

IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

FILED
COMMON PLEAS COURT
BELMONT CO., OHIO

2014 JUN 11 AM 10 25

Case No. 13ECV-113

MICHAEL DEWINE

ATTORNEY GENERAL OF OHIO

Plaintiff

JUDGE SARGUS

v.

BOB'S CHEAP SMOKES, et.al.

Defendants

JUDGMENT ENTRY CONTAINING

FINDINGS OF FACT AND CONCLUSIONS

OF LAW

Having considered this case in light of R.C. 1345.01 et seq. (The Consumer Sales Practices Act), this Court hereby finds by clear and convincing evidence that Defendants "Bob's Cheap Smokes" and Robert Grimmatt, individually and as owner of Bob's Cheap Smokes, violated the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq. Specifically, the Court hereby makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

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CONSUMER PROTECTION SECTION
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1. "Bob's Cheap Smokes" is located at 51710 National Road, St. Clairsville, Ohio. An Ohio sole proprietorship, "Bob's Cheap Smokes" is operated and owned by Robert Grimm, a resident of the State of Ohio and Belmont County.
2. Defendant Grimm operates, directs and controls the operations of "Bob's Cheap Smokes." The principal product sold by "Bob's Cheap Smokes" is tobacco used for smoking. Defendant has sold in addition to tobacco products certain other products which bear the name "Mad Hatter," "Mr. Happy," and "Beast."
3. Defendant Grimm and "Bob's Cheap Smokes" admits that "Bob's Cheap Smokes" sold controlled substances to an undercover agent on or about March 13, 2013.
4. Defendant Grimm raises "honest mistake" as an affirmative defense, noting that he relied on the packaging and representations of a lab report to conclude that the materials were legal.
5. The product Defendant Grimm admits selling was sold to an undercover agent on or about March 13, 2013. The Special Agent was Matt Steinbrook, and he operated at the direction of BCI&I and the Belmont County Sheriff's Office. Steinbrook entered the store, observed a handwritten list of products sold in addition to tobacco products, and made an inquiry regarding purchasing the products. After looking over the list, Agent Steinbrook selected "Mr. Happy" and "Beast." Agent Steinbrook paid \$47.50 for both packs. One packet was kept out of plain view at the time of purchase and one packet was not. The product labeled as "Mr. Happy" was purportedly a potpourri that allegedly did not contain prohibited ingredients. It was also labeled as not being intended for human consumption and set forth eighteen as the minimum age at which it could be purchased.
6. Laboratory testing revealed that the product labeled "Mr. Happy" contained [1-(5-fluoropentyl)indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone which is also known as "XLR11"

7. Pursuant to R.C 3719.41(C)(41) "XLR11" has been classified as a Schedule 1 controlled substance
8. The controlled substance was sold in a store designated as a place to purchase "cheap smokes."

CONCLUSIONS OF LAW

1. Pursuant to the terms of R.C. 1345.04, this Court has jurisdiction over the subject matter, issues, and parties to this Judgment Entry.
2. The Court has venue to hear this case.
3. The Consumer Sales Practices Act, R.C. 1345.01 et seq., governs the business practices of the Defendants.
4. The Ohio Attorney General is authorized to maintain this action under the authority of R.C. 1345.07.
5. Defendants are suppliers as that term is defined in R.C. 1345.01(C).
6. Defendants have represented that Schedule 1 controlled substances were not illegal controlled substances and have sold them as legal products.
7. The purpose of the Consumer Sales Practices Act is to protect consumers and eradicate deceptive trade practices, and the Act must be construed to effect its underlying purposes. **Fletcher v. Don Foss of Cleveland, Inc.**, (1993), 90 Ohio App.3d 82, 87, 628 N.E.2d60, 63.
8. Under the terms of the statute, an act is deceptive if it is at variance with the truth and the variance is likely to be material to a consumer's decisions to purchase the product. **Cranford v. Joseph Airport Toyota, Inc.**(May 17, 19996),Montgomery App. No. 15408, 1996 Ohio App. LEXIS 2252. Defendants sold to an undercover agent a substance expressly represented as legal which was illegal. Representations that a controlled substance is not a controlled substance is a material misrepresentation that is deceptive.

9. Defendants committed deceptive acts within the meaning of R.C. 1345.02.
10. "Honest mistake" is not a defense to engaging in deceptive sales practices when the likely effect of the deceptive conduct or representation is to materially effect the likelihood of sale.
Cranford, supra.
11. Defendants offered the controlled substance for sale in a store named for and designed to sell products consumed by humans for smoking purposes.
12. Violations of R.C. section 1345.02 have been the subject of decisions in existence and available to the public prior to the event giving rise to this action . The deceptive misrepresentation giving rise to the case at bar is similar to misrepresentations resulting in other cases resolving issues under the Act.
13. Accordingly, the Attorney General may request and the Court may grant a penalty against the supplier. R.C. 1345.07(D)

WHEREFORE, IT IS HEREBY ORDERED THAT THE DEFENDANTS SHALL PAY A PENALTY OF \$5,000 WITHIN 30 DAYS TO THE OFFICE OF THE OHIO ATTORNEY GENERAL. Said payment shall be delivered by way of a certified check or money order payable to the "Ohio Attorney General's Office at: Office of the Ohio Attorney General, Legal Research and Finance Assistance, Consumer Protection Section, 30 East Broad Street, 14th Floor, Columbus Ohio 43215. The Ohio Attorney General shall disperse the money in accordance with the statutory requirements set forth in the Act.

IT IS FURTHER ORDERED The Ohio Attorney General may assert any claim that Defendants have violated this Judgment Entry in a separate civil action to enforce this order. Evidence of conduct prior to the filing of this Judgment Entry shall be admissible to the extent it demonstrates breach or contempt and is otherwise permitted by law. Action maintained by the Ohio Attorney General to obtain

compliance with this entry may result in costs to the Defendants which shall include attorneys' fees.

The Court retains jurisdiction to enforce compliance with this Judgment Entry.

Court costs to be paid by Defendants.

IT IS SO ORDERED.

DATE

June 9, 2014


HON. JENNIFER SARGUS

ENDED

CLERK SERVED COPIES ON
ALL THE PARTIES OR
THEIR ATTORNEYS *RMH*