

IN THE COURT OF COMMON PLEAS
HIGHLAND COUNTY, OHIO

STATE OF OHIO, *ex rel.*
MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO

Plaintiff,

v.

ARYA ENTERPRISES, INC.
D/B/A NORTH END MINI MART

Defendant.

:
: CASE NO. 13C0206
:
: JUDGE

FILED
COMMON PLEAS COURT
HIGHLAND COUNTY, OHIO

JUN 25 2013


HIGHLAND COUNTY CLERK OF COURTS

:
: AGREED CONSENT JUDGMENT
: ENTRY AND ORDER
:

PREAMBLE

This matter came to be heard upon the filing of a Complaint by the Attorney General of Ohio alleging that Defendant Arya Enterprises, Inc., doing business as North End Mini Mart ("Defendant"), has violated the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder. The Attorney General has reached an agreement with Defendant and this Agreed Consent Judgment Entry and Order is intended to resolve all of the claims alleged against Defendant in the Complaint. By signing this entry, Defendant submits to the personal jurisdiction of this Court and consents to the entry of this Agreed Consent Judgment Entry and Order ("Consent Judgment") pursuant to R.C. 1345.07(F).

Defendant hereby consents to the Court's findings of facts and conclusions of law, to the imposition of this Consent Judgment and to the rights of Plaintiff to enforce this Consent Judgment. Pursuant to R.C. 1345.10, this Consent Judgment is not admissible as *prima facie* evidence of the facts on which it is based for any subsequent proceedings brought by any party under R.C. 1345.09.

RECEIVED
ATTORNEY GENERAL OF OHIO

JUL 01 2013

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

Upon joint submission of this Consent Judgment, Defendant hereby accepts and expressly waives service of process and the right to assert any claim of defect in connection with service of process.

AGREED FINDINGS OF FACT

1. Defendant Arya Enterprises, Inc., doing business as North End Mini Mart ("North End Mini Mart") is an Ohio corporation with its principal place of business located at 950 North Washington Street, Greenfield, Ohio 45123.
2. Defendant North End Mini Mart was, at all times relevant herein, engaged in the business of soliciting and offering for sale, *inter alia*, synthetic narcotics/illegal drugs to consumers which were represented as "Incense" or "Aromatic Incense."
3. Defendant sold the synthetic narcotics/illegal drugs in plastic packets that failed to disclose the full list of ingredients and further omitted the illegal ingredients contained in the products.
4. On January 13, 2012, two confidential informants operating under the direction of the Highland County Sheriff's Office, went to Defendant's store located at 950 North Washington Street, Greenfield, Ohio 45123, for the purpose of purchasing some "K2."¹
5. The confidential informants approached the counter and asked if the store had "K2."
6. Defendant's clerk said yes, they had "Funky Green" and had two different packs – a small 3 gram pack and a 5 gram pack.
7. The confidential informants then asked Defendant's clerk if it was any good, to which the clerk replied that a lot of people buy it, with some coming from Washington Courthouse and Leesburg.

¹ "K2" is a brand of synthetic cannabis which contains various synthetic cannabinoids which are Schedule I Controlled Substances. (See R.C. 3719.41(C)(67)).

8. The confidential informants then asked Defendant's clerk if they had any pipes.
9. Defendant's clerk responded by showing them a \$1.99 "Glass Ball Pen" which was actually a pipe.
10. Defendant's clerk then proceeded to show the confidential informants how the ink pen worked as a pipe.
11. The confidential informants purchased a packet of "incense" suspected to be K2 for \$27.99 and the "ink pen" for a total price of \$32.08.
12. The product purchased was labeled as "Funky Green Stuff – Reggie's Blend" Aromatic Incense.
13. The "Funky Green Stuff" incense was sold in a 5 gram packet which was labeled "For Aromatherapy Use Only" and "Not for sell [sic] to minors, 19+ only."
14. The "Funky Green Stuff" packet noted that it contained a "proprietary blend of herbs and spices, natural and synthetic scents, oils and aromatic enhancers."
15. The "Funky Green Stuff" packet also contained the following label: "Does NOT Contain: JWH-018,073,081,200,250, HU-210,211, CP-047,497,55, Cannabicyclohexanol or Salvia."
16. Although the "Funky Green Stuff" packet claimed it did not contain certain illegal or prohibited ingredients, when tested, the vegetation inside the "Funky Green Stuff" packet did contain N,N-diallyl-5-methoxytryptamine ("5MeO-DALT"), whose chemical structure is substantially similar to 5-methoxy-N,N-diisopropyltryptamine ("5-MeO-DIPT").

17. 5-MeO-DIPT is a Schedule I Controlled Substance. (See R.C. 3719.41 and R.C. 3719.43) (amended 2012)²
18. The vegetation inside the “Funky Green Stuff” packet also contained 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (“AM2201”), 1-pentyl-3-(4-methylnaphth-1-oyl)indole (“JWH-122”), and 1-pentyl-3-(4-ethylnaphth-1-oyl)indole (“JWH-210”), all of which have chemical structures substantially similar to 1-pentyl-3-(1-naphthoyl)indole (“JWH-018”).
19. JWH-018 is a Schedule I Controlled Substance. (See R.C. 3719.41(C)(35)) (amended 2012)³
20. “Incense” is defined as “material used to produce a fragrant odor when burned” or “the perfume exhaled from some spices and gums when burned.” (<http://www.merriam-webster.com/dictionary/incense>)
21. Unlike typical incense, which is composed of certain biotic materials, the vegetation represented as incense and sold by Defendant was coated with illegal and dangerous synthetic compounds that, when consumed, mimic the psychoactive and physiological effects of Tetrahydrocannabinol (“THC”), the active ingredient in cannabis, which is also an illegal Schedule I Controlled Substance. (See R.C. 3719.41(C)(27)) (www.dea.gov)

²At the time of the transaction at issue, 5MeO-DALT was a controlled substance analog to 5-MeO-DIPT, a schedule I controlled substance under R.C. 3719.41 and 3719.43. Effective December 20, 2012, House Bill 334 amended R.C. 3719.41. Under the superseding statute, 5MeO-DALT is now a schedule I controlled substance. R.C. 3719.41(C)(40).

³At the time of the transaction at issue, AM2201, JWH-122 and JWH-210 were controlled substance analogs to JWH-018, which was listed as a schedule I controlled substance under R.C. 3719.41(C)(35). (See R.C. 3719.01(HH) and 3719.031). Effective December 20, 2012, House Bill 334 amended R.C. 3719.41. Under the superseding statute, AM2201, JWH-122, JWH-210, and JWH-018 are schedule I controlled substances. R.C. 3719.41(C)(67)(a).

22. Defendant sold products labeled as “incense” which contained various illegal Schedule I Controlled Substances and for which the ordinary and customary use for such products is to be smoked and consumed as a drug by humans.
23. Defendant offered for sale and sold synthetic narcotics/illegal drugs as legal products.

CONCLUSIONS OF LAW

24. The Court has jurisdiction over the subject matter, issues and parties to this Consent Judgment pursuant to R.C. 1345.04 of the CSPA.
25. The Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) in that some of the transactions complained of herein, and out of which this action arose, occurred in Highland County.
26. The CSPA, R.C. 1345.01 et seq., governs the business practices of the Defendant.
27. The Ohio Attorney General is the proper party to commence these proceedings under the authority of R.C. 1345.07, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of Ohio.
28. Defendant is a “supplier,” as defined in R.C. 1345.01(C), as Defendant was, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting, offering for sale, and selling synthetic narcotics/illegal drugs to individuals in Highland County in the State of Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
29. A supplier’s practice of offering for sale and selling synthetic narcotics/illegal drugs as legal products, is an unfair, deceptive and unconscionable act or practice in violation of the CSPA, R.C. 1345.02(A).
30. A supplier’s practice of failing to clearly and conspicuously disclose that its products

contained Schedule I Controlled Substances and were thus illegal, is an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02(A).

31. A supplier's practice of failing to clearly and conspicuously disclose certain material exclusions related to its "incense" products is an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02(A), and the Exclusions and Limitations in Advertising Rule, Ohio Admin. Code 109:4-3-02(A)(1). Specifically, for a supplier's "incense" products to contain statements that they do not contain any prohibited ingredients or that they only contain certain ingredients, while failing to disclose that those products contain other Schedule I Controlled Substances and are thus illegal, is an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02(A), and the Exclusions and Limitations in Advertising Rule, Ohio Admin. Code 109:4-3-02(A)(1).

ORDER

For purposes of affecting this Consent Judgment Entry and Order, it is therefore ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff's request for a Declaratory Judgment is GRANTED; and it is therefore DECLARED that the acts and practices set forth in the Agreed Findings of Fact and enumerated in the Conclusions of Law set forth above in Paragraphs (29) through (31) violate the CSPA, R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder, in the manner set forth therein.
2. Defendant, its officers, partners, agents, representatives, salespersons, employees, independent contractors, successors, assigns, and all persons acting on behalf of Defendant, directly or indirectly, through any corporate device or private device, partnership or association in connection with any consumer transaction, including any

person or entity which purchases any interest in the business and continues to operate the business, is hereby PERMANENTLY ENJOINED from violating the CSPA, R.C. 1345.01 et seq.

3. Defendant, its officers, partners, agents, representatives, salespersons, employees, independent contractors, successors, assigns, and all persons acting on behalf of Defendant, directly or indirectly, through any corporate device or private device, partnership or association in connection with any consumer transaction, including any person or entity which purchases any interest in the business and continues to operate the business, is hereby PERMANENTLY ENJOINED from engaging in the acts and practices enumerated in the Conclusions of Law set forth above in Paragraphs (29) through (31).
4. IT IS FURTHER ORDERED that Defendant is PERMANENTLY ENJOINED from soliciting and engaging in the business of effecting consumer transactions by soliciting, offering for sale, and/or selling incense products, potpourri products, or synthetic narcotics/illegal drugs in the State of Ohio as a supplier, as defined in R.C. 1345.01(C).
5. IT IS FURTHER ORDERED that Defendant is assessed and shall pay Two Thousand Five Hundred Dollars (\$2,500.00) to the Office of the Ohio Attorney General's General Holding Account (R004). Said payment shall be used by the Attorney General for such purposes that may include, but are not limited to, education about the use and danger of synthetic narcotics/illegal drugs, and the investigation and enforcement for violations in relation to synthetic drug production, distribution, and possession. Said payment is due and payable upon execution of this Consent Judgment and shall be made by delivering a certified check or money order, payable to the "Ohio Attorney General's Office," to:

**Teresa Goodridge
Legal Research & Finance Assistance
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215**

6. The Attorney General may assert any claim that Defendant has violated this Consent Judgment in a separate civil action to enforce this Consent Judgment or to seek any other relief afforded by law. In any such action or proceeding, relevant evidence of conduct that occurred before the filing date of this Consent Judgment shall be admissible on any material issue, including alleged willfulness, intent, knowledge, contempt or breach, to the extent permitted by law. By this paragraph, Defendant does not waive any evidentiary objection or any other objection it may have as permitted by law to the admissibility of any such evidence.
7. IT IS FURTHER ORDERED that any violation of the terms of this Consent Judgment shall constitute contempt. Service of any action for contempt shall be complete upon mailing a certified copy of such action to undersigned counsel for Defendant.
8. In the event the Ohio Attorney General must initiate legal action or incur any costs to compel Defendant to abide by this Consent Judgment, upon order of the Court, Defendant shall be liable to the Ohio Attorney General for any and all penalties imposed by the Court for contempt and, in addition to the civil penalties awarded herein, any such costs and reasonable attorneys' fees expended to proceed with such a motion for contempt that the Court may impose.
9. Failure of the Attorney General to timely enforce any term, condition, or requirement of this Consent Judgment shall not provide, nor be construed to provide, Defendant a defense for noncompliance with any term of this Consent Judgment or any other law,

rule, or regulation; nor shall it stop or limit the Attorney General from later enforcing any term of this Consent Judgment or seeking any other remedy available by law, rule, or regulation.

10. Nothing in this Consent Judgment shall in any way preclude any investigation or enforcement action against Defendant under any legal authority granted to the State for transactions not subject to this action.

11. IT IS FURTHER ORDERED that Defendant shall not represent directly or indirectly or in any way whatsoever that the Court or the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of Defendant's business operation.

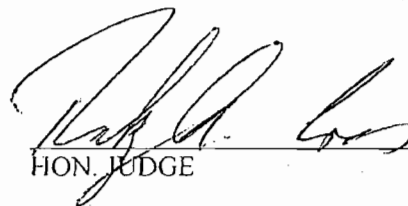
12. IT IS FURTHER ORDERED that Defendant shall cooperate with the Ohio Attorney General or his representative by providing the Ohio Attorney General, upon his request and upon reasonable twenty-four (24) hour notice, copies of any and all records in the possession and/or control of Defendant which are necessary to establish compliance with the law, this Consent Judgment, and any court order granted herein, or to permit the Ohio Attorney General or his representative to inspect and/or copy any and all such records that are in the possession and/or control of Defendant.

13. IT IS FURTHER ORDERED that Defendant shall pay all court costs associated with this matter *WITHIN 30 DAYS. FAILURE TO DO SO SHALL RESULT IN CONTEMPT PROCEEDINGS*

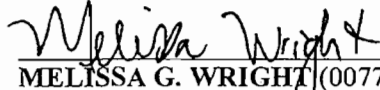
14. This Court shall retain jurisdiction to enforce compliance with this Consent Judgment.

IT IS SO ORDERED.

6-24-13
DATE


HON. JUDGE

**JOINTLY APPROVED FOR ENTRY AND SUBMITTED BY:
FOR THE OHIO ATTORNEY GENERAL, MICHAEL DEWINE**



MELISSA G. WRIGHT (0077843)

Senior Assistant Attorney General

Consumer Protection Section

30 East Broad Street, 14th Floor

Columbus, OH 43215-3428

(614) 466-8169; (866) 528-7423 (facsimile)

melissa.wright@ohioattorneygeneral.gov

Counsel for Plaintiff, State of Ohio

Date

6/11/13

**FOR DEFENDANT ARYA ENTERPRISES, INC.
D/B/A NORTH END MINI MART**



NELSON E. GENSHAFT (0011023)

Strip, Hoppers, Leithart, McGrath & Terlecky Co.

575 South Third Street

Columbus, OH 43215

(614) 228-6345; (614) 228-6369 (facsimile)

neg@columbuslawyer.net

Counsel for Defendant Arya Enterprises, Inc., D/B/A North End Mini Mart

Date

6-10-13