

IN THE COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO

STATE OF OHIO, ex rel.
ATTORNEY GENERAL
DAVE YOST,

Plaintiff,

v.

MARCUS FULTZ
dba Danielle's on 2nd,

Defendant.

CASE NO. 20CI0110

JUDGE MCCARTHY

RECEIVED
ATTORNEY GENERAL OF OHIO

MAR 19 2021

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

CONSENT ORDER AND JUDGMENT

Plaintiff, State of Ohio ("Plaintiff"), acting by and through Ohio Attorney General Dave Yost, brought this action against Defendant Marcus Fultz *dba* Danielle's on 2nd ("Defendant") pursuant to the provisions of the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 *et seq.* and its Substantive Rules, O.A.C 109:4-3-01 *et seq.*

Plaintiff and Defendant, by and through their respective counsel, have agreed to the entry of this Consent Order & Judgment ("Consent Judgment") by this Court without trial or adjudication of any issue of fact or law and without admission of any wrongdoing or admission of any of the violations of the CSPA, R.C. 1345.01 *et seq.* and its Substantive Rules, O.A.C. 109:4-3-01 *et seq.* or any other law as alleged by Plaintiff.

PRELIMINARY STATEMENT

WHEREAS, Defendant is in the business of selling products through Amazon's online sales platform, and for this business utilizes a warehouse located at 138 N. 2nd Ave., Middleport, Ohio 45760.

WHEREAS, Plaintiff filed the Complaint in this action concerning Defendant's online sale of hand sanitizer products.

WHEREAS, Plaintiff alleged in its Complaint that Defendant, through its online sale of hand sanitizer products, committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by substantially inflating the price of goods because of unforeseen events that caused an increased demand for the products during the time of a national health crisis, which allegations Defendant specifically denies.

WHEREAS, Plaintiff has also alleged in its Complaint that Defendant, through its online sale of hand sanitizer products, committed unconscionable acts and practices in violation of the CSPA, R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(5), by requiring consumers to enter into consumer transactions on terms Defendant knew were substantially one-sided in his favor due to a national health crisis, which allegations Defendant specifically denies.

WHEREAS, this Judgment is agreed to by Plaintiff and Defendant and entered into solely for the purpose of allowing the parties to avoid further expenses of litigation and to avoid protracted litigation.

NOW THEREFORE, upon the consent of the Plaintiff and Defendant, it is HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action and over the Defendant pursuant to the provisions of the CSPA, R.C. 1345.01 *et seq.*, and its Substantive Rules, O.A.C. 109:4-3-01 *et seq.* Jurisdiction is retained by this Court for the purpose of enabling the Plaintiff or the Defendant to enforce the terms of this Consent Judgment and to entertain any joint motions by the Plaintiff and Defendant to modify its provisions.

2. Venue is proper before the Court pursuant Ohio Civ. R. 3(C)(1) and (2).
3. The Ohio Attorney General, acting on behalf of the State of Ohio and in the public interest, is the proper party to bring this action by virtue of the authority vested in the Ohio Attorney General by R.C. 1345.07.

PAYMENT AND INJUNCTIVE PROVISIONS

4. Defendant, doing business under the name Danielle's on 2nd or any other names, and his officers, partners, agents, representatives, salespersons, employees, successors or assigns, and all persons acting in concert and participation with him directly or indirectly through any corporate device, partnership or association, in connection with any consumer transaction, is hereby permanently enjoined from engaging in any unfair, deceptive, or unconscionable acts and practices that violate the CSPA, R.C. 1345.01 *et seq.* and its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*

5. Defendant shall, within fifteen (15) days of the Court's entry of this Consent Judgment, pay Twelve Thousand Five Hundred Dollars (\$12,500) to the Ohio Attorney General's Consumer Protection Enforcement Fund (the "Fund"). Notwithstanding Defendant's payment into the Fund, such payment shall not, in any manner, be construed as a fine or admission of liability for the claims made in this case but rather an agreed settlement payment to avoid the cost of future litigation. Payment shall be made by certified check or money order payable to the "Ohio Attorney General's Office" and delivered to:

**Finance Specialist
Consumer Protection Section
Office of the Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215**

GENERAL PROVISIONS

6. This Consent Judgment shall operate as an injunction issued, and shall be enforceable under R.C. 1345.07, provided, however, that nothing in this Consent Judgment shall constitute an admission or finding that Defendant has been engaged or is engaged in any violation of the CSPA, R.C. 1345.01 *et seq.* and its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, or has otherwise acted unlawfully.

7. Defendant understands and agrees that this Consent Judgment shall not be construed as an approval or a sanction by the Ohio Attorney General of Defendant's business practices, nor shall Defendant represent that this Consent Judgment constitutes an approval or sanction of his business practices.

8. Defendant further understands and agrees that nothing in this Consent Judgment shall be construed as relieving Defendant of his obligations to comply with any state, local, or federal laws, regulations or rules, or as granting permission to engage in any acts or practices prohibited by such law, regulation or rule.

9. Defendant further understands and agrees that any failure by the Ohio Attorney General to take any action in response to any information submitted pursuant to this action shall not be construed as an approval, waiver, or sanction of any representations, acts, or practices indicated by such information.

REPRESENTATIONS AND WARRANTIES

10. Defendant warrants and represents that he has fully disclosed to the Ohio Attorney General all of his mask and sanitizer sales (regardless of the brand, type, model, or container/package size) from the time period of January 1, 2020 through February 1, 2021 (during which there were only actual sales from February 13, 2020 through March 6, 2020) and the records

that Defendant has provided the Ohio Attorney General relating to the purchase and sale of those products are true and accurate copies.

11. Defendant further represents and warrants that he does not have any remaining mask or sanitizer inventory available for sale.

12. Defendant acknowledges and agrees that the Ohio Attorney General has relied on the foregoing warranties and representations in entering into this Consent Judgment and that if such representations are proved false, unfair, deceptive, misleading or inaccurate in any material respect, the Ohio Attorney General has the right to seek any relief or remedy afforded by law or equity, including without limitation, applying to the Court for rescission of the terms of this Consent Judgment.

13. Defendant shall be responsible for all Court costs associated with this action.

IT IS SO ORDERED, ADJUDGED AND DECREED.



JUDGE

JOINTLY APPROVED FOR ENTRY AND SUBMITTED BY:

DAVE YOST
Ohio Attorney General

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Counsel for Plaintiff, State of Ohio

Counsel for Defendant Marcus Fultz

ALSO APPROVED AND AGREED TO BY:

/s/ Marcus Fultz
Marcus Fultz
Defendant

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