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FILED
COMMON PLEAS COURT
FEB 26 2019
GUERNSEY COUNTY, OHIO
Teresa A. Dankovic, Clerk of Court

**IN THE COURT OF COMMON PLEAS
GUERNSEY COUNTY, OHIO**

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

Plaintiff/Relator,

v.

BUBBY'S DRIVE-THRU, et al.,

Defendants/Respondents.

:
:
: **CASE NO. 13CV54**
:
: **JUDGE ELWOOD**
:
:
: **AGREED CONSENT JUDGMENT**
: **ENTRY AND ORDER BETWEEN**
: **PLAINTIFF AND DEFENDANTS**
: **BUBBY'S DRIVE-THRU AND**
: **GREGORY WILLIAM SYLVIS**

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 Bubby's Drive-Thru, a sole proprietorship, Gregory William Sylvis, Suburban Centers, Inc., and The Real Property located at 253 Main Street, Byesville, Ohio 43723 (Parcel ID No. 120000912000)¹ violated Ohio's Consumer Protection and Public Nuisance laws. Specifically, Plaintiff's Complaint states that Defendants Bubby's Drive-Thru's and Gregory William Sylvis's business practices are governed by the Ohio Consumer Sales

¹ Defendants Suburban Centers, Inc. and The Real Property (Parcel ID No. 120000912000) are not parties to this Consent Judgment.

Practices Act ("CSPA"), R.C. 1345.01 et seq., and the Substantive Rules ("Rules") enacted thereunder, Ohio Administrative Code 109:4-3-01 et seq. Plaintiff's Complaint alleges that Defendants Bubby's Drive-Thru and Sylvis violated the CSPA and the Rules, and that all named Defendants in Plaintiff's Complaint violated Ohio's public nuisance laws, R.C. 3767.01 et seq. Defendants Bubby's Drive-Thru and Sylvis deny the allegations of Plaintiff's Complaint.

Plaintiff has reached an agreement with Defendants Bubby's Drive-Thru and Gregory William Sylvis ("Defendants") and this Agreed Consent Judgment Entry and Order ("Consent Judgment") is intended to resolve all of the claims alleged or which could have been alleged against Defendants in Plaintiff's 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 expressly deny any liability arising out of state and federal law and the following conclusions of law, including felony violations of R.C. 2925.03 and R.C. 3719.10. However, solely for the purpose of resolving this matter and with no admission or finding of wrongdoing or that Defendants knowingly engaged in unlawful or illegal activity, Defendants hereby consent to the Court's imposition of this Consent Judgment regarding the CSPA violations and the allegations of a public nuisance, 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. This Consent Judgment shall not be admissible or construed as an admission in any proceeding in which Defendants are parties, except for a proceeding to enforce its terms.

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 Guernsey 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 Guernsey County.
3. 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.
4. 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) and R.C. 1345.03(A).
5. A supplier's practice of failing to clearly and conspicuously disclose that its products contain Schedule I controlled substances is an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02(A).
6. A supplier's practice of failing to clearly and conspicuously disclose certain material exclusions related to its "potpourri" 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 "potpourri" 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, 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).

7. A person or entity who commits, participates in the commission of, and/or aids and abets in the commission of felony violations of R.C. 2925.03, Trafficking in Drugs, is liable for maintaining a public nuisance under R.C. 3719.10.
8. A violation of R.C. 2925.03, or any law of the State of Ohio controlling the distribution of a drug of abuse, constitutes a public nuisance under R.C. 4729.35.
9. A person or entity that commits, participates in the commission of, and/or abets the commission of a violation of R.C. 2925.03 is liable for a public nuisance under R.C. 4729.35.
10. Violations of R.C. 2925.03 unreasonably interfere with the public right to health, safety, peace, and comfort, thereby creating a public nuisance.

AGREED 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 enumerated in the Conclusions of Law set forth above in Paragraphs (4) through (6) 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, any person or entity committing the acts set forth enumerated in the Conclusions of Law set forth above in paragraphs (7) through (10) is 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 any property used in the commission of the acts enumerated in the Conclusions of Law set forth above in paragraphs (7) through (10) is a public nuisance as defined in R.C. 3719.10, R.C. 4729.35, and R.C. 2923.42.
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 (4) through (6).
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, or in any way permitting the use of the premises located at 253 Main Street, Byesville, Ohio 43723 as a public nuisance.
8. IT IS FURTHER ORDERED that Defendants shall, for a period of two (2) years after the Effective Date of this Consent Judgment, post a sign on each drive-thru window of the business premises located at 253 Main Street, Byesville, Ohio 43723 that states that Defendants do not sell synthetic narcotics/illegal drugs. The sign will contain bold print in at least 20 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.

9. IT IS FURTHER ORDERED that Defendant Gregory Sylvis is TEMPORARILY ENJOINED from entering or actively participating in the onsite and day-to-day operation of Bubby’s Drive-Thru, located at 253 Main Street, Byesville, Ohio 43723, for a period of thirty (30) calendar days from the Effective Date of this Consent Judgment. During that time, Defendant Sylvis’s wife, Julie Sylvis, or other employees of Bubby’s Drive-Thru, may conduct the day-to-day operations of Bubby’s Drive-Thru, subject to the terms of this Consent Judgment. Upon expiration of the thirty-day period described above, Defendant Sylvis may enter the business premises located at 253 Main Street, Byesville, Ohio 43723 and resume active participation in the day-to-day activities and operation of the business, subject to the terms of this Consent Judgment.

10. IT IS FURTHER ORDERED that for a period of two years from the Effective Date of this Consent Judgment, the business known as Bubby's Drive-Thru and located at 253 Main Street, Byesville, Ohio 43723, shall be subject to periodic inspections of the premises by the Attorney General's Office or representatives thereof, or representatives working in connection with the Attorney General's Office, to ensure compliance with this Consent Judgment. If, upon any such inspection, Plaintiff determines Defendants are in violation of any of the terms of this Consent Judgment, Plaintiff shall move for the imposition of the suspended penalty noted in Paragraph (12) of this Order, *infra*.
11. 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 in accordance with the provisions noted in Paragraph (10) of this Order, *supra*.
12. IT IS FURTHER ORDERED that as part of and solely for 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 with no admission of or finding of wrongdoing on the part of Defendants or that Defendants knowingly engaged in unlawful or illegal activity, 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. 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 Assistant
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215**

The remaining balance of Fifteen Thousand Dollars (\$15,000.00) shall be suspended upon full compliance with the terms of this Consent Judgment, including, but not limited to, full compliance with Paragraph (10) of this Order, *supra*.

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 nor shall it preclude Defendants from asserting any defense in any matter or action initiated them.
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 ORDEED that Plaintiff shall not represent directly or indirectly or in any way whatsoever that the Court has found or the Defendants have admitted any wrongdoing or illegal activity on the part of Defendants or Defendants' business operation.

20. IT IS FURTHER ORDERED that the parties shall each pay their respective costs and expenses, including attorneys' fees incurred in this matter, and shall equally share and pay all court costs associated with this matter.

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

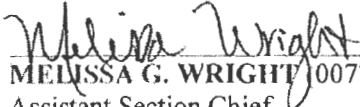
IT IS SO ORDERED.

26th FEBRUARY 2014.
DATE

David D. Ellwood
HON. JUDGE ELLWOOD

FINAL APPEALABLE
ORDER
NO JUST CAUSE FOR DELAY

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

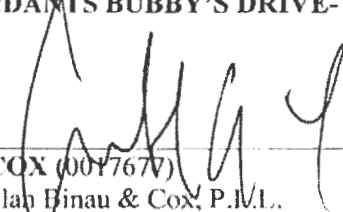


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Date 2/25/2014

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Date 2/25/2014

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