

IN THE COURT OF COMMON PLEAS
SENECA COUNTY, OHIO

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

Plaintiff/Relator,

-vs-

Zig Stag, LTD., *et al.*

Defendants/Respondents.

CASE NO. 13-CV-0119

JUDGE MICHAEL P. KELBLEY

AGREED CONSENT JUDGMENT
ENTRY AND ORDER BETWEEN
PLAINTIFF AND DEFENDANTS
ZIG STAG, LTD. AND
SHAWN STAGNOLIA

PREAMBLE

This matter came to be heard upon the filing of a Complaint by Plaintiff/Relator, State of Ohio, acting through Ohio Attorney General Michael DeWine ("Plaintiff"), alleging that Defendants/Respondents Zig Stag, Ltd., Shawn Stagnolia, Leigh A. Brauer, Husky Enterprises, LTD, and the Real Property at 20 E. Market Street, Tiffin, Ohio 44883 (Parcel ID No. Q53041282360000)¹ violated Ohio's Consumer Protection and Public Nuisance laws. Specifically, Plaintiff's Complaint alleges that Defendants Zig Stag and Shawn Stagnolia violated the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder, and that all named Defendants in Plaintiff's Complaint violated Ohio's public nuisance laws, R.C. 3767.01 et seq.

Plaintiff has reached an agreement with Defendants Zig Stag and Shawn Stagnolia ("Defendants") and this Agreed Consent Judgment Entry and Order ("Consent Judgment") is intended to resolve all of the claims alleged against Defendants in the Complaint. By signing

¹ Defendants Leigh A. Brauer, Husky Enterprises, Ltd, and the Real Property (Parcel ID No. Q53041282360000) are not parties to this Consent Judgment.

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this entry, Defendants submit to the personal jurisdiction of this Court and consent to the entry of this Consent Judgment pursuant to R.C. 1345.07(F).

Defendants hereby consent 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.

FINDINGS OF FACT

1. Defendant Zig Stag is an Ohio limited liability company with its principal place of business located at 20 E. Market Street, Tiffin, Ohio 44883.
2. Defendant Shawn Stagnolia ("Stagnolia") is a resident of the State of Ohio and Seneca County and is the owner of Zig Stag.
3. The real property located at 20 E. Market Street, Tiffin, Ohio 44883 is owned by Husky Enterprises, Ltd.
4. Defendant Stagnolia at all times relevant hereto, operated, dominated, controlled and directed the activities of Zig Stag, causing, personally participating in, and/or ratifying the acts and practices of Zig Stag, as described in Plaintiff's Complaint. Accordingly, Stagnolia is liable for those acts in which he personally participated as well as the acts of Zig Stag, its employees and other agents because Stagnolia controlled and/or directed such acts.
5. Defendants were, at all times relevant herein, engaged in the business of soliciting, offering for sale, and selling, *inter alia*, synthetic controlled substances/illegal drugs to

consumers which were represented as, among other things, “novelty sachet” and “potpourri” products.

6. Defendants sold the synthetic controlled substances/illegal drugs in packets that failed to disclose the full list of ingredients contained in the products and further omitted the illegal ingredients contained in the products.
7. Between November 6, 2012 and March 29, 2013, the Ohio Bureau of Criminal Identification and Investigation (“BCI&I”) and the Seneca County Drug Task Force-METRICH Enforcement Unit (“Drug Task Force”) conducted undercover investigations into Zig Stag and Stagnolia’s sale of synthetic controlled substances/illegal drugs as legal products.
8. On February 5, 2013, a confidential informant operating under the direction of BCI&I and the Drug Task Force, went to Zig Stag, located at 20 East Market Street, Tiffin, Ohio 44883, for the purpose of purchasing synthetic controlled substances/illegal drugs.
9. Upon entering Zig Stag, the confidential informant spoke to a female employee, later identified as Leigh A. Brauer, who was working behind the counter.
10. The confidential informant asked Brauer if they had any “herb” the confidential informant could buy for a friend and went on to explain that he/she did not know much about the stuff.
11. In response, Brauer then pulled out from behind the counter numerous different types and sizes of the “herb” they sold.
12. Brauer then went on to describe the size of the packets and the cost of each. The confidential informant asked her if it was better than “Hammerhead” and Brauer replied “yes.”

13. The confidential informant then asked Brauer for \$200.00 worth of the product.
14. In response, Brauer placed an assortment of the products in a pink bag and handed it to the confidential informant.
15. The confidential informant then told Brauer that he/she did not mess with the "stuff" because the last time he/she smoked it, it made the confidential informant go "crazy."
16. Brauer told the confidential informant that the next time he/she comes in the store not to talk about smoking the substances because it is not for human consumption, but then added, "but I know what you're talking about though!" After this comment, both Brauer and the confidential informant laughed.
17. The confidential informant purchased a total of seven packages of "novelty sachets" from the Zig Stag for a total of \$200.
18. The seven packages consisted of (1) two plastic vials labeled "Shpark *[sic]* in the Dark," (2) one plastic vial labeled "Atomic," (3) three blue plastic packets labeled "The Dreaded 2," and (4) one red plastic packet labeled "The Dreaded 2."
19. Each plastic vial of "Shpark *[sic]* in the Dark" had a label on one side claiming it had a "Mixed Fruit Scent" and on the other side contained a label noting the following:
"Novelty Sachet Jar. Not for human consumption!! Not for sale to minors! Do NOT burn. Do NOT Misuse!"
20. In addition, each vial contained the following directions: **"Directions.** Vent or open lid and place inside of a drawer or in a closet to scent your clothing and/or shoes."
21. Although each "Shpark *[sic]* in the Dark" vial claimed it was merely a "novelty sachet jar" with a "mixed fruit scent," when tested, the vegetation inside each jar of "Shpark *[sic]* in the Dark" contained [1-(5-fluoropentyl)indol-3-yl]-(2,2,3,3-

tetramethylcyclopropyl)methanone (“XLR11”) and N-Adamantyl-1-(5-fluoropentyl)indazole-3-carboxamide (“5F-AKB48”), which has a chemical structure substantially similar to N-Adamantyl-1-pentylindazole-3-carboxamide (“AKB48”).

22. XLR11 is a Schedule I controlled substance. (See R.C. 3719.41(C)(41))
23. AKB48 is a Schedule I controlled substance. (See R.C. 3719.41(C)(38))
24. A “sachet” is defined as “a small bag containing a perfumed powder or potpourri used to scent clothes and linens.” (<http://www.merriam-webster.com/dictionary/sachet>)
25. “Potpourri” is defined as “a mixture of flowers, herbs, and spices that is usually kept in a jar and used for scent.” (<http://www.merriam-webster.com/dictionary/potpourri>)
26. Unlike typical potpourri, which is composed of naturally fragrant plant materials, the vegetation represented as “sachet” and “potpourri” and sold by Zig Stag and Stagnolia is 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)
27. Zig Stag and Stagnolia sold products labeled as “novelty sachet” products which contained 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.
28. Zig Stag and Stagnolia offered for sale and sold synthetic controlled substances/illegal drugs as legal products.
29. Pursuant to eviction proceedings that were initiated by Husky Enterprises against Defendants Zig Stag and Stagnolia in the Tiffin Municipal Court, and by agreement of

the parties to that action, Defendants Zig Stag and Stagnolia vacated the premises located at 20 E. Market Street, Tiffin, Ohio 44883 on or before August 8, 2013².

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter, issues, and parties to this Consent Judgment pursuant to R.C. 1345.04, R.C. 3767.03, and R.C. 4729.53.
2. The Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3) in that Seneca County is the county in which Defendants reside, have their principal place of business and the transactions complained of herein, and out of which this action arose, occurred in Seneca County.
3. The CSPA, R.C. 1345.01 et seq., governs the business practices of the Defendants.
4. The Ohio Attorney General is the proper party to commence these proceedings under the authority of R.C. 1345.07, Chapter 3767 of the Ohio Revised Code, and by virtue of his statutory and common law authority to protect the interests of the citizens of the State of Ohio.
5. Defendants are “suppliers,” as defined in R.C. 1345.01(C), as Defendants were, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting, offering for sale, and selling synthetic controlled substances/illegal drugs to individuals in Seneca 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).
6. Defendants have committed unfair, deceptive, and unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by offering for sale and selling synthetic controlled substances/illegal drugs as legal products.

² See Tiffin Municipal Court Case No. CVG 1300344.

7. Defendants have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by failing to clearly and conspicuously disclose that its products contained Schedule I Controlled Substances and were thus illegal.
8. Defendants have committed unfair and deceptive acts or practices 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), by failing to clearly and conspicuously disclose certain material exclusions related to its “novelty sachet” and “potpourri” products. Specifically, while Defendants Zig Stag and Stagnolia’s products contained statements representing that they were merely “novelty sachet” products with a “mixed fruit scent,” Defendants Zig Stag and Stagnolia failed to disclose that the products contained Schedule I controlled substances, thus making the products illegal.
9. Defendants have committed, participated in the commission of, and/or aided and abetted in the commission of felony violations of R.C. 2925.03, Trafficking in Drugs, and are thus liable for maintaining a public nuisance under R.C. 3719.10.
10. Defendants have committed, participated in the commission of, and/or abetted the commission of violation of R.C. 2925.03, a law of the State of Ohio controlling the distribution of a drug of abuse. A violation of any laws of Ohio controlling the distribution of a drug of abuse constitutes a public nuisance under R.C. 4729.35.
11. Violations of R.C. 2925.03 unreasonably interfere with the public right to health, safety, peace, and comfort, thereby creating a public nuisance.

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 Findings of Fact and enumerated in the Conclusions of Law set forth above in Paragraphs (6) through (8) violate the CSPA, R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder, in the manner set forth therein.
2. It is further DECLARED that, in accordance with R.C. 3767.02, Defendants are liable of maintaining a nuisance, in violation of R.C. 3719.10, R.C. 4729.35, and R.C. 2925.03.
3. It is further DECLARED that Zig Stag, the business formerly located at 20 E. Market Street, Tiffin, Ohio 44883 (Parcel ID No. Q53041282360000), is a public nuisance as defined in R.C. 3719.10, R.C. 4729.35, and R.C. 2923.42 and that Defendants are liable of maintaining that nuisance.
4. Defendants, their officers, partners, agents, representatives, salespersons, employees, independent contractors, successors, assigns, and all persons acting on behalf of Defendants, 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, are hereby PERMANENTLY ENJOINED from violating the CSPA, R.C. 1345.01 et seq.
5. Defendants, their officers, partners, agents, representatives, salespersons, employees, independent contractors, successors, assigns, and all persons acting on behalf of Defendants, 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, are hereby PERMANENTLY ENJOINED from engaging in the acts and practices enumerated in the Conclusions of Law set forth above in Paragraphs (6) through (8).

6. IT IS FURTHER ORDERED that Defendants are 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 controlled substances/illegal drugs in the State of Ohio as suppliers, as defined in R.C. 1345.01(C).
7. IT IS FURTHER ORDERED that Defendant Shawn Stagnolia is PERMANENTLY ENJOINED from owning, operating, or having an ownership or other equitable interest in a same or similar business as Zig Stag, or assuming any position that affords Defendant Shawn Stagnolia the authority or ability to set policies and procedures for the business, or dominate, control, or direct the business activities or sales conduct for the business.
8. IT IS FURTHER ORDERED that as part of the consideration for the termination of the Attorney General's investigation and litigation of Defendants' business practices under the CSPA, R.C. 1345.01 et seq., and Ohio's public nuisance laws, R.C. 3767.01 et seq., Defendants are assessed, jointly and severally, and shall pay Twenty-Five Thousand Dollars (\$25,000.00) 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 controlled substances/illegal drugs, and the investigation and

enforcement for violations in relation to synthetic drug production, distribution, and possession. As Defendant Zig Stag is closed and is no longer operating; Defendant Shawn Stagnolia has submitted a Financial Affidavit regarding his inability to pay; Defendant Shawn Stagnolia has been punished in related criminal proceedings for the same or similar acts and practices enumerated in the Complaint filed in this action; and based upon Defendant Stagnolia's full compliance with this Consent Judgment, such payment shall be suspended in its entirety. If Defendant Stagnolia fails to comply with any provision of this Consent Judgment, the Twenty-Five Thousand Dollar (\$25,000.00) payment shall be due and payable upon demand.

9. The Attorney General may assert any claim that Defendants have 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, Defendants do not waive any evidentiary objection or any other objection it may have as permitted by law to the admissibility of any such evidence.
10. 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 Defendants.
11. In the event the Ohio Attorney General must initiate legal action or incur any costs to compel Defendants to abide by this Consent Judgment, upon order of the Court, Defendants shall be liable to the Ohio Attorney General for any and all penalties

imposed by the Court for contempt and, in addition to the payment to the State awarded herein, any such costs and reasonable attorneys' fees expended to proceed with such a motion for contempt that the Court may impose.

12. 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, Defendants 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.

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

14. IT IS FURTHER ORDERED that Defendants 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 Defendants' business operation.

15. IT IS FURTHER ORDERED that Defendants shall pay all court costs associated with this matter.

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

IT IS SO ORDERED.

DATE



HON. JUDGE KELBLEY

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


MELISSA G. WRIGHT (0077843)

5/6/14
Date

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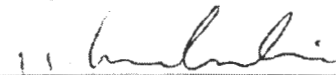
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