years.

B. D.C. Code § 28-3904(d)

As a consequence, plaintiff's entitlement to judgment on his remaining claims can be quickly summarized.

D.C. Code § 28-3904(d), the basis for plaintiff's second claim, is also a very simple statutory provision. It states in its entirety:

> **§ 28-3904. Unlawful trade practice**
>
> It shall be a violation of this chapter, ***whether or not any consumer is in fact misled, deceived or damaged thereby***, for any person to:
>
> (d) represent[4] that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;.

An unconditional guarantee of satisfaction is a representation[8] that defendants' services are of a particular standard, quality or grade when in fact (and by admission) they are of another. There is no requirement, in § 28-3904(d), that a consumer prove that a merchant's representation about the standard or quality of his service has a tendency to mislead. *Banks v. District of Columbia Department of Consumer & Regulatory Affairs*, 634 A.2d 433 (D.C. 1993).[9]

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[8] A "representation" has a different meaning than a "**mis**representation." A representation is simply a statement. A misrepresentation is a false statement. Thus, § 28-3904(a) (in contrast to § 28-3904(e) and (f)) is triggered by *any* statement, whether true or false.

[9] The June 25th Order states that no evidence was presented that the defendants failed to honor a request for customer satisfaction when a customer appeared with a receipt. A specific showing in this regard is unnecessary in light of defendants' admission that they have never, in fact, honored their representation of unconditional satisfaction. However, plaintiff takes this opportunity to correct the record.

Rhonda Dorsey, a customer who was also the mail person assigned to deliver mail each day to Custom Cleaners, testified for the plaintiff. Ms. Dorsey testified that although she appeared without her receipt, Soo Chung was able to look up her order in the store's computer, using Ms. Dorsey's telephone number. [A copy of a customer receipt can be generated at any time. Plaintiff's Exhibit #3(D) at p. 4 (admission that "defendants can produce a copy of any receipt at any time").] Because Soo Chung looked up the order number to determine how to locate the order, Soo Chung did not need Ms. Dorsey's copy of the receipt. The store's identical copy of the receipt was attached to the dry cleaning order Soo Chung located. Ms. Dorsey testified that the store's copy of the receipt corroborated her claim that she placed a sweater in the cleaners as part of her order and that it was not returned to her. *When Soo Chung took the stand she did not dispute Ms. Dorsey's testimony*. Nor did she produce a copy of the receipt to contradict Ms. Dorsey's claim that the receipt had Ms. Dorsey's sweater listed on it. Yet the defendants refused to compensate Ms. Dorsey when Ms. Dorsey re-raised the issue of compensation for her loss every day when she delivered mail to Custom Cleaners. Ms. Dorsey also testified that she *expressly* reminded Soo Chung of the "Satisfaction Guaranteed" sign in the store when Soo Chung resisted Ms. Dorsey's demand for compensation.

The court's statement excusing the defendants from honoring their satisfaction guarantee if a customer appears without a receipt confirms that production of a receipt is an undisclosed precondition to honoring the "Satisfaction Guaranteed" representation – despite the (footnote continued on next page)

C. D.C. Code § 28-3904(e) and (f)

D.C. Code § 28-3904(e) and (f), the basis for plaintiff's third claim, are similarly straightforward.

> **§ 28-3904. Unlawful trade practice**
>
> It shall be a violation of this chapter, ***whether or not any consumer is in fact misled, deceived or damaged thereby***, for any person to: . . .
>
> **(e)** misrepresent as to a material fact which has a tendency to mislead;

> **§ 28-3904. Unlawful trade practice**
>
> It shall be a violation of this chapter, ***whether or not any consumer is in fact misled, deceived or damaged thereby***, for any person to:
>
> **(f)** fail to state a material fact if such failure tends to mislead;

A misrepresentation, or omission, is actionable under D.C. Code § 28-3904(e) and (f), if it involves a material fact that has a tendency to mislead. Defendants' *admitted* failure to disclose the limitations on their unconditional guarantee had a tendency to mislead as a matter of law. Every federal and state court presented with the issue has ruled that the failure to disclose conditions and limitations on a guarantee of satisfaction has ***at least*** a tendency to mislead. *Thompson Medical Co*., 104 F.T.C. 648 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied* 479 U.S. 1086 (1987) (Under FTC Act materiality is presumed when the fact that has been misrepresented involves a claim of warranty or quality); National Consumer Law Center, *Unfair and Deceptive Acts and Practices* § 4.2.11.1 (6th ed. 2004) ("In determining under the FTC Act whether a practice has a capacity or tendency to deceive, federal courts and the FTC historically have considered whether the ignorant, the unthinking, the credulous and the least sophisticated consumer would be deceived. . . .") (footnotes omitted) Thus, when it codified

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fact the same information is in the defendant's cash register computer. Defendants admitted that they require a receipt as a (undisclosed) condition for honoring a customer's claim in their sworn discovery responses. Plaintiff's Exhibit 3(D) at p.2.

this FTC standard in 1976 the CPPA codified "the ignorant, the unthinking" consumer test for determining whether an act or practice has a tendency to mislead.

D. D.C. Code § 28-3904(h)

D.C. Code § 28-3904(h), the basis for plaintiff's fifth claim, is a similarly straighforward statutory prohibition. It states in its entirety:

> **§ 28-3904. Unlawful trade practice**
>
> It shall be a violation of this chapter, ***whether or not any consumer is in fact misled, deceived or damaged thereby***, for any person to: . . .
>
> (h) advertise *or offer* goods or services *without the intent to sell them or* without the intent to sell them as advertised *or offered*;

D.C. Code § 28-3904(h) prohibits the advertising or offering of services without the intent to sell them as advertised or offered. Defendants *admittedly* did not intend to sell their services with the unconditional guarantee of satisfaction that, as a matter of law, they advertised.

E. D.C. Code § 28-3904(u)

D.C. Code § 28-3904(u), the basis for plaintiff's sixth claim, codifies another simple statutory prohibition. It states:

> **§ 28-3904. Unlawful trade practice**
>
> It shall be a violation of this chapter, ***whether or not any consumer is in fact misled, deceived or damaged thereby***, for any person to: . . .
>
> (u) represent that the subject of a transaction has been supplied in accordance with a previous representation when it has not;

D.C. Code § 28-3904(u) prohibits representing that a service has been provided in accordance with the same terms as it was represented that those services would be provided, when it has not been. *Banks v. D.C. Dept. of Consumer & Regulatory Affairs,* 634 A.2d 433, 439 (D.C. 1993) ("This provision calls for a backward look: did a party make a present misrepresentation that he or she has done something pursuant to a previous representation.")

This prohibition is identical to § 3(b)(5) of the *Uniform Consumer Sales Practices Act*, reprinted in 7A Uniform Law Annotated 75 (2002) (Comment-"This subsection forbids such conduct as misrepresenting that different goods, services, or intangibles are those previously advertised or purchased.").

Since at least May 14, 2005, the defendants *admittedly* have represented to the plaintiff that the services they have provided to him are the same as those they advertised, when they *admittedly* have not provided their services to plaintiff (or any other customer) on the unconditional terms they advertised.

F. <u>The Tort of Fraud</u>

Under the common law, a claim of fraud has four elements in cases alleging a business person's misrepresentation to a consumer: (1) a false representation (or concealment), (2) of material fact, (3) knowingly made, (4) with intent to deceive. *Remeikis v. Boss & Phelps, Inc.,* 419 A.2d 986 (D.C. 1980). Proof of reliance is <u>not</u> required.[10]

The undisputed evidence at trial established that in July of 2002 the defendants lost a pair of pants that the plaintiff gave them for dry cleaning. The plaintiff demanded $150 in payment for the lost pants to guarantee his satisfaction. Through Jai Chung, an adult family member, the defendants attempted to pay plaintiff only $80. Plaintiff then pointed to the sign "Satisfaction Guaranteed" and stated to Jai Chung that, by that sign, the owners of the store guaranteed that their customer would be satisfied. Jai Chung agreed and paid the defendant the $150 he demanded.

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[10] *Hercules & Co., Ltd. v. Shama Restaurant Corp*, 613 A.2d 916 (D.C. 1992) ("There is support of the proposition that in actions by consumers against entrepreneurs who obtain those consumers' business or money through fraud, the requirement that reliance be reasonable has been eliminated"). Notwithstanding that proof of reliance is not required, in this case overwhelming evidence established that the defendants intended to induce plaintiff to rely on their "Satisfaction Guaranteed" sign, beginning in August of 2002 when they (as a family) first imposed and then lifted their ban on plaintiff's patronage after being served with a letter that advised them they must provide an unconditional guarantee of satisfaction if they continued to advertise "Satisfaction Guaranteed." The defendants had to intend to deceive the plaintiff into believing that they thereafter would honor an unconditional guarantee of satisfaction.

However, when plaintiff attempted to utilize the defendants' services shortly thereafter defendant Soo Chung advised the plaintiff that her family had met and decided that, as a result of his demand for satisfaction, they would no longer accept him as a customer. Plaintiff's Exhibit 3(D) at p. 5. The plaintiff then prepared a letter in which he pointed out that the defendants' conduct violated the D.C. Consumer Protection Procedures Act, in that the defendants' sign failed to disclose that a customer's satisfaction was guaranteed only one time. Plaintiff's Exhibit 1(E).

Plaintiff simultaneously drafted a lawsuit for filing in the event the defendants failed to either change the sign, or failed to accept him as a customer under the terms of their unqualified sign. Plaintiff's Exhibit 1(F). However, the lawsuit proved unnecessary because the defendants agreed to accept plaintiff as a customer under the unqualified terms of the sign -- by again accepting him as a customer without changing the sign "Satisfaction Guaranteed" in any way.

Plaintiff's testimony about the events of July and August 2002 were not disputed. The defendants did not call Jai Chung as a witness, although (as plaintiff testified on June 12, 2007) Jai Chung was present in the courtroom on each day of the trial.

By clear and convincing evidence plaintiff has proven each element of the tort of fraud:

1. <u>False Representations/Concealments</u>:

The defendants affirmatively advertised the false representation: "Satisfaction Guaranteed." With respect to their concealment, D.C. law provides that "'[t]hough one may be under no duty to speak as to a matter, if he undertakes to do so, either voluntarily or in response to inquiries, he is bound not only to state truly what he tells, but also not to suppress or conceal any facts within his knowledge which materially qualify those stated." *Borzillo v. Thompson*, 57 A.2d 195, 198 (D.C. 1948) (footnote and citations omitted).

2. <u>Of Material Facts</u>:

"A fact is material if it is a fact that the maker of the representation knew would likely be

important to the person to whom it is made, even if a reasonable person would not think that fact was important." § 20.2, *Standardized Civil Jury Instructions for the District of Columbia*. That circumstance clearly applies where plaintiff and the defendants are concerned.

> The FTC standard is that while materiality is important, the [Federal Trade] Commission can infer materiality and does not need independent evidence in most situations. Under the current standard, materiality can be presumed whenever:
> - Sellers make express claims;
> - Sellers should have know that the consumer would need information not disclosed;
> - Sellers intended to make implied claims; or
> - Sellers make any claims involving healthy, safety, purpose, efficacy, cost, durability, performance, warranties, quality, or other areas with which the reasonable consumer would be concerned."

National Consumer Law Center, *Unfair and Deceptive Acts and Practices* § 4.2.12.2 (6th ed. 2004)

3. Knowingly Made:

In this case the defendants knew their representations were false for at least fourteen different reasons (listed in *Trial Brief On Plaintiff's Key Claims*), including: (1) they have admitted they never intended a guarantee of satisfaction (2) they kept their "Satisfaction Guaranteed" sign up after receiving demand letter from plaintiff, after lawsuit was filed detailing relevant law and after trial court order was entered stating that if plaintiff proved the facts he alleged defendants would be liable for multiple violations of the CPPA.

4. With Intent To Deceive (i.e., intent to induce reliance):

In this case the overwhelming evidence that the defendants intended to deceive or induce plaintiff into relying on their unconditional guarantee, includes: (1) the lifting of the ban on plaintiff the defendants imposed in August 2002 after plaintiff successfully insisted on their complying with their satisfaction guarantee under similar circumstances; and (2) defendants' failure to remove the limitations and exclusions on the back of their receipt, or to prominently disclose those written and their other oral limitations to the plaintiff.

To prevail on his claim for fraud the plaintiff need *not* show that the defendants lost his suit pants.[11] Plaintiff's claim for fraud is brought because the defendants unconditionally

[11] The June 25, 2007 Order states that the plaintiff and Soo Chung testified to differing versions of what occurred on May 7, 2005. The Order overlooks record evidence that in July 2005 Soo Chung *admitted* that plaintiff's version of what occurred on May 7, 2005 (as well as what occurred on April 30 and May 3, 2005) was correct. Plaintiff's Exhibit 3(I).

Specifically, on July 27, 2007, the defendants filed an Answer to the Amended Complaint in which they admitted, under penalty of perjury, the following:

- On May 3, 2005, plaintiff left a pair of pants at Custom Cleaners for alteration and that defendant Soo Chung promised the altered pants would be ready by 4 pm. on May 5, 2005
- On the evening of May 5th plaintiff returned to Custom Cleaners. He was again waited on by defendant Soo Chung. Ms. Chung advised plaintiff that his pants were not ready. When plaintiff said he needed the pants for the next morning, and requested the ~~suit~~ pants in their unaltered state, Ms. Chung said she did not know which basket in the rear of the store the pants were in.
- On May 6th the plaintiff returned to Custom Cleaners to pick up the pants. He was again waited on by defendant Soo Chung. Ms. Chung advised plaintiff that his suit pants had not been found.
- On Saturday, May 7th the plaintiff again returned to the cleaners. He was again waited on by defendant Soo Chung. Ms. Chung advised him that his pants had still not been found. She dialed her cell phone to reach her sister. After speaking with her sister in her native tongue, Ms. Chung handed her cell phone to the plaintiff.
- Plaintiff returned to the store and gave Ms. Chung [a] red and blue pin striped suit coat.
- Although plaintiff's suit pants had been misplaced, defendant Soo Chung did have available some gray slacks plaintiff had ~~l~~eft. Ms. Chung measur~~ing~~[ed] the waist and inseam of the slacks. Ms. Chung then asked that the plaintiff give her [more time] to search.
- May 14th plaintiff walked to Custom Cleaners and was, again, waited on by defendant Soo Chung. Ms. Chung stated that gray slacks were the pants plaintiff had left to be altered on May 3rd.
- The plaintiff requested that Ms. Chung bring the blue and red pin striped suit coat to the front counter where they were standing. She did so.
- Ms. Chung said that she *specifically* remembered the pants. Plaintiff's Exhibit 3(I).

Defendant Soo Chung's contradictory and startlingly different testimony, almost two years later at the trial on June 13, 2007, is simply wrong. Her testimony that on May 3, 2005 plaintiff dropped off a gray pair of pants, along with his suit pants, is contradicted by Plaintiff's Exhibit 3(N) (print out of plaintiff's transactions at Custom Cleaners, showing only one item was placed in the store on May 3, 2005, and that it was never picked up, and that the single pair of non-suit pants plaintiff testified to were placed in the store on April 30, 2005 and were paid for and picked up on May 14, 2005). Soo Chung's testimony that two pair of pants were dropped off on May 3, 2005 is also contradicted by Plaintiff's Exhibits 1(P) and 1(Q), which are copies of the actual April 30, 2005 receipt for plaintiff's non-suit pants.

Similarly, Soo Chung's testimony to the effect that on May 7, 2005 she presented the gray pants (with three belt inserts) to the plaintiff clearly cannot be credited. Soo Chung's memory of these events was obviously clearer two years ago than it was on June 13, 2007. And it makes no sense, if Soo Chung believed she had found plaintiff's pants: (1) for Soo Chung to ask plaintiff to speak with her "sister" on the telephone so that "Ms. Parks" could persuade plaintiff to go home and bring back the suit coat for the missing suit pants, and (2) for Soo Chung to then hold the suit coat for a week.

If on May 7, 2005, Soo Chung was "very sure they [the pants with three belt inserts] were Mr. Pearson's pants," why did she hold the suit coat for the missing suit pants for a week (until plaintiff had to come in and inquire about the status of the search for his suit pants)? (footnote continued on next page)

guaranteed his satisfaction with their services while having no intention of honoring that unconditional guarantee.

The defendants *guaranteed*, in the aftermath of the events of July-August 2002, and by the continued posting of their unqualified "Satisfaction Guaranteed" sign, that there would be no debate on the question of their liability or plaintiff's satisfaction – i.e., the plaintiff-customer would *always* be right.

III. Related, But Subsidary, Issues

A. Statutory Damages Or Actual Damages?

Plaintiff incorporates, by this reference, the computations in the parties' Joint Pretrial Statement.

B. Statutory Punitive Damages

Plaintiff incorporates, by this reference, the computations in the parties' Joint Pretrial Statement.

C. Permanent Injunction

Plaintiff incorporates, by this reference, the injunctive relief set forth in the parties' Joint Pretrial Statement.

D. Reasonable Attorneys' Fees

As Judge Kravitz recognized in his order of November 20, 2006, plaintiff brought this suit as a private attorney general under a fee shifting statute. D.C. Code § 28-3901(k)(1)(B) plainly authorizes an award of reasonable attorneys' fees to any "person, whether acting for the interests of [him]self" or any one else. "Person" is defined in D.C. Code § 28-3901(a)(1) to

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And why didn't defense counsel call Ms. Parks as a witness, so that Ms. Parks could corroborate Soo Chung's assertion that she had presented the pants with the three loops to plaintiff on May 7, 2005, and was sure they belonged to him? Under the "missing witness" rule there is an inference that Ms. Park's testimony would not have been favorable to the defendants. [During discovery plaintiff was unable to obtain an address, or even the full name, of "Ms. Parks." The cell telephone number for "Ms. Parks" that defendants were compelled to produce in discovery was not "Ms. Park's" telephone number and the number could not be traced to a street address in any event.]

expressly include "an individual." It furthers the purposes of the CPPA to award attorneys' fees to persons who relieve the District of Columbia Government, and its taxpayers, of the expense of operating a fully staffed Office of Consumer Protection by expending their personal time and funds in prosecuting claims under the CPPA.

The defendants have not contested plaintiff's hourly rate, the amount of attorney time expended, or the reasonableness of the time expended. Plaintiff therefore seeks reasonable attorneys' fees in the amount of $425,000 for excellent legal work performed under extremely trying circumstances – including holding down a more than full time job;

E. Liability For Common Law Punitive Damages

Plaintiff requests that the trial of plaintiff's claim for common law punitive damages commence as previously scheduled at 9:30 a.m. on July 30, 2007, in courtroom 417, and that on or before July 23, 2007, defendants be required to complete, sign under oath, and hand deliver to plaintiff full responses to all discovery and all forms seeking financial information served on them by the plaintiff during the discovery phase of this litigation.

CONCLUSION

Plaintiff so moves.

Respectfully submitted,

Roy L. Pearson, Jr

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Counsel for Plaintiff

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

ROY L. PEARSON, JR.	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 4302-05
	:	
SOO CHUNG, et al.	:	
	:	
Defendants.	:	

O R D E R

Upon consideration of *Plaintiff's Motion For Reconsideration,* any Opposition thereto, and good cause having been shown, it is this _____ day of _____, 2007,

ORDERED, that the motion is granted, and the Findings of Fact and Conclusions of Law and Judgment entered by this court on June 25, 2007 are VACATED; and this court makes the following:

FINDINGS OF FACT

From at least June 7, 2002 through June 13, 2007, plaintiff Roy L. Pearson was or would have been a customer of the defendants at Custom Cleaners, located at 3174-1/2 Bladensburg Road, N.W., in Washington, D.C.

From at least June 7, 2002 through June 13, 2007, defendants Soo Chung, Ki Y Chung and Jin Nam Chung owned and operated Custom Cleaners, and advertised their alteration, dry cleaning, laundering and shoe repair services at that location.

From at least June 7, 2002 through June 15, 2006 the words "SATISFACTION GUARANTEED" were prominently displayed immediately inside Custom Cleaners so that they faced each person entering the cleaners.

At no time, from June 7, 2002 through June 15, 2006, did the defendants in fact unconditionally guarantee the satisfaction of all customers with all of the services they offered and advertised

Throughout the period of June 2000 through June 15, 2006, the defendants issued the same receipt (supplied by Royal Western Computer Co.) to customers of Custom Cleaners for laundering, dry cleaning and alteration services. Joint Pretrial Order at 3 (June 22, 2007).

The reverse side of the receipt/invoice issued between June 2000 and June 15, 2006, reads as follows:

CONDITIONS

NOT RESPONSIBLE FOR ORDERS LEFT OVER 30 DAYS.

Cleaning – We will use such process which, in our opinion, is best suited to texture and conditions, but *cannot be responsible* for weak, tender, defective or adulterated materials – not obvious prior to processing. *Not responsible* for trimmings, buckles, belts, beads, buttons, or valuables.

Laundry – Errors *must* be reported within 48 hours, accompanied by this invoice. Unless your list accompanied bundle, our count *must* be accepted. *Liability shall not exceed* 10 times laundry charge, unless higher value declared and owner agreed to additional charges. *No guarantee* on colors, curtains, shrinkage, or synthetics.

If labels are removed or missing, all work will be done at *customer's risk*.

Thank you. We appreciate your business.

From at least June 7, 2002 through March 21, 2007, when a customer requested alterations be performed the receipt/invoice the defendants gave the customer automatically set a date for completion and pick up that was three days later, despite the "SAME DAY SERVICE" sign the defendants displayed throughout this time period.

In July of 2002 the defendants lost a pair of pants that the plaintiff gave them for dry cleaning. The plaintiff demanded $150 in payment for the lost pants to guarantee his satisfaction. Through Jai Chung, the defendants attempted to pay plaintiff only $80. Plaintiff then pointed to the sign "Satisfaction Guaranteed" and pointed out that the owners of the store guaranteed that the customer would be satisfied. Jai Chung agreed and paid the defendant the $150 he demanded.

However, when plaintiff attempted to utilize the defendants' services shortly thereafter defendant Soo Chung advised the plaintiff that her family had met and decided that, as a result of his demand for satisfaction, they would no longer accept him as a customer. Plaintiff's Exhibit 3(D) at p. 5. The plaintiff then prepared a letter in which he pointed out that the defendants' conduct violated the D.C. Consumer Protection Procedures Act, in that the defendants' sign failed to disclose that a customer's satisfaction was guaranteed only one time. Plaintiff's Exhibit 1(E).

Plaintiff simultaneously drafted a lawsuit for filing if the defendants failed to either change the sign, or failed to accept him as a customer under the terms of the unqualified sign. Plaintiff's Exhibit 1(F). However, the lawsuit proved unnecessary because the defendants agreed to accept plaintiff as a customer under the unqualified terms of the sign by again accepting him as a customer without changing the sign "Satisfaction Guaranteed" in any way.

Plaintiff's testimony about the events of July and August 2002 were not disputed. The defendants did not call Jai Chung as a witness, although he was present in the courtroom on each day of the trial.

On June 7, 2005 plaintiff filed the present lawsuit. On July 21, 2005 plaintiff's Amended Complaint was accepted for filing.

On July 27, 2007, the defendants filed an Answer to the Amended Complaint in which they admitted, under penalty of perjury, the following:

- On May 3, 2005, plaintiff left a pair of pants at Custom Cleaners for alteration and that defendant Soo Chung promised the altered pants would be ready by 4 pm. on May 5, 2005

- On the evening of May 5th plaintiff returned to Custom Cleaners. He was again waited on by defendant Soo Chung. Ms. Chung advised plaintiff that his pants were not ready. When plaintiff said he needed the pants for the next morning, and requested the ~~suit~~ pants in their unaltered state, Ms. Chung said she did not know which basket in the rear of the store the pants were in.

- On May 6th the plaintiff returned to Custom Cleaners to pick up the pants. He was again waited on by defendant Soo Chung. Ms. Chung advised plaintiff that his suit pants had not been found.

- On Saturday, May 7th the plaintiff again returned to the cleaners. He was again waited on by defendant Soo Chung. Ms. Chung advised him that his pants had still not been found. She dialed her cell phone to reach her sister. After speaking with her sister in her native tongue, Ms. Chung handed her cell phone to the plaintiff.

- Plaintiff returned to the store and gave Ms. Chung [a] red and blue pin striped suit coat.

- Although plaintiff's suit pants had been misplaced, defendant Soo Chung did have available some gray slacks plaintiff had ~~l~~eft. Ms. Chung measur~~ing~~[ed] the waist and inseam of the slacks. Ms. Chung then asked that the plaintiff give her [more time] to search.

- May 14th plaintiff walked to Custom Cleaners and was, again, waited on by defendant Soo Chung. Ms. Chung stated that gray slacks were the pants plaintiff had left to be altered on May 3rd.

- The plaintiff requested that Ms. Chung bring the blue and red pin striped suit coat to the front counter where they were standing. She did so.

- Ms. Chung said that she ***specifically*** remembered the pants. Plaintiff's Exhibit 3(I).

Defendant Soo Chung's contradictory testimony, almost two years later at the trial on June 13, 2007 – to the effect that on May 7, 2005 she presented the gray pants to the plaintiff – is not credible. Soo Chung's memory of these events was obviously clearer two years ago than it was on June 13, 2007.

The defendants admit that: "The software system at Custom Cleaners enables the defendants to print as many copies of the store's copy of the receipt (or invoice) that is given to a customer as the defendants wish, at any time the defendants wish. The subsequently printed copies are identical to the fist printed store receipt, until the system records that the items have been picked up. At that point the words "PICKUP," above the date the system records the items as having been picked up, will be present on any subsequently printed receipt." Plaintiff's Exhibit 3(D) at p. 4, Admission 29, *Plaintiff's First Request for Admissions To All Defendants*.

Plaintiff is an attorney with more than twenty years of legal experience (including seven years spent as a consumer law specialist for the Neighborhood Legal Services Program of the District of Columbia). Plaintiff expended approximately 1,330 hours prosecuting the claims in this lawsuit. Plaintiff's Exhibit 15(D). The Laffey Matrix entitled him to an hourly billing rate of $390-$425 per hour during the pendency of this litigation. Plaintiff's Exhibit 15(B). As far back as 1994 plaintiff was awarded attorneys' fees in a civil case by a judge of this court at a rate of $300 per hour. Plaintiff's Exhibit 15(C). At the trial of this case the defendants did not dispute plaintiff's hourly rate or the amount of time claimed by him.

The following damages have been proved thus far:

I. D.C. CONSUMER PROTECTION PROCEDURES ACT

A. STATUTORY MINIMUM DAMAGES **OR** TREBLE ACTUAL DAMAGES

Statutory Minimum Damages (§ 28-3905(k)(1)(A)) $1,500 per violation
x 7,500 violations (7 violations; 6 of which existed on 1,200 days from June 7, 2002-June 15, 2006)
$11,250,000 per defendant
(Soo Chung, Ki Y Chung & Jin Nam Chung) x 3 defendants
$33,750,000 **$33,750,000**

- **or, treble plaintiff's actual damages –**

Actual Damages

Litigation Costs	$ 1,500
Mental suffering, inconvenience and discomfort from deceit, litigation and other "emotional damages that are the natural and proximate result" of the defendants' conduct (*Osbourne v. Capital City Mortgage Corporation*, 667 A.2d 1321 (D.C. 1995))	$500,000
Value/Loss of Time Expended in Litigation	465,390
Leasing Automobile for 10 Years	15,000
Replacement suit	1,450
	$983,340
	x 3 (treble damages)
	$2,950,020 **$2,950,020**

B. STATUTORY PUNITIVE DAMAGES (For 3 defendants)
Based on amount of actual damages awarded, the frequency, persistence, and degree of intention of the trade practice(s) and number of consumers affected $200,000 **$200,000**

C. ATTORNEYS' FEES
May 8, 2005-March 21, 2007 (estimated 1,200 hours @ $390-$425/hr.) $500,000

March 21, 2007 to Trial Date (estimated 100 hours @ $425/hr.)	$42,500	
	$542,500	**$542,500**

Total (Based on election of D.C.C.P.P.A. Minimum Statutory Damages): $34,492,000

II. COMMON LAW CLAIMS- D.C. Code § 28-3905(k)(2)

A. *COMMON LAW* COMPENSATORY DAMAGES

Fraud	$**1,500**
Leasing Automobile (or walking 2 miles) Each Weekend for 10 Years	**$15,000**
Emotional damages authorized for intentional tort (*Osbourne*, 667 A.2d at 1328; *Parker*, 557 A.2d 1319)	**$500,000**
	$516,500

WHEREUPON, this court reaches the following

CONCLUSIONS OF LAW

From at least June 7, 2002 through June 12-13, 2007, plaintiff Roy L. Pearson, Jr. was a "consumer" within the meaning of D.C. Code § 28-3901(a)(2).

From at least June 7, 2002 through June 12-13, 2007, Soo Chung, Kai Y Chung and Jin Nam Chung were "merchants" within the meaning of D.C. Code § 28-3901(a)(3).

Making available information about, and soliciting the sale of, defendants' consumer services is a "trade practice" within the meaning of D.C. Code § 28-3901(a)(6).

A. D.C. Code § 28-3904(a)

The court incorporates by this reference the legal analysis in *Plaintiff's Motion For Reconsideration* and concludes that each defendant violated this statutory prohibition by displaying a sign stating "Satisfaction Guaranteed," from at least June 7, 2002 through June 15, 2006, that represented that their services had a certification, characteristics or benefits they did not have.

B. D.C. Code § 28-3904(d)

The court incorporates by this reference the legal analysis in *Plaintiff's Motion For Reconsideration* and concludes that each defendant violated this statutory prohibition by displaying a sign stating "Satisfaction Guaranteed," from at least June 7, 2002 through June 15, 2006, that represented that their services were of a particular standard, quality or grade when in fact they were of another.

C. D.C. Code § 28-3904(e)

The court incorporates by this reference the legal analysis in *Plaintiff's Motion For Reconsideration* and concludes that each defendant violated this statutory prohibition by displaying a sign stating "Satisfaction Guaranteed," from at least June 7, 2002 through June 15, 2006, that misrepresented that that defendants unconditionally guaranteed every customer's satisfaction, when that material misrepresentation has a tendency to mislead.

D. D.C. Code § 28-3904(f)

The court incorporates by this reference the legal analysis in *Plaintiff's Motion For Reconsideration* and concludes that each defendant violated this statutory prohibition by displaying a sign stating "Satisfaction Guaranteed," from at least June 7, 2002 through June 15, 2006, which failed to state the material fact that there were written and oral pre-conditions to the defendants' compliance with their guarantee—including defendants' personal satisfaction that any customer's complaint is legitimate and that the amount of compensation the customer requests meets with their approval.

E. D.C. Code § 28-3904(h)

The court incorporates by this reference the legal analysis in *Plaintiff's Motion For Reconsideration* and concludes that each defendant violated this statutory prohibition by displaying a sign stating "Satisfaction Guaranteed" from at least June 7, 2002 through June 15, 2006, without the intent to sell their services as advertised or offered**.**

F. D.C. Code § 28-3904(u)

The court incorporates by this reference the legal analysis in *Plaintiff's Motion For Reconsideration* and concludes that each defendant violated this statutory prohibition by displaying a sign stating "Satisfaction Guaranteed" from at least June 15, 2005 through June 13, 2007, the defendants represented that the subject of a transaction has been supplied to the plaintiff in accordance with a previous representation when it has not**.**

G. The Tort of Fraud

The court incorporates by this reference the legal analysis in *Plaintiff's Motion For Reconsideration* and concludes that each defendant in liable for fraud. Damages in the amount requested in the Joint Pretrial Statement, of $501,500 are awarded jointly and severally against the defendants.

H. Same Day Service

On June 13, 2007, at the conclusion of plaintiff's case-in-chief, this court ruled that plaintiff had presented no evidence that the defendants did not make same day service available. The court overlooked, in this regard, plaintiff's testimony that when he placed a garment in for alteration on May 3, 2005 the defendants' computer automatically generated a date for completion and pick up that was three days later, despite the "SAME DAY SERVICE" sign the defendants displayed from at least June 7, 2002 through March 21, 2007. Considering this evidence in the light most favorable to the plaintiff, with all inferences construed in his favor, plaintiff submitted sufficient evidence to make out a prima facie case.

At the second stage of this trial the defendants will be given an opportunity to rebut this evidence, if they can, after which the court will make finding and reach conclusions of law on whether the plaintiff has proven violations of the CPPA based on this claim.

I. Statutory Damages Or Actual Damages?

Plaintiff is entitled to the greater of his actual damages or $1,500 for each violation of an unfair trade practice. Statutory damages will clearly be larger in this case than plaintiff's requested actual damages. The amount of statutory damages will await the completion of the trial on plaintiff's claims based on defendants' "Same Day Service" sign.

J. Statutory Punitive Damages

The court incorporates by this reference the legal analysis in the *Trial Brief On Plaintiff's Key Claims* (May 31, 2007) which addresses the standards for awarding statutory punitive damages, and awards statutory punitive damages in the amount sought in the Joint Pretrial Statement of $200,000

K. Permanent Injunction

The court incorporates by this reference the legal analysis in the *Trial Brief On Plaintiff's Key Claims* (May 31, 2007) which address plaintiff's request for a permanent injunction. Based on my determination that the defendants' "Satisfaction Guaranteed" sign violated the D.C. Consumer Protection Procedures Act, and the length of time it remained on display, a separate Judgment will issue:

(1) Requiring defendants to remove, and not restore, fraudulent//deceptive advertisements stating "SATISFACTION GUARANTEED",

and

(2) Requiring that defendants' future claim tickets describe at least the color(s) of garments left for laundry, dry cleaning and/or alteration.

L. Reasonable Attorneys' Fees

The court incorporates by this reference the legal analysis in *Plaintiff's Motion For Reconsideration*. The court therefore awards plaintiff reasonable attorneys' fees in the amount of $425,000; and it is

FURTHER ORDERED, that Plaintiff's Exhibit 15(D) shall be admitted into evidence; and it is

FURTHER ORDERED, that a separate judgment is being entered, together with these findings and conclusions of law, and it is

FURTHER ORDERED, that the trial of plaintiff's claim for common law punitive damages shall commence as scheduled at 9:30 a.m. on July 30, 2007, in courtroom 417, and that on or before July 23, 2007, defendants shall complete, sign under oath, and hand deliver to plaintiff full responses to all discovery and all forms seeking financial information served on them by the plaintiff during the discovery phase of this litigation.

SO ORDERED.

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JUDITH BARTNOFF
ASSOCIATE JUDGE

Copies to:

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of *Plaintiff's Motion For Reconsideration* to be e-filed on this 10th day of July, 2007.

Roy L. Pearson, Jr

Roy L. Pearson, Jr. #955948