

IN THE COURT OF COMMON PLEAS  
HIGHLAND COUNTY, OHIO

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

Plaintiff,

v.

DISCOUNT SMOKERS & GIFTS, INC.

Defendant.

CASE NO. 14CV00004  
JUDGE COSS

**FILED**  
COMMON PLEAS COURT  
HIGHLAND COUNTY, OHIO

JAN 09 2014

  
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 Discount Smokers & Gifts, Inc. ("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

JAN 14 2014

CONSUMER PROTECTION SECTION  
PUBLIC INSPECTION FILE

### AGREED FINDINGS OF FACT

1. Defendant Discount Smokers & Gifts Inc., also known as Discount Smokes & Gifts, ("Discount Smokes & Gifts"), is an Ohio corporation which formerly operated a business located at 342 Jefferson Street, Greenfield, Ohio 45123<sup>1</sup>.
2. Defendant Discount Smokes & Gifts was, on or about April 4, 2012, responsible for the business being conducted at 342 Jefferson Street, Greenfield, Ohio 45123.
3. On the above date and time, the premises known as Discount Smokes & Gifts and located at 342 Jefferson Street, Greenfield, Ohio 45123, was being managed by an individual who engaged in the business of soliciting and offering for sale, inter alia, synthetic narcotic/illegal drugs to consumers which were represented as "incense or aromatics like incense."
4. On or about the above date, synthetic narcotics/illegal drugs were sold from Defendant's premises. The synthetic narcotics/illegal drugs were sold in plastic packets that failed to disclose the full list of ingredients and further omitted the illegal ingredients contained in the products.
5. On April 4, 2012, investigators from the Highland County Sheriff's Office and a Special Agent with the Ohio Bureau of Criminal Identification and Investigation ("BCI&I") went to Defendant's store located at 4342 Jefferson Street, Greenfield, Ohio 45123, for the purpose of purchasing some "K2."<sup>2</sup>
6. The BCI&I Special Agent purchased a packet of "incense" suspected to contain synthetic narcotics.

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<sup>1</sup> On or about December 29, 2012, Cathy Jung, the owner of Discount Smokers & Gifts, Inc., sold the Greenfield store located at 342 Jefferson Street, Greenfield, Ohio 45123, and all inventory, to Robert Domino. A new business, Discount Smokes & Gifts, LLC, owned by Chasity V. Zayas, now operates from the 342 Jefferson Street location. Neither Ms. Zayas, Mr. Domino, nor Discount Smokes & Gifts, LLC is a party to this litigation.

<sup>2</sup> "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))

7. The product purchased was labeled as "Lime Shock Wave."
8. The "Shock Wave" incense was sold in a 3.5 gram packet which was labeled "NOT FOR HUMAN CONSUMPTION."
9. The "Shock Wave" packet also contained the following label: "Contains None Of The Following: JWH-018, JWH-073, JWH-081, JWH-200, JWH-250, JWH-398, HU-210, HU-211, or CP 47,497."
10. Although the packet of "Shock Wave" claimed it did not contain certain illegal or prohibited ingredients, when tested, the vegetation inside the "Shock Wave" packet did contain 1-(5-fluoropentyl)-3-(1-naphthoyl)indole ("AM2201"), the chemical structure of which is substantially similar to 1-pentyl-3-(1-naphthoyl)indole ("JWH-018").
11. JWH-018 is a Schedule I Controlled Substance. (See R.C. 3719.41(C)(35)) (amended 2012)<sup>3</sup>
12. "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>)
13. 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](http://www.dea.gov))

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<sup>3</sup> At the time of the transaction at issue, AM2201 was a controlled substance analog 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, both AM2201 and JWH-018 are schedule I controlled substances. R.C. 3719.41(C)(67)(a).

14. 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, were sold out of Defendant's premises.
15. The synthetic narcotics/illegal drugs referred to in the foregoing paragraphs were offered for sale and sold as a legal product.
16. While Defendant acknowledges that it was legally responsible for the business premises located at 342 Jefferson Street, Greenfield, Ohio 45123 at all times relevant herein, Defendant maintains that on April 4, 2012, the business premises were actually in the control of a prospective purchaser and it was this individual who engaged in the business of soliciting, offering for sale, and selling the synthetic narcotics/illegal drugs.

#### CONCLUSIONS OF LAW

17. The Court has jurisdiction over the subject matter, issues and parties to this Consent Judgment pursuant to R.C. 1345.04 of the CSPA.
18. 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.
19. The CSPA, R.C. 1345.01 et seq., governs the business practices of the Defendant.
20. 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.
21. On or about April 4, 2012, Defendant was a supplier as defined in R.C. 1345.01(C) and was, at the times relevant herein, responsible for its operator engaged in the business of effecting consumer transactions and acknowledges that said operator solicited, offered for

sale and sold 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).

22. 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).
23. A supplier's practice of failing to clearly and conspicuously disclose that its products contain 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).
24. 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 (22) through (24) violate the CSPA, R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder, in the manner set forth therein.

2. Defendant is hereby PERMANENTLY ENJOINED from engaging in the acts and practices enumerated in the Conclusions of Law set forth above in Paragraphs (22) through (24).
3. 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).
4. IT IS FURTHER ORDERED that Defendant is assessed and shall pay Five Thousand Dollars (\$5,000.00) 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 of and enforcement for violations in relation to synthetic drug production, distribution, and possession. Two Thousand Five Hundred Dollars (\$2,500.00) shall be suspended upon Defendant's full compliance with the terms of this Consent Judgment. The remaining balance of Two Thousand Five Hundred Dollars (\$2,500.00) shall be paid in five (5) equal monthly installments of Five Hundred Dollars (\$500.00), with the first payment due and payable on January 6, 2014. The remaining four (4) subsequent payments shall be made no later than the 5<sup>th</sup> day of each month thereafter, with the first of the remaining four payments due on or before February

5, 2014. Payment 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, 14<sup>th</sup> Floor  
Columbus, Ohio 43215**

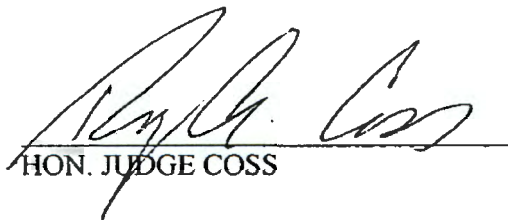
5. The Attorney General may assert any claim that Defendant has violated this Consent Judgment in a separate civil action to enforce this Consent Judgment or to seek any other relief afforded by law. In any such action or proceeding, relevant evidence of conduct that occurred before the filing date of 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.
6. 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.
7. 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.



8. 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.
9. 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.
10. 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.
11. IT IS FURTHER ORDERED that Defendant shall pay all court costs associated with this matter *WITHIN 30 DAYS, FAILURE TO PAY WITHIN THAT TIME MAY RESULT IN A CONTEMPT CITATION*
12. This Court shall retain jurisdiction to enforce compliance with this Consent Judgment.

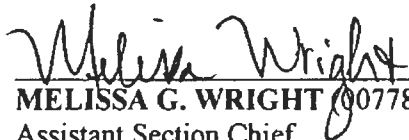
IT IS SO ORDERED.

6-8-14  
DATE

  
HON. JUDGE COSS



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



**MELISSA G. WRIGHT** (0077843)

Assistant Section Chief

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[melissa.wright@ohioattorneygeneral.gov](mailto:melissa.wright@ohioattorneygeneral.gov)

*Counsel for Plaintiff, State of Ohio*

12/31/13  
Date

**FOR DEFENDANT DISCOUNT SMOKERS & GIFTS, INC.**



**CATHY CHUNG**

Discount Smokers & Gifts, Inc.

12/23/2013  
Date



**JOHN D. SMITH** (0018138)

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*Counsel for Defendant Discount Smokers & Gifts, Inc., AKA Discount Smokes & Gifts*

12/27/13  
Date