

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA

a municipal corporation
400 6th Street NW, 10th Floor
Washington, D.C. 20001,

Plaintiff,

v.

NEW TSI HOLDINGS, INC.

d/b/a Washington Sports Club
399 Executive Boulevard
Elmsford, NY 10523

c/o New Town Sports Holdings, LLC
1140 Avenue of the Americas, Floor 10
New York, NY 10036

Serve on:
CT Corporation System
Registered Agent
1015 15th Street NW
Suite 1000
Washington, D.C. 20005,

Defendant.

Case No.: 2021 CA _____

COMPLAINT

Plaintiff the District of Columbia (“District”), through the Office of the Attorney General, brings this action against Defendant NEW TSI HOLDINGS, INC. for its operation of the Washington Sports Club (“Washington Sports Club”), a gym that operates in the District of Columbia. The District is currently in the middle of a public health crisis caused by the COVID-

19 virus. In order to protect District residents, Mayor Muriel Bowser has taken a series of executive actions that create rules for businesses and individuals with regards to wearing masks, maintaining social distance, and following other procedures for public health. Washington Sports Club has been operating its gym for several months in violation of these emergency executive measures. Patrons of the gym have been observed, on multiple occasions, not wearing masks inside of the Dupont Circle location of the gym. Washington Sports Club has also failed to comply with social distancing requirements and rules for spacing and cleaning equipment properly. These actions directly violate the Protecting Businesses and Workers from COVID-19 Congressional Review Emergency Amendment Act of 2020 (“Emergency Act”), D.C. Code § 32-141.01, *et seq.*, and the District’s Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.* The Emergency Act requires that businesses comply with Mayor’s Order 2020-080, Wearing of Masks in the District of Columbia To Prevent the Spread of COVID-19 (“Order”), and subsequent Mayoral Orders including Guidance for Gyms and Workout Studios (Sept. 21, 2020) (“Guidance”).¹ The District brings this enforcement action against Washington Sports Club to stop the gym’s on-going violations of the Order and Guidance.

Jurisdiction

1. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Code §§ 11-921 and 28-3909.

2. This Court has personal jurisdiction over Washington Sports Club pursuant to D.C. Code § 13-423(a).

¹ See Mayor’s Order No. 2020-080 (July 22, 2020), <https://coronavirus.dc.gov/maskorder>. See also Guidance for Gyms and Workout Studios (Sept. 21, 2020), https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/COVID-19_DC_Health_Guidance_for_Gyms_and_Workout_Studios_2020.08.31_FINAL.pdf.

Parties

3. Plaintiff the District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the seat of the government for the United States. The District brings this action through its chief legal officer, the Office of the Attorney General for the District of Columbia (“OAG”). The Attorney General has general charge and conduct of all legal businesses in the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). OAG has the authority to enforce the Emergency Act, pursuant to D.C. Code § 32-141.04. The Attorney General is also specifically authorized to enforce the District’s consumer protection laws, including the CPPA, pursuant to D.C. Code § 28-3909.

4. Defendant Washington Sports Club is registered to do business in the District of Columbia and operates a gym located at 1835 Connecticut Ave NW, Washington, DC 20009 (“Dupont Club”). Defendant engages, and has engaged, in the offer and sale of goods or services to consumers in D.C. for their personal, household or family purposes, by offering and selling gym memberships and services.

Facts

COVID-19 Mayoral Order and Guidance and Legislation

5. COVID-19 is a novel and deadly coronavirus. As of the time of this filing, it has plunged the United States into a public health crisis and has infected over 28,813,434 and killed over 523,850 Americans according to the Centers for Disease Control and Prevention. According

to the Office of the Mayor, COVID-19 has infected over 41,579 District residents, and over 1,035 District residents have died from COVID-19 infections.

6. In response to the threat of COVID-19, on March 11, 2020, Mayor Muriel Bowser issued Mayor’s Order 2020-045 declaring a public emergency, pursuant to D.C. Code § 28-4102(b), as well as declaring a public health emergency, pursuant to D.C. Code § 7-2304.01. Other states and the United States federal government have likewise declared an emergency concerning the COVID-19 outbreak and issued similar emergency measures.

7. On July 22, 2020, Mayor Bowser issued Mayor’s Order No. 2020-080 (the “Order”), which clarified and extended emergency requirements related to wearing masks both indoors and outdoors in the District. Mayor’s Order 2020-080 (July 22, 2020).

8. The Order requires that, “[b]usinesses . . . open to members of the public shall post signage on their exterior doors stating that a person may not enter unless the person is wearing a mask. In addition, the business . . . shall exclude or attempt to eject persons who are not wearing masks or who remove their required masks.”

9. To clarify and elaborate on the Order, the Mayor soon thereafter released Phase Two Guidance specifically for gyms (“Guidance”), which provides additional rules regarding proper procedures for maintaining social distance, maintaining distance between equipment, and properly disinfecting equipment. *See, infra*, fn. 1, Guidance for Gyms and Workout Studios (Sept. 21, 2020).

10. The Guidance, which has the same force as the Order, clarifies how the mask wearing provisions of the Order apply to gyms and requires all gym staff and patrons to “wear a face covering while entering, exiting or within the facility, including while exercising if able to do so safely.”

11. The Guidance also dictates proper procedures for social distancing, including spacing between persons and equipment. Specifically, the Guidance states that all gym staff and patrons must maintain six feet of social distance from each other. The arrangement of “workout areas, including those with cardio and strength equipment, must ensure at least 10 feet in all directions between patrons.”

12. Additionally, the Guidance sets out procedures for ensuring that equipment is properly cleaned and sanitized. Specifically, gyms must “[r]equire clients to use one piece of equipment at a time . . . so that machines can be cleaned by staff after each use.” Any equipment that cannot be cleaned or disinfected between each use should be removed.

13. On November 16, 2020, the Protecting Businesses and Workers from COVID-19 Congressional Review Emergency Amendment Act of 2020 was enacted. The law requires, on an emergency basis, that employers adopt and implement social distancing policies that adhere to the Order and subsequent Mayor’s orders. D.C. Code § 32-141.01 et seq.

Washington Sports Club’s Failure to Comply with the Emergency Act, Order and Guidance

14. On December 3, 2020, NEW TSI HOLDINGS, INC. registered with the District of Columbia Department of Consumer and Regulatory Affairs as owner of the company that operates the Dupont Club.

15. On January 23, 2021, a District resident (“First Complainant”) visited the Dupont Club. During their time inside the gym, the First Complainant observed 5 patrons exercising on the cardiovascular equipment without wearing masks. The Complainant reported that the gym staff told them that they did not have to enforce mask wearing when people exercised 12 feet apart. The Complainant also reported that patrons used cardiovascular equipment within less than the required 10 feet of distance between one another.

16. On February 4, 2021, a different District resident (“Second Complainant”) visited the Dupont Club and observed that the gym was not enforcing mask wearing policies.

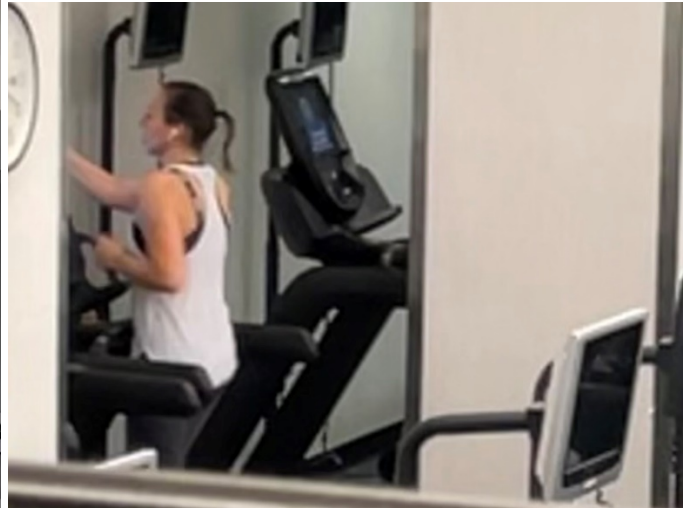
17. On February 6, 2021 Second Complainant observed 2 patrons at the Dupont Club using the treadmill and elliptical machines without masks.

18. On February 8, 2021, Second Complainant observed 13 patrons in the cardiovascular and weight-lifting areas of the Dupont Club without masks.

19. On February 9, 2021, Second Complainant observed 7 patrons in the cardiovascular and weight-lifting areas of the Dupont Club who were not wearing masks or were wearing masks improperly (e.g. not covering the nose).



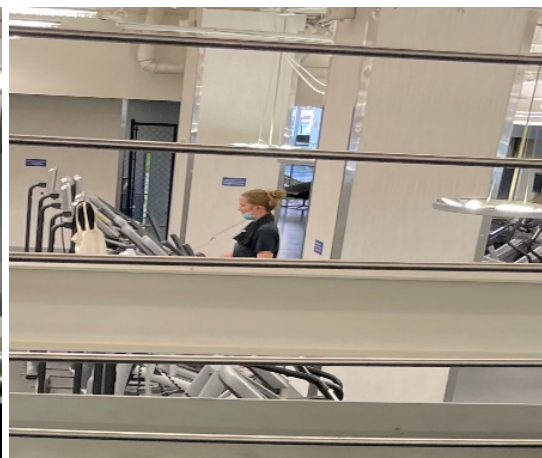
20. On February 10, 2021, Second Complainant observed 10 patrons at the Dupont Club not wearing masks or wearing masks improperly. The Complainant observed every other treadmill or elliptical machine blocked off, providing roughly 3 feet (rather than the 10 feet required by the Guidance) between patrons using the equipment.



21. On February 11, 2021, Second Complainant observed 3 patrons at the Dupont Club not wearing masks or wearing masks improperly.

22. On February 14, 2021, Second Complainant observed 2 patrons at the Dupont Club not wearing masks or wearing masks improperly.

23. On February 15, 2021, Second Complainant observed 3 patrons at the Dupont Club not wearing masks or wearing masks improperly.



24. On February 17, 2021, Second Complainant observed 4 patrons at the Dupont Club not wearing masks or wearing masks improperly. The Complainant also observed a lack of enforcement of social distancing of patrons in the weight-lifting area.

25. On February 18, 2021, Second Complainant observed 2 patrons not wearing masks or wearing masks improperly.

26. On February 19, 2021, First Complainant observed 3 patrons in the cardiovascular area of the Dupont Club not wearing masks or wearing masks improperly. The Complainant also observed that no signs were posted to remind patrons to keep their masks on.

27. On February 19, 2021, Second Complainant observed 5 patrons at the Dupont Club not wearing masks or wearing masks improperly.

28. On February 20, 2021, Second Complainant observed 5 patrons at the Dupont Club not wearing masks or wearing masks improperly.



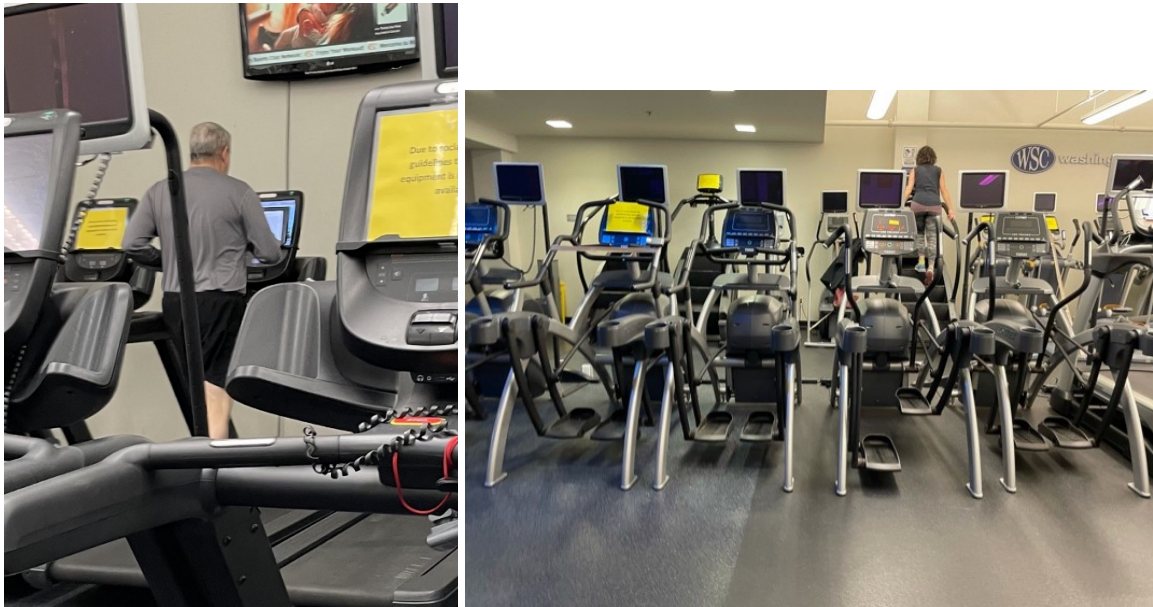
29. On February 22, 2021, Second Complainant observed several patrons at the Dupont Club not wearing masks or wearing masks improperly. The Complainant also observed a lack of enforcement of social distancing in the cardiovascular area.

30. On February 23, 2021, Second Complainant observed 2 patrons at the Dupont Club not wearing masks or wearing masks improperly.

31. On February 25, 2021, Second Complainant measured the distance between treadmills at Washington Sports Club as 3 feet 10 inches rather than the 10 feet of distance required by the Guidance.



32. On February 27, 2021, Second Complainant observed 5 patrons at the Dupont Club not wearing masks or wearing masks improperly, in the cardiovascular area. The Complainant also observed the elliptical machines stationed less than the required 10 feet apart from each other.



33. On all of their 16 visits to Dupont Club in February 2021, Second Complainant did not observe the gym staff cleaning the equipment after use by a patron, despite more than one patron using the equipment during observations.

Washington Sports Club's Website Confirms Non-Compliance with the Guidance

34. Washington Sports Club's website states that the company permits patrons to not wear a mask if they are more than 12 feet away from another patron. This policy is non-compliant with the Guidance's mandate that patrons must "wear a face covering while entering, exiting or within the facility, including while exercising if able to do so safely."

Q: What policies and procedures should I expect when coming to the club?

A: All members, vendors, and staff will have their temperature taken upon arrival at the club each time they visit. Masks are required to be worn in our Maryland clubs at all times, and in our DC clubs unless you are 12 feet away from the next person. For the safety of our members and staff, we're temporarily prohibiting some amenities such as towel service, babysitting, Group Exercise classes, showers, access to steam and sauna rooms, indoor swimming pools without shower on pool deck, juice bars, and court access.

35. On its website, Washington Sports Club states that, “Our safe, spacious clubs are ready to get you back on track to your peak fitness.”² The website further reports that, “At Washington Sports Clubs, we’ve been working hard on reopening safety procedures that meet or go beyond state and federal guidelines around COVID-19.”³

Count I: Violation of the District of Columbia Protecting Businesses and Workers from COVID-19 Congressional Review Emergency Amendment Act of 2020 (“Emergency Act”)

36. The District incorporates the allegations of paragraphs 1 through 35 into this Count.

37. Pursuant to the Emergency Act, “employers in the District shall adopt and implement social distancing and worker protection policies to prevent transmission of COVID-19 in the workplace that adhere to the requirements of Mayor’s Order 2020-080, or subsequent Mayor’s Order.” D.C. Code § 32–141.02 (emphasis added).

38. The Order is an emergency executive order issued by the Mayor of the District of Columbia pursuant to D.C. Code § 7-2307, which requires businesses operating in the District of Columbia to comply with mask-wearing requirements in order to mitigate the current COVID-19 public health crisis.

39. The Guidance is an emergency executive order issued by the Mayor of the District of Columbia pursuant to D.C. Code § 7-2307, which requires businesses operating in the District

² <https://www.washingtonsportsclubs.com/>.

³ <https://www.washingtonsportsclubs.com/page/wsc-club-health-updates>.

of Columbia to comply with mask-wearing, social-distancing, and other requirements in order to mitigate the spread of COVID-19. It was issued subsequent to Mayor’s Order 2020-080.

40. In operating its business, Washington Sports Club has failed to implement the social distancing and mask-wearing requirements mandated by the Order and Guidance in order to prevent transmission of COVID-19.

41. As of the filing of this Complaint, Washington Sports Club has and continues to violate the Emergency Act by failing to comply with the Order and Guidance, and in doing so endangers the health of its staff and patrons, and District residents more broadly, amid the ongoing COVID-19 public health emergency.

42. OAG has the authority to enforce the Emergency Act, pursuant to D.C. Code §§ 7-2307 and 32-141.04.

Count II: Misrepresentation of Goods or Services in violation of the Consumer Protection Procedures Act (“CPPA”) D.C. Code § 28-3904(a)

43. The District incorporates the allegations of paragraphs 1 through 42 into this Count.

44. The CPPA establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.

45. Per the CPPA, “[i]t shall be a violation of this chapter for any person to engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damaged thereby, including to: (a) represent that goods or services have . . . characteristics . . . that they do not have.” D.C. Code § 28-3904(a) (emphasis added).

46. Washington Sports Club engages, and has engaged, in the offer and sale of goods or services to consumers in D.C. for their personal, household or family purposes, by offering and selling gym memberships and services.

47. Despite representing to its consumers that the clubs are safe, Washington Sports Club has failed to comply with several public health requirements, and in doing so has endangered its consumers and citizens of the District more broadly.

Count III: Misrepresentation of Compliance with the Guidance in violation of the CPPA, D.C. Code § 28–3904(e)

48. The District incorporates the allegations of paragraphs 1 through 47 into this Count.

49. Per the CPPA, “[i]t shall be a violation of this chapter for any person to engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damaged thereby, including to: (e) misrepresent as to a material fact which has a tendency to mislead.” D.C. Code § 28–3904(e).

50. Despite the Guidance’s mandate that gym patrons wear a mask at all times while exercising, unless they are unable to do so for health reasons, the Washington Sports Club website allows patrons to remove their masks if they are more than 12 feet from one another.

51. As of the filing of this Complaint, Washington Sports Club has and continues to be in violation of the CPPA, D.C. Code § 28–3904(e).

Count IV: Violation of the (“CPPA”), D.C. Code § 28–3904

52. The District incorporates the allegations of paragraphs 1 through 51 into this Count.

53. The CPPA prohibits any person from engaging in unfair or deceptive trade practices, including trade practices that violate other District of Columbia laws and regulations not specifically enumerated in the CPPA.

54. Washington Sports Club has engaged in unfair and deceptive trade practices affecting District consumers, in violation of D.C. Code § 28-3904, by engaging in trade practices that violate District laws and regulations meant to protect and promote the welfare of gym patrons

during a public health emergency by misrepresenting to patrons the safety of the Dupont Club and failing to enforce the Order and the Guidance in the Dupont Club.

Prayer for Relief

WHEREFORE, the District of Columbia respectfully requests this Court enter a judgment in its favor and grant relief against Defendant Washington Sports Club as follows:

- a) Enjoin Defendant, pursuant to D.C. Code § 32-141.04(b)(3)(D), from violating the Emergency Act by failing to comply with Mayor's Order No. 2020-080 and related Guidance;
- b) Award civil penalties in an amount to be proven at trial for each violation of the Emergency Act, as authorized by D.C. Code §§ 7-2307(a) and 32-141.04(b)(3)(B).
- c) Enjoin Defendant, pursuant to D.C. Code § 28-3909(a), from violating the CPPA;
- d) Award civil penalties in an amount to be proven at trial and as authorized per violation of the CPPA pursuant to D.C. Code § 28-3909(b);
- e) Award the District the costs of this action and reasonable attorney's fees, pursuant to D.C. Code § 32-141.04(b)(3)(A) and D.C. Code § 28-3909; and
- f) Grant such further relief as the Court deems just and proper.

Jury Demand

The District of Columbia demands a trial by jury by the maximum number of jurors permitted by law on all claims triable to a jury.

Dated: March 8, 2021

Respectfully submitted,
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/s/ _____
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