

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPERIOR COURT

Civil Action No. 2084-cv-02713

RECEIVED

NOV 24 2020

COMPLAINT  
SUPERIOR COURT - CIVIL  
MICHAEL JOSEPH DONOVAN  
CLERK/MAGISTRATE

COMMONWEALTH OF MASSACHUSETTS

Plaintiff,

v.

TOWN SPORTS INTERNATIONAL, LLC,  
d/b/a BOSTON SPORTS CLUB

Defendant.

I. INTRODUCTION

1. The Commonwealth of Massachusetts, by and through its Attorney General, Maura Healey (the “Commonwealth”), brings this action against the Defendant, Town Sports International LLC, d/b/a Boston Sports Club (“TSI”) pursuant to G. L. c. 93A, § 4. The Commonwealth seeks injunctive relief, civil penalties and other appropriate relief pursuant to Chapter 93A.
2. Town Sports International (“TSI”) is a New York corporation with its principal place of business located at 399 Executive Boulevard, Elmsford, NY 10523. TSI owns and operates fitness centers in the United States under various trade names. TSI operates at least 31 health clubs in Massachusetts under the brand name Boston Sports Clubs (“BSC”).
3. Undoubtedly, TSI, like all people and businesses in Massachusetts, did not anticipate that daily life in 2020 would be upended by a global pandemic. However, the pandemic did not relieve TSI from its obligation to comply with state law – in this case, the

Massachusetts Health Club Statute, G.L. c. 93 § 78, *et seq.* and the Massachusetts Consumer Protection Act, G.L. c. 93A.

4. On or around March 16, 2020, TSI closed all of its health clubs in Massachusetts due to the COVID-19 pandemic. The health club facilities remained closed until early July 2020 at which time they partially re-opened at 40% capacity in accordance with the Massachusetts' Governor's guidelines. Many of the health clubs' amenities, including group exercise classes and pools, remained limited or prohibited for consumer use until early September. TSI's operations have and continue to be substantially changed, giving consumers the right to cancel their memberships without penalty.
5. Following TSI's closure in March, hundreds of consumers canceled their memberships to avoid paying for facilities they could not access. To date, TSI has not honored a significant number of these cancellations, claiming either that TSI did not receive the cancellations or that the cancellations are not valid because consumers did not make them in-person at the club or by registered or certified mail. TSI continues to automatically debit consumers' bank accounts for membership fees after consumers requested cancellation.
6. After facing a public backlash, TSI stopped charging members and froze their accounts beginning in April while the clubs remained closed. However, when the clubs resumed limited operations in the middle of July, TSI began charging consumers again regardless of the consumers' attempts to cancel their memberships and without providing sufficient or timely notice to consumers that TSI planned to resume automatically debiting their bank accounts.

7. Over 2,000 Massachusetts consumers submitted complaints to the Attorney General's Office about TSI's practices. This number of consumer complaints in a timeframe of only several months represents one of the most significant influx of complaints the Attorney General's Office has received in recent years.
8. While the Attorney General's Office was attempting to address the complaints and ensure TSI's cancellation and billing practices conformed to state law, TSI filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court, District of Delaware. The Commonwealth's action is subject to an exception to the automatic stay, 11 U.S.C. § 362(d)(4), which provides, in relevant part, that the automatic stay does not apply to the "...commencement or continuation of an action or proceeding by a governmental unit...to enforce such governmental unit's...police and regulatory power, including the enforcement of a judgment other than a money judgment."
9. The Commonwealth brings this action in the public interest to enjoin TSI from engaging in unfair and deceptive acts and practices in violation of the G.L. c. 93A, § 2 and G.L. c. 93, § 82, and to obtain penalties for its willful conduct to deter future consumer protection violations.

## **II. JURISDICTION AND VENUE**

10. The Attorney General is authorized to bring this action pursuant to G.L. c. 12, § 10 and G.L. c. 93A, § 4.
11. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 12, § 10, and G.L. c. 93A, § 4.
12. This Court has personal jurisdiction over TSI pursuant to G.L. c. 223A, §§ 2 and 3.



13. Venue is proper in Suffolk County pursuant to G.L. c. 93A, § 4.

### **III. PARTIES**

14. The Plaintiff is the Commonwealth of Massachusetts, represented by Attorney General Maura Healey, who brings this action in the public interest.
15. The Defendant TSI is a New York corporation with its headquarters and principal place of business located at 399 Executive Boulevard, Elmsford, NY 10523.

### **IV. FACTUAL ALLEGATIONS**

#### **Boston Sports Club Shuts Down**

16. On March 10, 2020, Governor Charlie Baker declared a state of emergency in Massachusetts to support the Commonwealth's response to the coronavirus disease 2019 (COVID-19).
17. On or around March 16, 2020, TSI closed all of their locations in Massachusetts. Members immediately lost access to the health club facilities. The Commonwealth does not challenge TSI's necessary actions to close their health clubs to comply with the Governor's executive orders during the state of emergency or his phased reopening plan for businesses.
18. On or about March 16, 2020, members began notifying TSI that they wished to immediately cancel their membership, as is their right under G.L. c. 93 §82, which provides for cancellation without penalty when health clubs substantially change their operations. Members made these requests by phone, by mail, and by email and other electronic communication to TSI and to individual BSC locations.

19. TSI refused to honor many of these cancellations. In some cases, TSI failed to answer their phones or respond to electronic communications. In other instances, TSI informed members that cancellations could only be done in person or by certified or registered mail, despite the fact that clubs' physical locations were closed and TSI employees were not in the clubs to accept in-person or mailed cancellation requests. Even then, TSI notified members that cancellations would only be honored if members made them according to TSI's cancellation policy, which required 30 or 45 days notice of cancellation and a cancellation fee between \$10 and \$25. This meant that members who canceled would be required to pay an additional month's membership fee in addition to the cancellation fee, despite being unable to access or use the facilities.
20. On April 1, 2020, TSI began charging its members for their April membership fee even though the health clubs remained closed. Many members were surprised and upset by this action because they had either already canceled their membership or because they reasonably assumed that TSI would not charge them while the clubs were completely shut down.
21. TSI knew or should have known its actions were unfair and violated G.L. c. 93, § 82.
22. Aware of its failure to honor consumers' cancellation requests and its members' complaints about being charged while the clubs were closed, TSI began sending emails to its members trying to persuade them not to move forward with their cancellations.
23. TSI said it would "freeze" members' accounts – meaning that TSI ceased automatically debiting membership dues - at no cost to members and with no additional action required to enact the freeze. The communication did not inform consumers that TSI could unfreeze their accounts and begin automatically debiting them at any time. As a result,

many consumers reasonably believed given the uncertainty of the ongoing pandemic that their memberships would remain frozen until and unless the consumers took some action.

24. TSI also promised in an email to members that members would “receive additional days of membership access equal to the number of days paid for while the clubs were closed in your area.” This relief is meaningless for members who cancelled their memberships.
25. BSC locations opened with substantially changed operations in July. The health clubs opened at only 40% capacity, closed its pools, required masks, and canceled or limited in person fitness classes. Some members have existing medical conditions making them unable to comply with these provisions or receive full value for their membership. For example, some members had existing physical limitations so that they only used a particular facility’s pool.
26. TSI unilaterally unfroze consumers accounts when it partially reopened in July 2020, and immediately debited consumers’ bank accounts for the month of July. Many of these consumers had already requested cancellation of their memberships and some members were unaware of the clubs’ partial reopening.
27. TSI did not immediately apply a credit to all members who paid while the clubs were closed. Instead, TSI waited for members to inquiry about the credit, usually while visiting a re-opened club. Therefore, members who did not visit a club because they wished to cancel were further penalized by not receiving the promised credit and paid for both April and July in full even though they were no longer using the facilities.
28. Many consumers requested cancellation in July after TSI began debiting their membership dues again, and TSI refused to honor those cancellations. TSI told members



they could only cancel with 30 to 45 days notice and would have to pay the cancellation fee. TSI also told members they had to cancel in person.

29. When members sent proof of their earlier attempts to cancel through their local gyms TSI employees still refused to immediately cancel their memberships or refund any of the fees.
30. TSI also refused to process a new cancellation unless members paid a \$10 cancellation fee. If a member did not pay the \$10 fee, they continued to charge them monthly. As a result, many members who had canceled prior to July 31, 2020, were charged the full membership fee in August.
31. Some consumers canceled their credit cards in March to prevent further charges. TSI has continued to attempt to collect payments that allegedly accrued in April or after, including sending harassing emails and threatening to refer this so-called debt to debt collection agencies.
32. TSI knew or should have known the failure to cancel and refund membership fees and its misrepresentation to consumers about the status of their cancellation request and accounts were unfair and deceptive act and practices in violation of G.L. c. 93A and G.L. c. 93, § 82.
33. Prior to filing this complaint, the Attorney General's Office provided TSI with the notice required by G.L. c. 93A, § 4.

## V. CAUSES OF ACTION

### COUNT I

Unfair or Deceptive Acts or Practices in Violation of G.L. c. 93A, § 2  
and G.L. c. 93, § 82

34. The allegations contained in paragraphs 1 through 33 are hereby re-alleged and incorporated herein.
35. TSI engaged in unfair or deceptive acts or practices when it failed to honor consumers' cancellation requests after its health clubs substantially changed operations beginning in March 2020.
36. TSI substantially changed its operations on or around March 16, 2020 when it closed all of its health clubs in Massachusetts. The health clubs remained closed for approximately four months.
37. TSI operations remained substantially changed when it partially reopened in early July 2020 because it is operating at only 40% capacity, such that the majority of its members cannot access their health clubs, and TSI has a prohibition on use of significant amenities including pools and group exercise classes.
38. In some cases, TSI told members they had to cancel their contracts in person or by sending a certified letter despite the on-going health risks because of the COVID-19 pandemic and despite TSI not having employees at the physical locations to cancel memberships.
39. TSI did not cancel consumers' memberships and provide a pro-rata refunds within 15 days of receipt of the consumers' cancellation requests as required by G.L. c. 93 § 82.



## COUNT II

### Unfair or Deceptive Acts or Practices in Violation of G.L. c. 93A, § 2: False or Deceptive Statements

40. The allegations contained in paragraphs 1 through 39 are hereby re-alleged and incorporated herein.
41. TSI engaged in unfair or deceptive practices in violation of G.L. c. 93A by making misleading, false and deceptive statements, including but not limited to statements that:
  - a. Gave the false impression that consumers could cancel their memberships by email when in fact TSI did not cancel consumers' memberships;
  - b. Gave the false impression that consumers could cancel by visiting health clubs in person when the clubs were closed with no employees available to cancel;
  - c. Gave the false impression that accounts would be frozen without telling consumers TSI could unilaterally unfreeze their memberships; and
  - d. Gave the false impression that consumers would receive credits for membership dues paid in April when in fact TSI did not provide or apply any credits when they resumed billing.
42. Members relied on these statements when making decisions about their memberships.
43. TSI knew or should have known that these statements were misleading, deceptive or false.

## COUNT III

### Unfair or Deceptive Acts or Practices in Violation of G.L. c. 93A, § 2: Unfair Billing Practices

44. The allegations contained in paragraphs 1 through 43 are hereby re-alleged and incorporated herein.

45. TSI engaged in unfair or deceptive practices in violation of G.L. c. 93A by engaging in unfair billing practices whereby TSI charged members of services they knew they could not provide.
46. TSI did not refund any of the March 1, 2020 payments even though the health clubs were closed for half of March and members did not have access to the facilities.
47. TSI charged all members on April 1, 2020, even though they knew that health clubs were closed and members did not have access to the facilities.
48. TSI also threatened to refer members to debt collection agencies when members did not continue to pay for the memberships they had previously canceled.
49. TSI unilaterally resumed automatically debiting members accounts in July 2020 even though the clubs' operations had significantly changed and members had not agreed to continue with their membership in light of the many changes brought by the COVID-19 emergency.
50. TSI's actions violate established concepts of unfairness, are unethical, oppressive or unscrupulous, and caused substantial injury to consumers.

## **VI. PRAYERS FOR RELIEF**

WHEREFORE, the Commonwealth requests that this Court, as authorized by G.L. c. 93A, § 4 and pursuant to its own equitable powers:

1. After a trial on the merits, and pursuant to G.L. c. 93A, § 4, issue a permanent injunction barring TSI for further violations of G.L. c. 93A, § 2 and G.L. c. 93, § 82.

2. Order that TSI pay civil penalties and costs of investigation and litigation of this matter, including reasonable attorney's fees, to the Commonwealth pursuant to G.L. c. 93A, § 4; and

3. Order such other and further relief as this Court deems just and proper.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS  
MAURA HEALEY, ATTORNEY GENERAL

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