

IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

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

Plaintiff/Relator,

-vs.-

Shadyside Party Center, *et al.*

Defendants/Respondents.

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Case No. 13CV112

Judge Vavra

AGREED CONSENT JUDGMENT ENTRY
AND ORDER BETWEEN PLAINTIFF AND
DEFENDANTS SHADYSIDE PARTY
CENTER AND STACEY HEATHCOTE

FILED
CLERK OF COURT
2015 MAR 31 PM 12:45
COURT CLERK

PREAMBLE

This matter came to be heard upon the filing of a Complaint by Plaintiff, State of Ohio, acting through Ohio Attorney General Michael DeWine ("Plaintiff"), alleging that Defendants Shadyside Party Center, Stacey M. Heathcote, John Doe Employee 1, John Doe Employee 2, John Doe Employee 3, and The Real Property at 3750 Central Avenue, Shadyside, Ohio 43947 (Parcel ID No. 17-01932.000), violated Ohio's Consumer Protection and Public Nuisance laws. Specifically, Plaintiff's Complaint alleges that Defendants Shadyside Party Center and Stacey Heathcote 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.¹

Plaintiff has reached an agreement with Defendants Shadyside Party Center and Stacey Heathcote ("Defendants") and this Agreed Consent Judgment Entry and Order ("Consent Judgment") is intended to resolve all of the pending CSPA claims alleged against Defendants in

¹ As Plaintiff's claims regarding violations of Ohio's Public Nuisance laws have already been addressed, this Agreed Consent Judgment only addresses the remaining pending violations of the Consumer Sales Practices Act, R.C. 1345.01 et seq., as applied to Defendants Shadyside Party Center and Stacey M. Heathcote, Individually and as Business Owner and Property Owner of Shadyside Party Center.

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ATTORNEY GENERAL OF OHIO

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the Complaint. By signing 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 Shadyside Party Center is an Ohio business² with its principal place of business located at 3750 Central Avenue, Shadyside, Ohio 43947.
2. Defendant Stacey M. Heathcote ("Heathcote") is a resident of the State of Ohio and Belmont County and is the owner of Shadyside Party Center.
3. Defendant Heathcote is also the property owner of the real property located at 3750 Central Avenue, Shadyside, Ohio 43947.
4. Defendant Heathcote at all times relevant hereto, operated, dominated, controlled and directed the activities of Shadyside Party Center, causing, personally participating in, and/or ratifying the acts and practices of Shadyside Party Center, as described in Plaintiff's Complaint.

² Shadyside Party Center was previously incorporated with the Ohio Secretary of State. However, the Secretary of state cancelled the Articles of Incorporation/Certificate of Authority for Shadyside Party Center, Inc. on May 7, 2009 for failure to file the necessary corporate franchise tax reports or pay any such taxes within the time prescribed by law.

5. Defendants were, at all times relevant herein, engaged in the business of soliciting, offering for sale, and selling, *inter alia*, synthetic narcotics/illegal drugs to consumers which were represented as “incense” or “potpourri.”
6. Defendants sold the synthetic narcotics/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 March 4, 2013 and March 13, 2013, the Ohio Bureau of Criminal Identification and Investigation (“BCI&I”) and the Belmont County Sheriff’s Office conducted undercover investigations into Shadyside Party Center and Heathcote’s sale of synthetic narcotics/illegal drugs as legal products.
8. On March 4, 2013, Special Agent Matt Steinbrook (“S/A Steinbrook”), operating in an undercover capacity at the direction of BCI&I and the Belmont County Sheriff’s Office, went to Shadyside Party Center, located at 3750 Central Avenue, Shadyside, Ohio 43947, for the purpose of purchasing synthetic narcotics/illegal drugs.
9. Upon entering Shadyside Party Center, S/A Steinbrook could see the store’s inventory of synthetic drugs in a glass display case under the counter.
10. S/A Steinbrook spoke to a female employee, later identified as Stacey Heathcote, the owner of Shadyside Party Center, about these substances.
11. S/A Steinbrook told Heathcote that he was trying to decide which of the packages to get. S/A Steinbrook then told her that he wanted to buy one packet of “Purple Haze - Kryptonite” and one packet of the “Kush Max.”
12. Heathcote removed the items from the case and told S/A Steinbrook that the total cost would be \$45.00.

13. S/A Steinbrook purchased a 2.5 gram packet of “incense” and a 3 gram packet of “potpourri” suspected to be synthetic narcotics from Heathcote for a total of \$45.00.
14. The 2.5 gram of “incense” was labeled as “Kush Max” on one side and on the other side claimed that its main ingredients were “Mullien Leaf, hops, Lemon balm, Indian Leaves, passion flower, and wild lettuce.”
15. The “Kush Max” packet further claimed that it “Contains no nicotiv[e] *[sic]* or tobacco products.”
16. The “Kush Max” packet contained the following notices: “KEEP OUT OF REACH OF CHILDREN,” and “NOT INTENDED FOR HUMAN CONSUMPTION.”
17. A portion at the bottom of the packet referenced lab certification and contents, but a sticker reading “ORIGINAL” “Wild Incense” and “In accordance with New Federal Law S. 3187 Effective July 9, 2012” was affixed to the packet, obstructing the language.”
18. Although the “Kush Max” packet claimed it contained natural ingredients and that it was in compliance with synthetic drug laws, when tested, the vegetation inside the packet of “Kush Max” incense did contain [1-(5-fluoropentyl)indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone (“XLR11”).
19. XLR11 is a Schedule I Controlled Substance. (See R.C. 3719.41(C)(41))
20. The 3 gram packet of “potpourri” that was labeled as “Purple Haze – Kryptonite,” noted the website “www.indiScent.com” and claimed that it was a “NEW AND IMPROVED FORMULA” and that it was “100% COMPLIANT GUARANTEED.”
21. The reverse side of the “Purple Haze” packet contained the following labeling: “MADE IN THE USA” and “100% CHEMICAL FREE,” and “100% SYNTHETIC FREE.”

22. The "Purple Haze" packet also noted that "This product is made with only the finest herbs and their extracts. Package includes all of the following: Kratom Kanna Blue Lotus Wild Dagga" and that "No ingredient has been left out."
23. The "Purple Haze" packet also contained the following instructions: "INSTRUCTIONS Place the POTPOURRI in a clear and open area free from drafts or flammable materials. NEVER leave burning POTPOURRI unattended."
24. Additionally, the "Purple Haze" packet contained the following warning: "WARNINGS DO NOT INHALE. DO NOT CONSUME."
25. Although the "Purple Haze" packet claimed it did not contain any chemicals or synthetics, when tested, the vegetation inside the packet of "Purple Haze" incense did contain XLR11.
26. On March 13, 2013, S/A Steinbrook, again operating in an undercover capacity and under the direction of BCI&I and the Belmont County Sheriff's Office, went to Shadyside Party Center, located at 3750 Central Avenue, Shadyside, Ohio 43947, for the purpose of purchasing synthetic narcotics/illegal drugs.
27. Upon entering Shadyside Party Center, S/A Steinbrook approached the glass display case where the synthetic narcotics were displayed for sale.
28. There were three female employees working behind the counter — Defendants/Respondents John Does 1-3. Again, S/A Steinbrook observed numerous boxes containing various brands and weights of synthetic narcotics on display for sale.
29. S/A Steinbrook spoke to the three employees regarding the brands that they had and asked if they had the "OMG" in a 4 gram packet.
30. In response, one of the employees indicated that they did have "OMG."

31. S/A Steinbrook then asked to purchase both "OMG" and "Purple Haze."
32. The employees told S/A Steinbrook that the "OMG" was \$25.00 and the "Purple Haze" was \$20.00.
33. After some discussion, S/A Steinbrook told them he would like to buy five packs of "OMG" and four packs of "Purple Haze."
34. The younger female employee then removed the packs from behind the counter while the older female employee totaled the cost and quoted a price of \$250.00.
35. S/A Steinbrook purchased a total of nine packs of "potpourri" and "incense" suspected to be synthetic narcotics for a total of \$250.00.
36. The five packets of "potpourri" were sold in 4 gram packets and were labeled as "OMG."
37. Each packet of "OMG" was labeled as "NEXT GENERATION" and "HERBAL POTPOURRI" and claimed that it "Does not contain AM 2201 or any DEA Banned Substances."
38. The reverse side of each packet of "OMG" contained the following label: "NOT FOR HUMAN CONSUMPTION," "OMG IS SOLD AS POTPOURRI. STROKE THE FURRY BAG", "THIS POTPOURRI DOES NOT CONTAIN AM 2201, JWH-081, JWH-019, JWH-018, JWH-073, HU-211, JWH-015, JWH-200, JWH-250, HU-210, CP47, 497 ALONG WITH STIMULANT BZP AND TFMPP."
39. In addition, each packet of "OMG" noted that it was "NOT FOR CONSUMPTION. NOT FDA APPROVED."
40. Although each packet of the "OMG" "potpourri" claimed that it did not contain any illegal or banned substances, when tested, the vegetation inside all five packets of "OMG" did contain the illegal substance XLR11.

41. The four packets of “incense” were sold in 3 gram packets and were labeled as “Purple Haze – Kryptonite.”
42. Each packet of “Purple Haze – Kryptonite” noted the website “www.indiScent.com” and claimed that it was a “NEW AND IMPROVED FORMULA” and that it was “100% COMPLIANT GUARANTEED.”
43. The reverse side of each “Purple Haze” packet contained the following labeling: “MADE IN THE USA” and “100% CHEMICAL FREE,” and “100% SYNTHETIC FREE.”
44. Each packet of “Purple Haze” also noted that “This product is made with only the finest herbs and their extracts. Package includes all of the following: Kratom Kanna Blue Lotus Wild Dagga” and that “No ingredient has been left out.”
45. Each “Purple Haze” packet also contained the following instructions: “INSTRUCTIONS Place the POTPOURRI in a clear and open area free from drafts or flammable materials. NEVER leave burning POTPOURRI unattended.”
46. Additionally, each “Purple Haze” packet contained the following warning: “WARNINGS DO NOT INHALE. DO NOT CONSUME.”
47. Although each “Purple Haze” packet claimed it did not contain any chemicals or synthetics, when tested, the vegetation inside each packet of “Purple Haze” incense did contain XLR11.
48. “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>)

49. "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>)
50. Unlike typical incense, which is composed of certain biotic materials, or typical potpourri, which is composed of naturally fragrant plant materials, the vegetation represented as "incense" and "potpourri" and sold by Defendants 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)
51. Defendants sold products labeled as "incense" and "potpourri" 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.
52. Defendants offered for sale and sold synthetic narcotics/illegal drugs as legal products.

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.
2. The Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3) in that Belmont County is the county in which Defendants reside, have their principal place of business and some of the transactions complained of herein, and out of which this action arose, occurred in Belmont 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 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 narcotics/illegal drugs to individuals in Belmont 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 narcotics/illegal drugs as legal products.
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 “incense” and “potpourri” products. Specifically, while Defendants’ “incense” and “potpourri” products contained statements that they did not contain any prohibited ingredients or that they only contained certain ingredients, Defendants failed to disclose that their products contained other Schedule I controlled substances and were thus illegal.
9. Defendant Heathcote participated personally in the unfair, deceptive, and unconscionable

acts and practices described in the Complaint as she personally sold synthetic narcotics/illegal drugs as legal products to a confidential informant. Accordingly, Heathcote is liable for those acts in which she personally participated as well as the acts of Shadyside Party Center, its employees and other agents because Heathcote controlled and/or directed these acts.

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. 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.
3. 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).

4. 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 narcotics/illegal drugs in the State of Ohio as suppliers, as defined in R.C. 1345.01(C).
5. IT IS FURTHER ORDERED that Defendants shall, for a period of two (2) years commencing on the filing date of this Consent Judgment, and so long as the property located at 3750 Central Avenue, Shadyside, Ohio 43947 is owned and/or controlled by Defendant Heathcote, post a sign on each door of the business premises located at 3750 Central Avenue, Shadyside, Ohio 43947 that states that Defendants do not sell synthetic narcotics/illegal drugs. The sign shall contain bold print in at least 28 point font that specifically states:

**“INCENSE,” “POTPOURRI,” AND ANY OTHER
NOVELTY PRODUCTS WHICH MAY CONTAIN
SCHEDULE I CONTROLLED SUBSTANCES OR OTHER
SYNTHETIC NARCOTICS/ILLEGAL DRUGS WILL NOT
BE SOLD AND MAY NOT BE PURCHASED ON THESE
PREMISES.**

6. IT IS FURTHER ORDERED that Defendants 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 Defendants 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 Defendants.

7. 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., Defendants are assessed, jointly and severally, and shall pay Twelve Thousand Five Hundred Dollars (\$12,500.00) 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. Ten Thousand Dollars (\$10,000.00) 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:

**Finance Assistance
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215**

The remaining balance of Two Thousand Five Hundred Dollars (\$2,500.00) shall be suspended upon Defendant Heathcote's full compliance with the terms of this Consent Judgment.

8. 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.

9. 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.
10. 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.
11. 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.
12. 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.

13. 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.

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

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

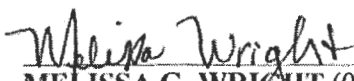
IT IS SO ORDERED.

John A. Vavra

DATE

HON. JUDGE VAVRA

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



MELISSA G. WRIGHT (0077843)

Assistant Section Chief

Consumer Protection Section

CHARISSA PAYER (0064452)

Principal Assistant Attorney General

Health & Human Services Section

30 East Broad Street, 14th Floor

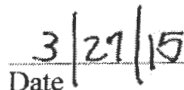
Columbus, Ohio 43215-3428

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

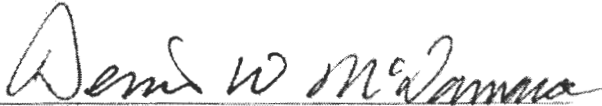
melissa.wright@ohioattorneygeneral.gov

charissa.payer@ohioattorneygeneral.gov

Counsel for Plaintiff, State of Ohio


Date

**FOR DEFENDANTS SHADYSIDE PARTY CENTER AND
STACEY M. HEATHCOTE, INDIVIDUALLY AND AS PROPERTY OWNER AND
BUSINESS OWNER OF SHADYSIDE PARTY CENTER**



DENNIS W. MCNAMARA (0005114)

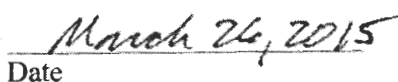
88 East Broad Street, Suite 1350

Columbus, Ohio 43215

(614) 464-2770; (614) 464-0043 (facsimile)

mcnamara@rr.ohio.com

Counsel for Defendants Shadyside Party Center and Stacey M. Heathcote


Date