

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**R Midwest, Inc., and Driven Service
Professionals, Inc.,**

Plaintiffs,

vs.

**Shell Oil Products US, and Jiffy Lube
International, Inc.,**

Defendants.

Case No.

COMPLAINT FOR INJUNCTIVE RELIEF

NOW COME the Plaintiffs, R Midwest, Inc. (“RMI”) and Driven Service Professionals, Inc. (“DSP”) (collectively “Plaintiffs”), by and through their attorneys, Fuchs & Roselli, Ltd., and as for their *Complaint for Injunctive Relief*, state as follows:

PARTIES AND JURISDICTION

1. RMI is an Illinois corporation with its principle place of business located at 12016 Coon Creek Road, Marengo, Illinois 60152.

2. RMI owns, operates, and manages six (6) Jiffy Lube franchise service centers (“Service Centers”) located at the following addresses: (1) Store No. 2503 – 810 W. 31st St., Chicago, Illinois; (2) Store No. 2913 – 2021 S. Route 59, Plainfield, Illinois; (3) Store No. 205 – 1600 Irving Park Rd., Hanover Park, Illinois; (4) Store No. 203 – 630 W. North Ave., Elmhurst, Illinois; (5) Store No. 952 – 705 W. Lake St., Addison, Illinois; and (6) Store No. 2566 – 344 Montgomery Rd., Montgomery, Illinois.

3. DSP is an Illinois corporation with its principle place of business located at 12016 Coon Creek Road, Marengo, Illinois 60152.

4. DSP owns, operates, and manages one (1) Jiffy Lube franchise Service Center located at 1860 Army Trail Rd., Hanover Park, Illinois. DSP was established in December of 2006 and purchased its first Jiffy Lube franchise Service Center in February of 2007.

5. Defendant, Jiffy Lube International, Inc. (“JLI”) is a Delaware corporation with its principle place of business located at 700 Milam Street, Houston, Texas 77002.

6. Defendant, Shell Oil Products US (“SOPUS”) is a Delaware corporation with its principal place of business in Houston, Texas.

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332 in so far as there is complete diversity between Plaintiffs and Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

8. In addition, this Court has jurisdiction over this matter pursuant to 28 U.S.C. §2201 because this is a declaratory judgment action seeking a declaration of the rights of RMI and DSP pursuant to certain contracts with Defendants in which the amount at stake is in excess of \$75,000.

9. Venue is also proper as in this district pursuant to 28 U.S.C. §1397 insofar as RMI and DSP reside in this judicial district.

FACTS COMMON TO ALL COUNTS

10. On or about June 3, 2008, JLI entered into a franchise agreement (“Franchise Agreement”) with an Illinois corporation called SE Midwest, Inc. (“SEMI”). A true and accurate copy of the Franchise Agreement is attached hereto as **Exhibit 1**.

11. When the Franchise Agreement was executed, Robert Stambolic (“Stambolic”) owned 90% of SEMI and the other 10% was owned by Rob Witwicki (“Witwicki”).

12. The Franchise Agreement outlined, *inter alia*, a business relationship wherein JLI would loan certain funds (“Conversion Funds”) to SEMI in order to allow SEMI to commence operating certain Jiffy Lube branded motor vehicle oil-change service centers.

13. On or about December 13, 2013, Stambolic sold his 90% interest in SEMI to Witwicki who in turn took over full operation and management of all of SEMI’s Service Centers.

14. Further, on or around December 13, 2013, in an effort to streamline his corporate structure, Witwicki moved the six (6) Service Centers which were under the ownership of SEMI and put them under the ownership of his own company, RMI.

15. RMI was thereafter assigned all SEMI’s rights and responsibilities under the Franchise Agreement.

16. In addition to JLI loaning the Conversion Funds to SEMI (repayment of which was assumed by RMI), JLI also required both RMI and DSP, respectively, to enter into product supply agreements with SOPUS (the “SOPUS Agreement(s)”) wherein Plaintiffs would be required to purchase all of their petroleum products (“SOPUS Products”) from SOPUS, at a rate calculated by SOPUS (as vaguely detailed in the SOPUS Agreement) up to and through the time when Plaintiffs were able to fully repay JLI their respective Conversion Funds. A true and accurate copy of the SOPUS Agreement is attached hereto as **Exhibit 2**.

17. The SOPUS Agreement requires SOPUS to act in good faith and imposes a duty of fair dealing. The duty of good faith and fair dealing applies to SOPUS's pricing scheme and the rates it seeks to charge Plaintiffs for SOPUS Products.

18. Between 2013 and December of 2017, SOPUS would continuously, unilaterally, and without reason, increase the price it was charging Plaintiffs for SOPUS Products. Although the constant and excessive increase in price by SOPUS seemed improper to Plaintiffs, they continued purchasing SOPUS Products at the higher rate due to their obligations under the SOPUS Agreement.

19. However, in or around December of 2017, due to a fire which caused SOPUS to be unable to fill Plaintiffs' petroleum product needs, SOPUS directed Plaintiffs (for an unspecified interim period of time) to purchase their required petroleum products elsewhere.

20. It was only in December of 2017 when Plaintiffs commenced purchasing petroleum products from other distributors (at SOPUS's behest) that Plaintiffs realized SOPUS had been unilaterally and unreasonably raising the price of SOPUS Products and charging Plaintiffs prices that were over 260% higher than that of other petroleum suppliers in the Chicagoland area for the same exact products with identical specifications pursuant to the American Petroleum Institute ("API").

21. But for the SOPUS Agreement and its oppressive pricing scheme, Plaintiffs would be free to purchase petroleum products from these other suppliers at reasonable market-based prices and rates.

22. Further, upon information and belief, SOPUS uses its arbitrary pricing scheme to charge Plaintiffs a higher price for SOPUS Products as compared to the

lower prices SOPUS charges other similarly situated competing JLI franchisees in the Chicagoland area. In so doing, SOPUS has placed Plaintiffs at a competitive disadvantage in the same Chicagoland market while affording certain select JLI franchisees (“Favored Buyers”) a corresponding competitive advantage based on more favorable pricing.

23. SOPUS’s oppressive and arbitrary pricing scheme, through which it is charging Plaintiffs an extreme markup for SOPUS Products, has made the ongoing viability of Plaintiffs’ businesses impossible.

COUNT I
DECLARATORY JUDGMENT

24. Plaintiffs hereby restates and re-alleges Paragraphs 1-23 as if fully set forth herein.

25. In late June, 2019, as a direct and proximate result of SOPUS’s pattern and practice of improperly and unreasonably raising the price of SOPUS Products and other similar instances of misconduct in its treatment of Plaintiffs under the SOPUS Agreement, Plaintiffs have terminated the SOPUS Agreement, for cause.

26. An actual case and controversy exists between Plaintiffs and Defendants as to their rights and obligations, including those under the now terminated SOPUS Agreement which SOPUS views as still being in force.

27. Specifically, Plaintiffs and Defendants have diametrically opposed views as to the rates and prices being charged under the SOPUS Agreement that must be resolved now.

28. A declaration of the parties’ rights and responsibilities pursuant to 28

U.S.C. §2201 will terminate the controversy or some part thereof.

WHEREFORE, Plaintiffs respectfully requests that this Honorable Court enter a declaratory judgment pursuant to 28 U.S.C. 2201:

- A. Finding SOPUS's conduct as described herein has violated the duty imposed on it to operate with good faith and fair dealing;
- B. Upholding Plaintiffs' Termination of their respective SOPUS Agreements, for cause; and
- C. Granting Plaintiffs such other and further relief as this Honorable Court deems just and equitable.

COUNT II
INJUNCTIVE RELIEF

29. Plaintiffs hereby restates and re-alleges Paragraphs 1-23 as if fully set forth herein.

30. Plaintiffs have contractual and equitable rights related to the SOPUS Agreements and SOPUS's conduct as described herein.

31. Plaintiffs' contractual and equitable rights are in need of protection due to Defendants' recent conduct as described herein.

32. Specifically, Defendants have threatened to unilaterally and without further notice terminate the Franchise Agreement which would result in Plaintiffs being forced out of business.

33. Such a threat poses both immediate and irreparable harm for which there is no adequate remedy at law should such threats be acted on.

34. Plaintiffs seek to maintain the *status quo* and have all seven (7) of their

combined Service Centers remain in full operation until such a time when this Honorable Court has made a determination as to the declaration requested in Count I.

35. The balance of equities favors granting Plaintiffs' requested injunction as Plaintiffs are still making all required payments under the Franchise Agreement regardless of the extreme pricing structure being imposed on them by SOPUS.

36. The allegations contained herein demonstrate a likelihood of success on the merits.

WHEREFORE, Plaintiffs respectfully request this Honorable Court enter an Order:

- A. Enjoining Defendants, without bond, from terminating the Franchise Agreements with RMI and DSP or otherwise taking any other steps to interfere with or alter the current *status quo*; and
- B. Granting such other and further relief as this Honorable Court deems just and equitable.

COUNT III
VIOLATION OF THE ILLINOIS FRANCHISE DISCLOSURE ACT

37. Plaintiffs hereby restates and re-alleges Paragraphs 1-23 as if fully set forth herein.

38. Section 18 of the Illinois Franchise Disclosure Act of 1987 ("Franchise Act") states:

Discrimination. It shall be an unfair franchise practice and a violation of this Act for any franchisor to unreasonably and materially discriminate between franchisees operating a franchised business located in this State in the charges

offered or made for franchise fees, royalties, goods, services, equipment, rentals or advertising services, if such discrimination will cause competitive harm to a franchisee who competes with a franchisee that received the benefit of the discrimination, unless and to the extent that any classification of or discrimination between franchisees is:

(a) based on franchises granted at different times, and such discrimination is reasonably related to such differences in time

(b) related to one or more programs for making franchises available to persons with insufficient capital, training, business experience or education, or lacking other qualifications;

(c) related to local or regional experimentation with or variations in product or service lines or business formats or designs;

(d) related to efforts by one or more franchisees to cure deficiencies in the operation of franchise businesses or defaults in franchise agreements; or

(e) based on other reasonable distinctions considering the purposes of this Act and is not arbitrary.

See 815 ILCS 705/18.

39. As set forth herein, Defendants have violated the Franchise Act by arbitrarily discriminating against Plaintiffs and similarly situated franchisees based on the prices of its supplies which actions have and continue to cause Plaintiffs to suffer competitive harm.

40. Defendants' discriminatory conduct includes, but is not limited to, the sale of identical SOPUS Products to other JLI franchisees in Illinois who, as Favored Buyers, directly compete with Plaintiffs, at significantly lower prices and rates and thus are bestowed with an unfair and unreasonable competitive advantage by

SOPUS.

41. Such discriminatory practices have caused a competitive harm to Plaintiffs as the extremely high markup being charged by Defendants exceeds market based pricing and has all but eliminated any profit which Plaintiffs would otherwise be able to recognize but for Defendants' discriminatory practices.

42. Without a fair opportunity to compete in the Chicagoland marketplace, Plaintiffs are left with little or no ability to operate their franchise businesses at a profit, such that remaining a viable business has become impossible for Plaintiffs.

43. Additionally, Section 4 of the Franchise Act states:

Jurisdiction and venue. Any provision in a franchise agreement that designates jurisdiction or venue in a forum outside of this State is void, provided that a franchise agreement may provide for arbitration in a forum outside of this State.

See 815 ILCS 705/4.

44. Thus, the forum selection clause contained in the terminated SOPUS Agreement is void pursuant to the Franchise Act. Although Section 4 of the Franchise Act allows for the exception of arbitration outside of Illinois, Plaintiffs prior termination of the SOPUS Agreement for cause negates any reason to otherwise arbitrate and thus the only legal relief left for Plaintiffs is that which is requested herein.

WHEREFORE, Plaintiffs respectfully request this Honorable Court enter an Order:

A. Finding that Defendants have violated the Franchise Act for the reasons stated herein;

- B. Awarding Plaintiffs damages in an amount to be proven at trial, including attorneys' fees; and
- C. Granting Plaintiffs any further relief this Honorable Court deems just and equitable.

COUNT IV
VIOLATION OF THE ILLINOIS COMMERCIAL CODE

45. Plaintiffs hereby restates and re-alleges Paragraphs 1-23 as if fully set forth herein.

46. The SOPUS Products being sold to Plaintiffs and the Favored Buyers originates from a SOPUS Plant located outside of Illinois.

47. SOPUS has illegally discriminated against Plaintiffs in the distribution and sale of SOPUS Products of like grade and quality intended for resale in the greater Chicago geographic area by selling SOPUS Products obtained from the same SOPUS distribution centers to other JLI franchisees/Favored Buyers at lower prices than those charged to Plaintiffs.

48. The Favored Buyer franchisees receiving SOPUS Products at the lower prices are located in close proximity to Plaintiffs' franchise Service Centers.

49. Further, regardless of SOPUS's discriminatory conduct among its JLI franchisees, SOPUS's pricing scheme as it relates only to Plaintiffs is oppressive in that the extreme markup in pricing of the SOPUS Products will force Plaintiffs out of business.

50. The effect of such discrimination as outlined above has been to substantially lessen competition for the retail distribution of SOPUS Products in the

greater Chicagoland geographic area, and to injure, destroy, and prevent competition from Plaintiffs and other similarly situated franchisees.

51. As a consequence of SOPUS's above-described price discrimination, Plaintiffs' profits have drastically diminished to a point where the future viability of the business is threatened and Plaintiffs may be forced from the market and completely out of business because of the loss of sales and profits directly attributable to SOPUS's discriminatory and arbitrary pricing scheme.

52. Within the SOPUS Agreement, specific prices for SOPUS Products were not set, however SOPUS provided a formula which could be followed, along with a caveat that the formula supplied will coincide with "SOPUS's then current price at the time of order." See **Exhibit 2** at ¶5(a).

53. The Illinois Commercial Code at 810 ILCS 5/2-305 provides in pertinent part as follows:

Sec. 2-305. Open price term. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time of delivery if:

- (a) nothing is said as to price; or
- (b) the price is left to be agreed by the parties and they fail to agree; or
- (c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

54. Defendants have violated Section 305 of the Illinois Commercial Code by unilaterally and unreasonably raising SOPUS Product prices charged to Plaintiffs in bad faith, calculated without reference to any good faith market rate formula or legitimate regional policy.

55. In the State of Illinois, all contracting parties for the sale of goods are subject to the duty of good faith and fair dealing.

56. SOPUS, through its acts and omissions as set for above, breached its duty of good faith and fair dealing under the SOPUS Agreement in the following ways, including, but not limited to:

- a. Wrongfully discriminating against Plaintiffs in the sale of SOPUS Products by selling like quality and grade SOPUS Products to competitor JLI franchisees/Favored Buyers at a lower cost than that charged to Plaintiffs;
- b. Unilaterally, unreasonably, and arbitrarily raising the price of SOPUS Products in bad faith without reference to any legitimate market rate formula or legitimate regional policy; and
- c. Charging Plaintiffs a markup of over 260% for SOPUS Products, with knowledge that such a high markup would force Plaintiffs out of business.

57. As a result of SOPUS's continued and repeated breaches of the SOPUS Agreement, Plaintiffs have been damaged and will continue to be damaged, including but not limited to, by way of the loss of their franchises, by the loss of profits and sales they would have otherwise made but for the breaches of SOPUS, and for the

loss of their investments in the Service Centers.

WHEREFORE, Plaintiffs respectfully request this Honorable Court enter an Order:

- A. Finding that SOPUS has violated the Illinois Commercial Code for the reasons stated herein;
- B. Awarding Plaintiffs damages in an amount to be proven at trial, plus attorneys' fees; and
- C. Granting Plaintiffs such further relief as this Honorable Court deems just and equitable.

Respectfully submitted,

R. Midwest, Inc., and Driven Service Professionals, Inc., Plaintiffs

By: /s/ Samuel J. Tallman
Attorney for Plaintiffs

Steven M. Ruffalo - #6200052
Samuel J. Tallman - #6322843
Fuchs & Roselli, Ltd.
440 West Randolph Street, Suite 500
Chicago, IL 60606
(312) 651-2400
sruffalo@frltd.com
stallman@frltd.com