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FILED
COMMON PLEAS COURT
APR 25 2014
GUERNSEY COUNTY, OHIO
Teresa A. Dankovic, Clerk of Court

IN THE COURT OF COMMON PLEAS
GUERNSEY COUNTY, OHIO

CENTURY NATIONAL BANK, :
 : CASE NO. 13-CV-15
Plaintiff, :
 : JUDGE ELLWOOD
v. :
 :
WILLIAM J. GLADSTONE, et al. :
 :
Defendants. :
 :
AND :
 :
STATE OF OHIO, *ex rel.* :
MICHAEL DEWINE : CASE NO. 13-CV-55
ATTORNEY GENERAL OF OHIO :
 : JUDGE ELLWOOD
Plaintiff/Relator, :
 :
v. :
 :
PARTY TIME CARRYOUT, INC., et al. :

FINAL APPEALABLE
ORDER
NO JUST CAUSE FOR DELAY

AGREED CONSENT JUDGMENT ENTRY AND ORDER BETWEEN
PLAINTIFF, STATE OF OHIO, AND DEFENDANTS PARTY TIME CARRYOUT, INC.,
HELEN JANE GLADSTONE, JOHN DOE TRUST, AND THE REAL PROPERTY
(PARCEL ID NO. 060006483000)

RECEIVED
ATTORNEY GENERAL OF OHIO

MAY 16 2019

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

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 Party Time Carryout, Inc., Helen Jane Gladstone, William Gladstone¹, John Doe Trust, and The Real Property at 135 North 5th Street, Cambridge, Ohio 43725 (Parcel ID No. 060006483000) violated Ohio's Consumer Protection and Public Nuisance laws. Specifically, Plaintiff's Complaint alleges that Defendants Party Time Carryout, Inc. and Helen Jane Gladstone 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 Party Time Carryout, Helen Gladstone, John Doe Trust, and the Real Property (Parcel ID No. 060006483000) ("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 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 fact 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.

¹ Defendant William Gladstone is not a party to this Consent Judgment.

FINDINGS OF FACT

1. Defendant Party Time Carryout, Inc. ("Party Time") is an Ohio for-profit corporation with its principal place of business located at 135 North 5th Street, Cambridge, Guernsey County, Ohio 43725.
2. Defendant Helen Jane Gladstone ("Helen Gladstone") is a resident of the State of Ohio and was co-owner and Vice-President of Party Time Carryout.
3. Defendant William Gladstone ("William Gladstone") is a resident of the State of Ohio and was co-owner and President of Party Time Carryout.
4. The real property located at 135 North 5th Street, Cambridge, Ohio 43725 is owned by Defendant John Doe Trust, an Ohio trust, with Helen and William Gladstone serving as trustees.
5. Defendants Helen and William Gladstone at all times relevant hereto, operated, dominated, controlled and directed the activities of Party Time Carryout, causing, personally participating in, and/or ratifying the acts and practices of Party Time Carryout, as described in Plaintiff's Complaint.
6. 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."
7. 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.
8. Between November 1, 2012 and January 14, 2013, the Ohio Bureau of Criminal Identification and Investigation ("BCI&I"), the Guernsey County Sheriff's Office, and

the Ohio State Board of Pharmacy conducted undercover investigations into Party Time Carryout and Helen Gladstone's sale of synthetic narcotics/illegal drugs as legal products.

9. On January 9, 2013, Special Agent ("S/A") Matt Steinbrook, operating in an undercover capacity at the direction of BCI&I, the Guernsey County Sheriff's Office, and the Ohio State Board of Pharmacy, went to Party Time Carryout, located at 135 North 5th Street, Cambridge, Ohio 43725, for the purpose of purchasing synthetic narcotics/illegal drugs².
10. Upon entering the Party Time Carryout, S/A Steinbrook made contact with Helen Gladstone, who was working the counter, and asked her if she still had any more of the "Kush" or "Ninja" S/A Steinbrook had purchased previously from Helen Gladstone.
11. In response, Helen Gladstone stated she had to get her bag and proceeded to retrieve it from a silver Honda Accord parked on the Party Time Carryout parking lot.
12. Once Helen Gladstone returned inside, she began removing packages of "incense" from the bag and placed them on the counter.
13. Upon seeing that she did not have what S/A Steinbrook had asked for, Helen Gladstone removed a box from the under the counter.
14. Helen Gladstone proceeded to open the box, removed a bundle of "incense" packages that were bundled by a rubber band, separated the bundle of 3 gram and 4 gram packages and placed them on the counter.
15. Upon asking how much the packages were, Helen Gladstone responded that the 3 gram packets were \$20.00 each and the 4 gram packets were \$25.00 each.

² S/A Steinbrook had previously made a purchase from Defendants/Respondents Party Time Carryout and Helen Gladstone on November 1, 2012.

16. S/A Steinbrook selected a package that was different from the rest because it was in a silver envelope.
17. Helen Gladstone stated that she'd "Prefer not to sell that one" because "a guy had purchased and returned one to her because it didn't do anything for him."
18. S/A Steinbrook purchased two packets of "incense" suspected to be synthetic narcotics from Helen Gladstone, for a total of \$45.00.
19. The two products purchased were labeled as "Cloud 9 Mad Hatter" Incense.
20. The packets of "Cloud 9 Mad Hatter" were sold in 3 gram and 4 gram packets.
21. The backs of both packets of the "Cloud 9 Mad Hatter" were labeled "Not for human consumption" and contained the following notice: "The manufacturer and/or seller of this product is not responsible for misuse."
22. The 4 gram packet of "Cloud 9 Mad Hatter" was also labeled as a "Legal Herbal Sachet" and noted that it "Does not contain AM2201 or any DEA Banned *[sic]* Substance."
23. When tested, the vegetation inside the packet of "Mad Hatter" contained the chemical [1-(5-fluoropentyl)indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone ("XLR11").
24. XLR11 is a Schedule I Controlled Substance. (See R.C. 3719.41(C)(41))
25. On January 14, 2013, S/A Steinbrook, again operating in an undercover capacity under the direction of BCI&I, the Guernsey County Sheriff's Office, and the Ohio State Board of Pharmacy, returned to Party Time Carryout, located at 135 North 5th Street, Cambridge, Ohio 43725, for the purpose of purchasing synthetic narcotics/illegal drugs.
26. Upon entering Party Time Carryout, S/A Steinbrook made contact with Helen Gladstone again and asked her if she had any of the "Mad Hatter" he'd purchased on his last visit.

27. In response, Helen Gladstone stated she did and also stated that they had received some of the "Ninja" brand as well.
28. Helen Gladstone then removed several packages of each brand from a tote bag that she had on the counter and asked S/A Steinbrook how many he wanted to purchase.
29. S/A Steinbrook stated that he wanted to purchase ten packets, to which Helen Gladstone responded, "We can do that."
30. While Helen Gladstone was counting out the ten packets, she and S/A Steinbrook discussed the various flavors and S/A Steinbrook advised her that it did not matter and that he would just take ten of the 4 gram packets.
31. S/A Steinbrook purchased ten packets of "Cloud 9 Mad Hatter" for a total \$250.00.
32. Eight of the ten packets purchased were labeled "Cloud 9 Mad Hatter," one packet was labeled "Mad Hatter Kush," and one packet was labeled "Mad Hatter Hypnotic."
33. The eight packets of "Cloud 9 Mad Hatter" purchased were all sold in 4 gram packets.
34. The backs of all eight packets of the "Cloud 9 Mad Hatter" were labeled "Not for human consumption" and contained the following notice: "The manufacturer and/or seller of this product is not responsible for misuse."
35. Each of the eight packets of "Cloud 9 Mad Hatter" was also labeled as a "Legal Herbal Sachet" and noted that it "Does not contain AM2201 or any DEA Banned *[sic]* Substance."
36. The packet labeled as "Mad Hatter Kush" was sold in a 4 gram packet and was labeled "Not for Human Consumption" and contained the following notice: "The manufacturer and/or seller of this product is not responsible for misuse."

37. The “Mad Hatter Kush” packet was also labeled as a “Legal Herbal Sachet” and noted that it “Does not contain AM2201 or any DEA Banned (*sic*) Substance.”
38. The packet labeled as “Mad Hatter Hypnotic” was sold in a 4 gram packet and was labeled “Not for Human Consumption” and contained the following notice: “The manufacturer and/or seller of this product is not responsible for misuse.”
39. The “Mad Hatter Hypnotic” packet was also labeled as a “Legal Herbal Sachet” and noted that it “Does not contain AM2201 or any DEA Banned [*sic*] Substance.”
40. When tested, the vegetation inside each packet of “Mad Hatter” contained the chemical “XLR11.”
41. “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>)
42. Unlike typical incense, which is composed of certain biotic materials, the vegetation represented as incense 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. (www.dea.gov)
43. Party Time Carryout, Helen Gladstone, and William Gladstone sold products labeled as “incense” 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.
44. Party Time Carryout, Helen Gladstone, and William Gladstone offered for sale and sold synthetic narcotics/illegal drugs as legal products.

CONCLUSIONS OF LAW

45. 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.
46. The Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3) in that Guernsey County is the county in which Defendants reside, where they have their principal place of business, and some of the transactions complained of herein, and out of which this action arose, occurred in Guernsey County.
47. The CSPA, R.C. 1345.01 et seq., governs the business practices of the Defendants.
48. 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.
49. 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 Guernsey 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).
50. 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.
51. 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.

52. 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” products. Specifically, while Defendants’ “incense” 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.
53. Defendant Helen Gladstone participated personally in the unfair, deceptive, and unconscionable acts and practices described in this Complaint as she personally sold synthetic narcotics/illegal drugs as legal products to an undercover agent. Accordingly, Helen Gladstone is liable for those acts in which she personally participated as well as the acts of Party Time Carryout, its employees and other agents because Helen Gladstone controlled and/or directed these acts.
54. 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 of maintaining a public nuisance under R.C. 3719.10.
55. 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.
56. 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 (50) through (53) 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 the property located at 135 North 5th Street, Cambridge, Ohio 43725 (Parcel ID No. 060006483000) 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 (50) through (53).

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 narcotics/illegal drugs in the State of Ohio as suppliers, as defined in R.C. 1345.01(C).
7. IT IS FURTHER ORDERED that, in accordance with Chapter 3767, Defendants, their heirs, assigns, and successors in interest or title, are PERMANENTLY ENJOINED from conducting, maintaining, using, occupying, or in any way permitting the use of the premises located at 135 North 5th Street, Cambridge, Ohio 43725, as a public nuisance.
8. IT IS FURTHER ORDERED that Defendants, their owners, members, or any partners of the corporation or trustees or beneficiaries of the John Doe Trust, are PERMANENTLY ENJOINED from occupying, using, or being at 135 North 5th Street, Cambridge, Ohio 43725.
9. IT IS FURTHER ORDERED that Defendant Helen Gladstone is PERMANENTLY ENJOINED from operating, owning, or having an ownership or other equitable interest in, a retail grocery, drive-thru beverage store, or convenience store or assuming any position that affords Defendant Helen Gladstone the authority or ability to set policies

and procedures for the business, or dominate, control, or direct the business activities and sales conduct of the business.

10. IT IS FURTHER ORDERED that so long as the property located at 135 North 5th Street, Cambridge, Ohio 43725 is owned and controlled by Defendant John Doe Trust, an Ohio trust, with Helen and William Gladstone serving as trustees, such property shall remain padlocked and closed against all use for a period of one year from the date of this Consent Judgment.
11. IT IS FURTHER ORDERED that upon the Effective Date of this Consent Judgment, and so long as the property located at 135 North 5th Street, Cambridge, Ohio 43725 is owned and controlled by Defendant John Doe Trust, an Ohio trust, with Helen and William Gladstone serving as trustees, the Guernsey County Sheriff's Office shall be permitted to remove and sell any and all furniture, moveable property, and any other item located on the property and used in maintaining the nuisance, specifically the cash register, in the manner provided for the sale of chattels under execution. All proceeds from the sale of property under this paragraph shall be deposited into the state treasury and credited to the attorney general nuisance abatement fund, pursuant to R.C. 3767.06(C).
12. 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 narcotics/illegal drugs, and the

investigation and enforcement for violations in relation to synthetic drug production, distribution, and possession. As Defendant Party Time Carryout is closed, is no longer operating, and is subject to foreclosure litigation, and as Defendant Helen Gladstone has submitted a Financial Affidavit regarding her inability to pay, such payment shall be suspended in its entirety based upon Defendant Helen Gladstone's full compliance with this Consent Judgment. If Defendant Helen Gladstone 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.

13. 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.

14. 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.

15. 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 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.

16. 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.

17. 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.

18. 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.

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

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


IT IS SO ORDERED.

DATE

4/25/14


HON. JUDGE ELLWOOD


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


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4/24/14
Date

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