

Urban Active Lawsuit

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Actions Leading to Lawsuit

Urban Active Fitness, whose headquarters are in Lexington, Kentucky have had several class action lawsuits filed against them in recent months in the U.S. District Court in Columbus, Ohio for several types of business practices that violated Ohio's consumer protection laws. Some of the violations the company has been cited for include: "1) misrepresenting the terms and duration of its membership contracts, and other contracts for services; 2) misrepresenting customer's cancellation rights; 3) failing to notify customers of their cancellation rights as required by law; 4) failing to provide customers with copies of contracts at the time of signing as required by law; 5) failing to honor notices of cancellation; 6) continuing to charge customers after cancellation; 7) failing to inform customers of hidden \$15 "maintenance fees" which increase the cost of its membership contract; and 8) failing to provide customers with personal training sessions as contracted for in their agreements" (Representative Council, 2011)

All of the complaints in the class action lawsuit against Urban Active stem from consumer protection laws being broken and were initiated by members and former members who were frustrated when their many calls and written communication about billing disputes being blatantly ignored. According to various consumer comments on the website RipoffReport.com, many current and former members of the fitness center say they have received abysmal customer service, apathetic style in which club employees interacted with members, and repeated relay of incorrect information when they inquired about ancillary services paid for and/or about their membership contract in general. (Various, 2011)

Risk Management

In a 2009 interview with ClubIndustry.com, Urban Active's CEO, Royce Pulliam stated that his club has "quality people who believe in what the company does, have the same culture,

have a strong work ethic, and have energy and passion.” (Kufahl, 2009) If Mr. Pulliam employed legally astute managers on his team, those managers: 1) should have respected consumer protection laws and performed due diligence of said laws in each state Urban Active operates to ensure they were operating within the guidelines of the law; 2) would have known the proactive steps to take in order to investigate complaints and handled them swiftly; 3) would have exercised informed judgement calls and would have “been active in finding business solutions to legal disputes” (Bagley & Savage, 2009, p.11) made to Urban Active’s corporate office and later to the Better Business Bureau .

In order to quickly rectify the matter, Mr. Pulliam managers should have; 1) promptly responded to the complaints by members and to the Better Business Bureau’s attempts to contact them; 2) ensured that all corporate and club employees were in compliance with company procedures; and 3) made certain that measures were being taken to guarantee employees were not conducting or participating in deceptive business practices.

Ethical Considerations

There are no laws against unethical behavior; however, when unethical behavior leads to violations in state or federal laws, “a judge or jury’s assessment of the ethical character of an action may determine how the law is interpreted and applied in a given case” (Bagley & Savage, 2009, p.21)

A business who wishes to operate with a business manner of integrity and ethics would “consider not only what the firm *can* do but also what it *should* do.” (Bagley & Savage, 2009, p.9) Companies who wish to have a reputation of good business practices and unwavering ethics should consider utilizing the “Ethical Business Leader’s Decision Tree” (Bagley & Savage, 2009, p.25), to determine if their decision is: 1) legal; 2) adds value to the business; and

3) is ethical, as well as how it “ treat its employees well, serves its customers well, fosters good relationships with suppliers, maintains an effective compliance program and strong corporate governance practices and have a reputation for civic responsibility” (Bagley & Savage, 2009, p.9)

Urban Active did not demonstrate a reputable or ethical business decision by being non-responsive when contacted numerous times by the Better Business Bureau of Central Ohio to respond to the complaints against the organization. According to Kentucky.com’s website “In Central Ohio, there have been more than 200 complaints filed against the chain during the past year, with 78 of those unanswered or unresolved, "as Urban Active did not respond to BBB's written requests for their side," according to a statement from the BBB Central Ohio.” (Sloan, 2011)

Sources of Law

In the state of Ohio where the class actions lawsuits were filed against Urban Active, there are two consumer protection laws that specifically relate to this class action case and are part of the lawsuit’s foundation for action. Those laws outlined are: “1) Makes it illegal for sellers to misrepresent the nature of their business, products or services, the price of their goods or the terms of a transaction; 2) Protects consumers from deceptive advertising and other types of fraud.” (Attorney General Mike DeWine, 2011)

Based on the context of the lawsuit, one of the challenges Urban Active faces is a violation of “consumer protection laws and its own contracts. In short, the lawsuit claims that Urban Active says members are allowed to cancel their contracts, but when the members attempted to do so, Urban Active refuses cancellation and continues to charge them membership fees.” (Goldman, 2011)

Going forward, if the Urban Active management team performs due diligence of the consumer protection laws in any state which they now operate or will do so in the future, they would be knowledgeable of the laws that govern their business practices; thus minimizing their exposure to future lawsuits on other consumer rights violations.

Secondly, by having legally astute managers and other departmental staff; such as marketing and sales personnel who are informed of which governing laws mandate their actions; they will be able construct effective and successful marketing campaigns as well as design membership recruitment strategies that remain within the guidelines of all consumer protection laws covering each location's jurisdiction.

Lastly, management could conduct training sessions with their employees on the content of their contracts, coach employees on the proper way of explaining the contract to potential members, and teach their employees on specific customer service techniques in order to provide superior service to their members, including former and future.

Recommendations

According to Law.com's website, class action lawsuits "can force businesses that have caused broad damage or have a "public be damned" attitude to change their practices and/or pay for damages. They often result in high fees for the winning attorneys, although often attorneys do not collect a fee at the beginning of a class action suit but might charge a contingent fee (such as one-third of the final judgment), which, occasionally, can be millions of dollars. Such fees usually require court approval." (Hill, 2011) In a majority of cases, attorneys will not represent class action suits unless they are quite certain a judgment will be made in favor of the plaintiff's they represent and in doing so, with a ruling in their favor, the attorneys' will be substantially compensated for said representation.

John Graff, general counsel for Urban Active stated that the chain is "going to be very pro-active about this" and "We're going to take somebody who was probably dedicating 10 percent of their time to this to 100 percent. We've reached out to the Lexington BBB and asked them for a meeting to discuss steps we can take to improve our ratings and our responsiveness." (Sloan, 2011)

In this case, Urban Active's actions may be too little too late for them to take steps in pursuing alternative resolutions. However, they may still be able to petition the courts and ask for permission to offer all affected members some type of restitution in order to compensate them for the club's misleading and fraudulent actions when conducting business with its members and former members.

In this author's opinion, it would be in Urban Actives best interest to put into action a damage control program and quickly identify creative options to resolve the conflict and diligently try to settle the case outside of the court system. Perhaps the fitness company could come up with two or three options of alternative resolutions for the plaintiffs to review and accept in lieu of proceeding with the suit. If this scenario actually takes place and is approved by the court, hopefully, the class action suit would be dismissed and all parties can move forward with the satisfaction of knowing they worked together to settle the matter at hand.

"Many companies view class actions as a strategic management tool that can end litigation nightmares and work to their advantage by avoiding potentially devastating jury awards, reducing litigation costs, and limiting long-term liability." (Bagley & Savage, 2009, p.79)

Perhaps if Urban Active views this matter as a "strategic management" opportunity and makes a sincere attempt to quickly resolve the matter (possibly by offering free services or by

refunding all monies paid to the club by the members): they may find there would be more plaintiffs who would accept one of their alternate offers and drop out of the suit against them.

A little effort goes a long way when action is quick, and not letting complaints fall on deaf ears by leaving the matter unaddressed to a point where legal action has been initiated. By being involved in this class action lawsuit, Urban Active may end up learning a hard and expensive lesson, a lesson that may have caused irreparable damage to their organization's reputation and a drastic decline in their membership count.

Resources

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