

ENTERTAINMENT, ART AND LEISURE

Art Fraud

Background

Works of art have become increasingly popular investments. The market value of a work depends on whether its status as an original or limited edition work. In some mediums, such as lithography, serigraphy, photography or castings, an artist may create limited edition copies that are sold as such.

But modern technology has made it possible for other persons to create high quality copies of an artist's work. Unscrupulous sellers can produce copies at low cost and misrepresent them as original or limited edition works.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) regulates unfair and deceptive business practices. DATCP has rules to prevent fraud in the sale of art copies. The rules are contained in Wisconsin Administrative Code chapter ATCP 117. Violators may be prosecuted, and there is a private remedy for consumers and other buyers.

Coverage

ATCP 117 applies to sales or offers of "multiple art" – a print, sculpture, bas relief, etching, or other work of visual art (excluding motion pictures or video) that is produced from a master in quantities. ATCP 117 applies to sales between art suppliers and art dealers, and between art dealers and consumers.

Misrepresentations

ATCP 117 prohibits misrepresentations in the sale of multiple art, including misrepresentations related to any of the following:

- The work's originality. A seller may not claim that a work of multiple art is an "original" unless:
 - The work is produced from a master created solely by the artist, or by the artist and others working under the artist's supervision and direction.
 - The master was created for the purpose of producing works of multiple art.
 - The work was produced by or under the supervision and direction of the artist.
 - The artist approved the work after its completion.
- The artist's identity.
- The authenticity of the artist's signature.

- The artist's involvement in creating the work.
- The use of photomechanical procedures to create the work.
- The work's prior sales or ownership history.
- The number of copies produced.
- The availability of information about the work from normal trade sources.
- The market value of the work.

Art Dealer Disclosures

An art dealer selling "investment art" priced at more than \$800 must do all the following in writing, on a prescribed form, unless the buyer signs a written waiver:

- Disclose the following information about the art work (unless the dealer states that the dealer does not know and cannot obtain the information):
 - Whether the artist personally signed the work.
 - Whether the work is an original.
 - How the work was created.
 - Whether photomechanical procedures were involved in the work's production.
 - Where and when the work was produced.
 - The work's prior ownership history.
 - All of the editions of the work and the number of copies in each edition.
- Promise to refund the full purchase price if any of the disclosures is incorrect.
- Notify the buyer that the buyer may inspect the work of art before buying it. The dealer must make the work available for inspection unless the buyer waives inspection in writing.

Supplier Declaration

An art dealer selling a work of "investment art" priced at more than \$800 get a declaration from the supplier who provided the work to the dealer. The supplier must give the declaration in writing on a prescribed form. The declaration must disclose all the following information, unless the supplier declines in writing to certify that information:

- Identification of the work of art.
- Whether the work is an original.
- Whether the work is part of a limited edition. The declaration must describe the limited edition, if any, including the total number of works in the limited edition.

- Whether the artist signed the work.
- Whether the work bears authentic edition numbers or markings.

Recordkeeping

- An art dealer must keep records related to every work of multiple art that the dealer sells for more than \$300. The records must identify all the following:
 - The work.
 - The date of sale.
 - The sale price.
 - The buyer's name and address.
 - A copy of any required disclosure statement given to the buyer (for "investment art" priced at more than \$800).
 - The name and address of the supplier from whom the dealer obtained the work.
 - The date of purchase from the supplier.
 - The purchase price from the supplier.
 - A copy of the supplier's declaration (for "investment art" that the dealer prices at more than \$800).
- An art dealer must keep disclosure statements and suppliers' declarations (for "investment art" priced at more than \$800) for 5 years. An art dealers must keep other records for 2 years.
- Suppliers must keep supplier declarations for 5 years.

Rule Background

DATCP adopted ATCP 127 is a *general order* (rule) under Wisconsin's Unfair Business Practices Law, Wisconsin Statutes section 100.20. DATCP adopted this rule in 1990 (DATCP Docket No. 2124.)

Rule Enforcement

Private Remedy

A person who suffers a monetary loss because of a seller's violation of ATCP 117 may sue the seller under Wisconsin Statutes section 100.20(5) and may recover twice the amount of the loss, together with costs and attorneys fees.

Injunction and Restitution

DATCP may seek a court order, under Wisconsin Statutes section 100.20(6), enjoining violations of ATCP 117 and ordering a seller to pay restitution to consumers. The Department of Justice or a district attorney may represent DATCP in court.

Civil Forfeiture

DATCP or any district attorney may start a court action under Wisconsin Statutes section 100.26(6) to recover a civil forfeiture from a seller who violates ATCP 117. The court may impose a civil forfeiture of up to \$10,000 per violation. The Department of Justice or a district attorney may represent DATCP in court.

Criminal

A district attorney may start a criminal prosecution, under Wisconsin Statutes section 100.26(3), against a seller who violates ATCP 117. A violator may be fined up to \$5,000 or sentenced to as much as a year in jail, or both.