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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-926**

Interstate Truck Driving School, LLC,
Respondent,

vs.

Class A Leasing, Inc.,
Appellant,

Eric Odegard,
Defendant.

**Filed December 5, 2011
Affirmed as modified
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CV-09-20099

David E. Albright, Eagan, Minnesota (for respondent)

Robert M. Pearson, Robert M. Pearson P.A., Rogers, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and
Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the district court's order that permanently enjoins appellant from holding itself out as a licensed driving school and from providing driver's training and education without a license. The district court did not abuse its discretion by enjoining appellant from engaging in deceptive marketing practices, but the portion of the injunction that bars appellant from providing driver's training and education without a license exceeds the permissible scope of injunctive relief. Accordingly, we affirm as modified.

FACTS

Respondent Interstate Truck Driving School, LLC is a licensed driving school in the business of training students to pass commercial driving tests. Appellant Class A Leasing, Inc. leases large trucks for customers to drive in preparation for and during commercial driving tests.

Respondent sought an injunction on the grounds that appellant's marketing of itself as a licensed driving school violates the Uniform Deceptive Trade Practices Act (DTPA), Minn. Stat. §§ 325D.43-.48 (2010), constitutes false advertising, and puts respondent at a competitive disadvantage. Following a court trial, the district court found that appellant provides driving instruction although not licensed under Minn. Stat. § 171.34 (2010) to do so, and that its marketing deceptively implies that it is a licensed driving school. The district court further determined that appellant's deceptive trade practice enabled appellant to provide driving instruction without incurring the costs of

licensing, thereby undercutting respondent.¹ On this basis, the district court enjoined appellant from both marketing itself as a licensed driving school and from providing driving instruction. This appeal follows.

D E C I S I O N

Appellant challenges the district court's injunction of its provision of driver's training and education.² We review the issuance of an injunction for an abuse of discretion. *Williams v. Nat'l Football League*, 794 N.W.2d 391, 395 (Minn. App. 2011), *review denied* (Minn. Apr. 27, 2011). The district court abuses its discretion if it bases its injunction on clearly erroneous factual findings or a misapplication of the law. *Id.*

We turn first to the district court's factual findings. The district court found that (1) appellant provided commercial driving instruction and training without a license in violation of Minn. Stat. § 171.34; (2) appellant's marketing implied that it was a licensed driving school, which constitutes a deceptive trade practice under Minn. Stat. § 325D.44; and (3) this deceptive trade practice gave appellant an unfair market advantage over respondent by allowing it to compete as though it was a licensed driving school without incurring the costs of licensing. Appellant does not argue that these findings are clearly erroneous, and the record amply supports them. Accordingly, we discern no abuse of discretion with respect to the factual basis for the injunction.

¹ The district court ruled in favor of appellant on the false-advertising claim.

² Although respondent urges us to dismiss this appeal due to appellant's failure to provide a transcript, the absence of a transcript in this case does not hinder our review and therefore does not warrant dismissal. *See Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995) (refusing to dismiss case because court could analyze the merits of appellant's claims absent the transcript).

We next consider whether the district court properly applied the law to these factual findings. Appellant does not challenge the portion of the injunction that prohibits appellant from holding itself out as a licensed driving school. We agree that the district court acted well within its discretion in enjoining this deceptive trade practice. But appellant asserts that the district court abused its discretion by also enjoining appellant from providing driving instruction without a license. We agree.

The DTPA provides equitable relief for a party who is damaged by a deceptive practice. “A person likely to be damaged by a deceptive trade practice of another may be granted an injunction against *it*[.]” Minn. Stat. § 325D.45, subd. 1 (emphasis added). The equitable remedy must be tied to the deceptive practice itself. *See Dennis Simmons, D.D.S., P.A. v. Modern Aero, Inc.*, 603 N.W.2d 336, 339 (Minn. App. 1999) (stating that the DTPA allows “relief against deceptive trade practices”). Here, the deceptive trade practice is appellant’s practice of holding itself out as a licensed driving school. While appellant’s operation of an unlicensed driving school may be illegal under section 171.34, it is not a deceptive trade practice.³ Accordingly, we modify the district court’s injunction:

Due to Defendant Class A Leasing, Inc.’s violation of Minn. Stat. § 325D.44, Defendant Class A Leasing, Inc. is permanently enjoined from making any statement, whether oral or written or electronic and whether express or implied,

³ Appellant also insists that, under Minn. Stat. § 171.34, the commissioner of public safety has the exclusive authority to enjoin it from operating an unlicensed driving school. Respondent counters that appellant did not properly raise this issue to the district court. We need not resolve this debate because we have already determined that the district court erred by enjoining appellant from operating an unlicensed driving school.

to the effect that Defendant Class A Leasing, Inc. or its employees are licensed to provide any Class A or Class B truck driver training or education or to operate any type of school, unless or until properly licensed as a driving school under Minn. Stat. § 171.34.

Affirmed as modified.