

SPIKE, LLC,  
a Colorado limited liability company  
1850 Reliable Circle  
Colorado Springs, CO 80906,

**RAMIREZ 12CV00111**

Plaintiff,

v.

Case No. \_\_\_\_\_

NATIONWIDE RECYCLING, LLC,  
2230 Stonebridge Circle  
West Bend, WI 53095,

Case Code: 30301  
Money Judgment

and

JOHN MCCARDLE,  
2255 Michelle Court  
Brookfield, WI 53095,

Defendants.

FILED  
IN CIRCUIT COURT  
JAN 10 2012  
WAUKESHA CO. WI  
CIVIL DIVISION

**COMPLAINT**

NOW COMES the above-named Plaintiff, SPIKE, LLC, ("SPIKE") a Colorado limited liability company, by its attorneys, The Schroeder Group S.C., Attorneys at Law, for its Complaint against the above-named Defendants, alleges and shows to the Court as follows:

**OVERVIEW**

This case arises out of Defendants' conspiracy to take and sell product belonging to SPIKE through fraud and theft that Defendants had agreed to destroy thereby undercutting SPIKE's sales.

**PARTIES**

1. Plaintiff, SPIKE, is a Colorado limited liability company, with its principal office located at 1850 Reliable Circle, Colorado Springs, CO 80906.
2. Defendant NATIONWIDE RECYCLING, LLC ("NATIONWIDE") is a Wisconsin limited liability company with its principal office located at 2230 Stonebridge Circle, West Bend, WI 53095.

3. Defendant JOHN MCCARDLE ("MCCARDLE"), is a natural person who, upon information and belief, has a home address of 2255 Michelle Court, Brookfield, WI 53045.

4. Upon information and belief, NATIONWIDE is owned and operated by MCCARDLE.

### **FACTS**

5. SPIKE manufactures and distributes energy drinks including "SPIKE Energy Drink" and "SPIKE Shooter."

6. Out of concern for its customers and its own business reputation, SPIKE monitors its own products to ensure it sells only products fit for sale.

7. In or about 2010, SPIKE determined it had approximately 18 pallets of SPIKE products that should be removed from the marketplace (collectively, "removed SPIKE products").

8. If the removed SPIKE products had been sold, the value of that product would have been worth approximately \$900,000.

9. SPIKE wanted to hire a company that could safely and ethically dispose of the removed SPIKE products.

10. SPIKE contacted National Environmental Solutions, LLC ("NES"), a company who represented themselves capable about performing those services, about having NES destroy the removed SPIKE products in or about March, 2010.

11. After reaching agreement on price, SPIKE arranged to have the removed SPIKE products delivered to NES.

12. NES took delivery of the removed SPIKE products on or about April 6, 2010.

13. The removed SPIKE products delivered totaled 18 pallets, or 13,617 cases.

14. NES agreed to safely dispose of the SPIKE products and recycle the metal in the containers.

15. SPIKE agreed to pay NES \$6,000 for this service.

16. NES was a Wisconsin limited liability company owned and operated by Dean Schwichtenberg.

17. NES represented itself as being in the business of disposing of and recycling materials in an environmentally-compliant way.

18. NES stopped operating on or about August 31, 2010.

19. Upon information and belief, MCCARDLE began NATIONWIDE's operations on or about September 1, 2010.

20. Like NES, NATIONWIDE represents itself as being in the business of disposing of and recycling materials in an environmentally-compliant way.

21. Like NES, NATIONWIDE operated out of the facility at 2230 Stonebridge Circle in West Bend.

22. MCCARDLE had not previously been a recycler by trade; he was primarily a real estate broker.

23. MCCARDLE hired Dean Schwichtenberg, the same person who had just shut down his business that had done the same work in the same facility, to run the day-to-day operations of NATIONWIDE.

24. NATIONWIDE picked up where NES left off—taking over accounts and relationships that had been NES customers.

25. In or around mid-September, 2010, SPIKE learned that NES had not destroyed the removed SPIKE products.

26. SPIKE contacted MCCARDLE on or about September 20, 2010 alarmed that the removed SPIKE products still existed.

27. In that phone call, MCCARDLE represented himself to SPIKE as the landlord of the building ("2230 Stonebridge") NES had operated in. MCCARDLE did not represent himself as the owner of a successor business at that time.

28. During that September 20, 2010 phone call, MCCARDLE represented that Schwichtenberg owed MCCARDLE money and made other negative statements about Schwichtenberg.

29. MCCARDLE spoke to SPIKE again on or about September 27, 2010 and represented that Schwichtenberg was no longer in the 2230 Stonebridge premises.

30. MCCARDLE also represented in that call that the removed SPIKE products were still on his 2230 Stonebridge premises.

31. MCCARDLE represented to SPIKE at that time that he was not in the recycling business, but offered for a fee of \$10,000 plus additional transportation costs

to act as an agent to arrange for the transport of the removed SPIKE product to another company, Miller Compressing Company, for destruction of the product. MCCARDLE dictated the only payment he would accept for this work was an immediate wire transfer of \$10,000.

32. SPIKE arranged for the immediate wire transfer that MCARDLE demanded on or around September 27, 2010.

33. MCCARDLE promised to send a certificate of destruction once the work was completed.

34. MCCARDLE represented to SPIKE on November 2, 2010 that the removed SPIKE products had been transported to Miller Compressing Company and destroyed.

35. As of November 2, 2010, MCCARDLE had not arranged the transport of the removed SPIKE products to Miller Compressing Company.

36. In November of 2010, MCCARDLE represented that he did not know where Schwitchenberg was and that Schwitchenberg was not in the 2230 Stonebridge premises.

37. Unbeknownst to SPIKE, as of November 2010, MCCARDLE was operating a business in conjunction with Schwitchenberg out of the 2230 Stonebridge premises.

38. MCCARDLE conspired with Schwitchenberg to make illicit sales of the expired SPIKE products as of November, 2010. Operating outside of the terms of his business and contract, he was allowing or encouraging Schwitchenberg to illicitly take and sell removed SPIKE products through unauthorized channels.

39. SPIKE learned of these illicit sales on or about January 25, 2011.

40. SPIKE immediately contacted MCCARDLE who falsely claimed he did not know where Schwitchenberg was or how to get in contact with him.

41. On or about January 26, 2011, MCCARDLE admitted his earlier claims to have destroyed the product were false. In that call, MCCARDLE claimed the removed SPIKE products had been transported to Miller Compressing Company for destruction.

42. On or about January 26, 2011, SPIKE learned that MCCARDLE had not arranged for the transport of the removed SPIKE products to Miller Compressing Company as of that date.

43. On or about January 31, 2011, MCCARDLE again represented that NATIONWIDE would destroy all of the removed SPIKE products that had been in NATIONWIDE and its predecessor's possession.

44. On or around February 11, 2011, SPIKE received a certificate of destruction from NATIONWIDE stating they had destroyed all of the removed SPIKE products.

45. That certificate was false. The illicit sales of the removed SPIKE products occurred as late as April, 2011.

**CLAIM FOR RELIEF:**

**CONSPIRACY**

46. Plaintiff realleges and incorporates by reference all of the allegations set forth above.

47. MCCARDLE, NATIONWIDE, and Schwitchenberg were all working together to accomplish the unlawful purpose of stealing from SPIKE.

48. Defendants each made overt acts in furtherance of trying to accomplish those unlawful purposes.

49. Those decisions to act in concert with each other makes each Defendant individual fully responsible for the unlawful activities of them and Schwitchenberg.

**CLAIM FOR RELIEF:**

**BREACH OF CONTRACT**

50. Plaintiff realleges and incorporates by reference all of the allegations set forth above.

51. SPIKE formed a contract with Defendants for the destruction of all of the expired SPIKE products.

52. SPIKE paid Defendants \$10,000 for those services.

53. Defendants breached their obligations under that contract by not destroying all of the removed SPIKE products delivered to it and its predecessor.

54. Defendants' breach damaged SPIKE in depriving SPIKE of the benefit of the services it had purchased.

55. Defendants are jointly responsible for this breach.

**CLAIM FOR RELIEF:**

**PROPERTY LOSS THROUGH FRAUDULENT MISREPRESENTATION IN**

**VIOLATION OF WIS STATS § 895.446**

56. Plaintiff realleges and incorporates by reference all of the allegations set forth above.

57. MCCARDLE made multiple false representations to SPIKE including, but not limited to, the representations that (1) he was no longer affiliated with Schwitchenberg and that Schwitchenberg had vacated the 2230 Stonebridge premises; (2) that MCCARDLE had arranged the transport and destruction of the removed SPIKE products to Miller Compressing Company as of November, 2010; and (3) that all removed SPIKE products had been destroyed as of February, 2011.

58. MCCARDLE knew these representations were false when he made them.

59. MCCARDLE made these false representations with the intent to deceive and defraud SPIKE.

60. SPIKE was deceived and defrauded by these false representations.

61. Defendants profited from these false representations to SPIKE.

62. Defendants are jointly responsible for the harm caused to SPIKE.

**CLAIM FOR RELIEF:**

**MISREPRESENTATION: INTENTIONAL DECEIPT**

63. Plaintiff realleges and incorporates by reference all of the allegations set forth above.

64. MCCARDLE made multiple false representations to SPIKE including, but not limited to, the representations that (1) he was no longer affiliated with Schwitchenberg and that Schwitchenberg had vacated the 2230 Stonebridge premises; (2) that MCCARDLE had arranged the transport and destruction of the removed SPIKE products to Miller Compressing Company as of November, 2010; and (3) that all removed SPIKE products had been destroyed as of February, 2011.

65. Those representations were untrue.

66. MCCARDLE made those representations either knowing they were untrue or recklessly without care as to whether they were true or false.

67. MCCARDLE made those representations with the intent to deceive SPIKE and induce SPIKE to act upon it to SPIKE's pecuniary damages.

68. SPIKE believed MCCARDLE's misrepresentations and relied upon them.
69. Defendants are jointly responsible for the harm caused to SPIKE.

**CLAIM FOR RELIEF:**

**MISREPRESENTATION: STRICT RESPONSIBILITY**

70. Plaintiff realleges and incorporates by reference all of the allegations set forth above.

71. MCCARDLE made multiple false representations to SPIKE including, but not limited to, the representations that (1) he was no longer affiliated with Schwitchenberg and that Schwitchenberg had vacated the 2230 Stonebridge premises; (2) that MCCARDLE had arranged the transport and destruction of the removed SPIKE products to Miller Compressing Company as of November, 2010; and (3) that all removed SPIKE products had been destroyed as of February, 2011.

72. Those representations were untrue.

73. MCCARDLE made those representations based on his own personal knowledge or in circumstances in which he necessarily ought to have known the falsity of his statements.

74. MCCARDLE had an economic interest in the transaction with SPIKE and stood to make a financial gain in SPIKE wiring him \$10,000 for disposal of the removed SPIKE products.

75. SPIKE believed MCCARDLE's misrepresentations and relied upon them.

76. Defendants are jointly responsible for the harm caused to SPIKE.

**CLAIM FOR RELIEF:**

**MISREPRESENTATION: NEGLIGENCE**

77. Plaintiff realleges and incorporates by reference all of the allegations set forth above.

78. MCCARDLE made multiple false representations to SPIKE including, but not limited to, the representations that (1) he was no longer affiliated with Schwitchenberg and that Schwitchenberg had vacated the 2230 Stonebridge premises; (2) that MCCARDLE had arranged the transport and destruction of the removed SPIKE products to Miller Compressing Company as of November, 2010; and (3) that all removed SPIKE products had been destroyed as of February, 2011.

79. Those representations were untrue.

80. MCCARDLE was negligent in making those representations.
81. SPIKE believed MCCARDLE's misrepresentations and relied upon them.
82. Defendants are jointly responsible for the harm caused to SPIKE.

**CLAIM FOR RELIEF:**

**CONVERSION**

83. Plaintiff realleges and incorporates by reference all of the allegations set forth above.

84. SPIKE transferred possession, but not ownership of the removed SPIKE products to NATIONWIDE under MCCARDLE's control.

85. Defendants seriously interfered with SPIKE's ownership of the removed SPIKE product by conspiring with Schwitschenberg in converting the removed SPIKE products to their own uses and benefit.

86. That interference damaged SPIKE; it permitted removed SPIKE product not appropriate sale to be introduced to the marketplace with SPIKE's name on the label damaging SPIKE's reputation and undercutting SPIKE's authorized sales.

87. Defendants are jointly responsible for the harm caused to SPIKE.

**CLAIM FOR RELIEF:**

**VIOLATION OF WIS. STATS § 100.18**

88. Plaintiff realleges and incorporates by reference all of the allegations set forth above.

89. NATIONWIDE advertised itself to the public as a recycler of goods with "guaranteed" privacy and security.

90. Those statements were made with the intent to induce members of the public to enter into business with NATIONWIDE.

91. Those statements were untrue.

92. Those false statements harmed SPIKE.

WHEREFORE, Plaintiff SPIKE respectfully requests:

- A. Judgment against NATIONWIDE and MCCARDLE jointly and severally;
- B. Compensatory damages in an amount to be proven at trial;
- C. Treble damages;
- D. Attorney's fees;

- E. All interest permitted by law;
- F. All other relief the Court deems just and equitable.

**PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY OF ALL ISSUES SO TRIABLE.**

Dated at Waukesha, Wisconsin, this 20<sup>th</sup> day of July, 2012.

**THE SCHROEDER GROUP, S.C.,  
Attorneys at Law**

Attorneys for SPIKE, LLC



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