

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

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ATTORNEY GENERAL OF OHIO

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

Plaintiff,

v.

SAMUEL DARLING
DBA FLAMINGO COLLECTIVE,

Defendant.

Case No: 21 CV 7390

Judge Carl A. Aveni

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

**CONSENT JUDGMENT AND
FINAL AGREED ENTRY AND
ORDER AGAINST DEFENDANT
SAMUEL DARLING**

This matter came to be heard upon a Complaint by Plaintiff, State of Ohio *ex rel.* Attorney General Dave Yost ("Plaintiff"), charging Defendant Samuel Darling ("Defendant") with violations of the Consumer Sales Practices Act ("CSPA") and the Ohio Charitable Organizations Act. Plaintiff and Defendant have agreed to settle and resolve the matters contained herein and all claims alleged against Defendant.

By signing this Consent Judgment and Final Agreed Entry and Order ("Consent Judgment"), Defendant submits to the personal jurisdiction of this Court and consents to the entry of this judgment. For purposes of settlement only, Defendant consents to the imposition of this Order, and to the rights of Plaintiff to enforce this Order.

FINDINGS OF FACT

1. Defendant Samuel Darling is a natural person residing at 730 Vancouver Dr., Westerville, Ohio 43081.

2. Defendant at all times relevant to this action was engaged in the business of soliciting, offering for sale, or selling watches and related goods to consumers in the State of Ohio and nationwide under the fictitious business name Flamingo Collective.
3. Defendant further represented that a portion of the proceeds he collected from consumers would be donated to three separate charitable organizations.
4. Defendant engaged in the business of soliciting and selling watches and related goods via a crowdfunding campaign titled "Turtle Conservation Diver" that he operated on the crowdfunding website Kickstarter.com in July and August of 2020.
5. A Kickstarter funding campaign or "project" is a website hosted by Kickstarter.com, where the project creator describes the project and where backers may make financial "pledges" in support of the project.
6. Per Kickstarter's requirements, a crowdfunding campaign must set a monetary funding goal. The Turtle Conservation Diver campaign had a \$18,000 goal and an August 28th, 2020 deadline.
7. During the campaign, the public may "back" projects with promises to pay a certain amount upon the end of the campaign. A backer's promise to pay is called a "pledge." In exchange, backers receive "rewards," which are usually, though not always, the item that is the subject of the funding campaign.
8. Ultimately, the Turtle Conservation Diver campaign obtained 101 backers and \$31,753 in backer pledges prior to the August 28, 2020 deadline.
9. In an effort to promote and sell his products and generate interest, Defendant displayed prominently on the Turtle Conservation Diver website, "Buy a Watch, Save a Turtle."

10. Defendant promised consumers that, if the Turtle Conservation Diver goal was met, he would ship watches and related goods to consumers in exchange for payment and would additionally donate a portion of the proceeds to turtle conservation charities.
11. Through the Turtle Conservation Diver website, Defendant identified three charitable organizations that would benefit from the campaign, under the heading “Our Partners (and Who You’ll Be Helping).”
12. One of the partners identified by Defendant was Turtle Conservancy, a 501(c)(3) charitable organization headquartered in Ojai, California.
13. Another partner identified by Defendant was Maui Ocean Center Marine Institute, a 501(c)(3) charitable organization headquartered in Maui, Hawaii.
14. The third partner identified by Defendant was SEE Turtles, a 501(c)(3) charitable organization headquartered in Portland, Oregon.
15. Turtle Conservancy, Maui Ocean Center Marine Institute, and SEE Turtles are “charitable organizations,” as that term is defined in R.C. 1716.01(A).
16. According to Kickstarter’s Terms and Conditions, backers enter into a contract with the creator when a project is fully funded. Under this contract, project creators are legally bound to fulfill the promises they make on their campaign page, including fulfilling each backer’s reward.
17. During the Turtle Conservation Diver campaign, Defendant induced consumers to pay him a total of \$31,753 in exchange for watches and other merchandise, with an expected delivery window of November 2020.
18. After Kickstarter took a 5% fee, Defendant deposited the \$28,903.35 in remaining funds into his personal bank account.

19. Defendant provided updates to the backers on the Turtle Conservation Diver campaign website.
20. On October 27, 2020, Defendant posted an update to the Turtle Conservation Diver campaign website claiming that the watches were “still in the manufacturing process” and that Defendant had put into place a “contingency plan” to ensure that shipment of the watches would not be delayed.
21. On November 24, 2020, Defendant posted an update to the Turtle Conservation Diver campaign website claiming to have “everything ready for assembly” except for the Japanese Miyota Movements, a necessary component of the watches they promised to deliver. Defendant represented to backers that the delay was caused by an inability to source this watch part from a company in Japan due to the worldwide COVID-19 pandemic and the disruption of supply chains related thereto.
22. On June 20, 2021 Defendant posted an update to the Turtle Conservation Diver campaign website acknowledging that he had not delivered the backer rewards and promising to refund all backers. In this update, Defendant claimed that all of the money backers pledged was used to produce the goods he had promised the consumers.
23. Defendant did not post an update to the Turtle Conservation Diver campaign website after June 20, 2021.
24. As part of the Turtle Conservation Diver campaign, Defendant promised to donate \$15 to Turtle Conservancy for every watch sold. Defendant has failed to pay Turtle Conservancy any portion of the backer pledges he received from consumers.
25. As part of the Turtle Conservation Diver campaign, Defendant promised to donate \$5 to SEE Turtles for every watch sold. To date, Defendant has paid SEE Turtle \$1,250. However,

Defendant has to date failed to provide a final accounting for the charitable sales promotion to SEE Turtles.

26. Defendant obtained oral but not written consent from Maui Ocean Center Marine Institute to be part of the Turtle Conservation Diver campaign.
27. Defendant failed to provide requested and/or promised refunds to all consumers for whom he did not deliver the backer rewards within eight weeks of the cancellation of the project, as required by Ohio law. Defendant has represented and provided proof to Plaintiff that he refunded all consumers he was able to contact or who had valid payment information stored with Kickstarter. Defendant has provided \$31,403.02 in total consumer refunds.

CONCLUSIONS OF LAW

28. Jurisdiction over the subject matter of this action lies with this Court pursuant to the CSPA, R.C. 1345.04, and R.C. 109.16.
29. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(1) and (C)(3), as Defendant resides in and operated his Kickstarter campaign from Franklin County.
30. The Attorney General of Ohio, Dave Yost, is the proper party to commence these proceedings in the public interest and on behalf of the State of Ohio and impacted consumers under the authority vested in him by R.C. 1345.07 and R.C. Chapter 1716.
31. Defendant is a “supplier” as that term is defined in R.C. 1345.01(C) of the CSPA because Defendant has engaged in the business of effecting “consumer transactions” either directly or indirectly by soliciting and selling watches and related goods to individuals in Ohio for purposes that were primarily for personal, family, or household use, within the meaning of R.C. 1345.01(A).

32. Defendant has conducted one or more “charitable sales promotions” in Ohio, as defined by R.C. 1716.01(C), and has acted as a “commercial co-venturer” as defined by R.C. 1716.01(D).
33. Defendant committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09(A), and the CSPA, R.C. 1345.02(A), by accepting money from consumers for goods and then permitting eight weeks beyond the promised delivery date to elapse without making shipment or delivery of the goods ordered, making a full refund, advising the consumers of the duration of an extended delay and then offering to send a refund within two weeks if so requested, or furnishing similar goods of equal or greater value as a good faith substitute.
34. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by misrepresenting the status of consumers’ orders and refunds.
35. Defendant committed unfair or deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by providing consumers with inadequate and unfair customer service.
36. The acts or practices described in Paragraphs 33-35 above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).
37. Defendant violated the Ohio Charitable Organizations Act, R.C. 1716.09(A), when he failed to obtain Maui Ocean Center Marine Institute’s written consent prior to the commencement of the Turtle Diver Campaign.
38. Defendant violated the Ohio Charitable Organizations Act, R.C. 1716.09(B), when, as part of Turtle Diver Campaign he failed to disclose dollar amounts, either actual or estimated, per watch sold that would be donated to Turtle Conservancy, Maui Ocean Center Marine Institute, and SEE Turtles.

39. Defendant violated the Ohio Charitable Organizations Act, R.C. 1716.09(C), when he failed to provide a final accounting for the Turtle Diver Campaign within ten days of being requested to do so by SEE Turtles.
40. Defendant violated the Ohio Charitable Organizations Act, R.C. 1716.14(A)(11), when he failed to provide complete and timely payment to Turtle Conservancy of the promised proceeds from the Turtle Diver Campaign.
41. As an individual who conducted one or more charitable sales promotions on behalf of Turtle Conservancy, Maui Ocean Center Marine Institute, and SEE Turtles, Defendant was a fiduciary and acted in a fiduciary capacity for these organizations pursuant to R.C. 1716.17.
42. Through his acts and omissions, Defendant breached his fiduciary duties to these organizations under the Ohio Charitable Organizations Act.

ORDER

- A. Plaintiff's request for a Declaratory Judgment that the acts and practices set forth above are in violation of the CSPA and the Ohio Charitable Organizations Act is hereby GRANTED.
- B. Defendant, individually and doing business under the name Flamingo Collective or any other name, the officers, 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, are hereby PERMANENTLY ENJOINED from further engaging in the acts or practices described herein and from engaging in consumer transactions as a supplier in the State of Ohio until the payments ordered pursuant to this action have been paid.
- C. Defendant, individually and doing business under the name Flamingo Collective or any other name, the officers, 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, are hereby ENJOINED from conducting “charitable sales promotions” in Ohio, as defined by R.C. 1716.01(C), and from acting as a “commercial co-venturer” as defined by R.C. 1716.01(D) for a period of five (5) years from the date this Consent Judgement is executed by all Parties and the Court, and payments hereunder are paid. After a period of five years Defendant may conduct “charitable sales promotions” in Ohio and act as a “commercial co-venturer so long as he: (1) provides specific written notice of intent to do so to the Ohio Attorney General’s Office (mail directed to the attention of the Consumer Protection Section and Charitable Law Section Chiefs and Assistant Section Chiefs) and (2) agrees to strictly comply with applicable law, including under R.C. 1716.

- D. Defendant is ORDERED, pursuant to R.C. 1345.07(B), to pay consumer restitution to any of the remaining unrefunded consumers that backed Defendant’s Turtle Conservation Diver campaign and who provide Defendant or Plaintiff with their contact and payment information before January 1, 2024. Payment shall be equal to the amount of their pledge to the Turtle Conservation Diver campaign and will be due within fourteen (14) days of Defendant’s receipt of the complaint and contact and payment information from either the consumer or the Attorney General’s Office.
- E. Defendant is ORDERED, pursuant to R.C. 1345.07(D), to pay a civil penalty for CSPA violations in the total amount of Two Thousand Dollars (\$2,000) to the Attorney General’s Office, within fourteen (14) days of the Court’s entry of this Consent Judgment.

- F. Defendant is ORDERED, pursuant to R.C. 1716.16(B), to pay a civil penalty for Charitable Law violations in the total amount of Two Thousand Dollars (\$2,000) to the Attorney General's Office, within fourteen (14) days of the Court's entry of this Consent Judgment.
- G. Defendant's payments required by Paragraphs D, E and F shall be made by delivering a certified check, IOLTA Trust Check or money order, made payable to the "Ohio Attorney General's Office" to:

**Ohio Attorney General
Finance Department
30 East Broad Street, 15th Floor
Columbus, Ohio 43215
RE: Sam Darling, Flamingo Collective**

- H. Defendant is hereby notified that if he fails to pay any amounts due, the unpaid amounts due under this Consent Judgment may be referred to the Ohio Attorney General's Collection Enforcement Section for collection. Should the unpaid amount be referred for collection, the Collections Enforcement Section will assess additional collection fees and interest against Defendant, pursuant to Ohio law, including, but not limited to R.C. 131.02, 109.08, and 109.081.
- I. Defendant shall not represent, directly or indirectly, that the Court or the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of their business operations.
- J. It is further ORDERED that the acceptance of any payment by the Plaintiff subsequent to the time it is due or the failure of the Plaintiff to insist on strict performance of any order contained within this Consent Judgment shall not be construed as a waiver of any of the obligations created by this Consent Judgment.

- K. It is further ORDERED that Defendant's failure to comply with the terms of this Consent Judgment shall constitute a violation of an injunction of this Court, and Plaintiff may seek a civil penalty pursuant to R.C. 1345.07(A)(2) and R.C. 1716.16(C) for such a violation.
- L. It is further ORDERED that in the event the Ohio Attorney General must initiate legal action or incur any costs to compel Defendant to abide by this Consent Judgment, Defendant shall be liable to the Ohio Attorney General, should he prevail, for all related enforcement costs, including, but not limited to, a reasonable sum for attorneys' fees and investigative costs, and interest and collection costs as permitted by statute.
- M. Defendant shall not represent, directly or indirectly, that the Ohio Attorney General has sanctioned, condoned, or approved any part of aspect of their business operations.
- N. Defendant is ORDERED to pay all court costs associated with this action.

IT IS SO ORDERED.

DATE

JUDGE CARL A. AVENI

JOINTLY APPROVED FOR ENTRY AND SUBMITTED BY:

PLAINTIFF

DAVE YOST
Attorney General

/s/ Christopher Ramdeen
Christopher N. Ramdeen (0095623)
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Counsel for Plaintiff, State of Ohio

/s/ Sophia Hussain
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DEFENDANT

/s/ Samuel Darling
Samuel Darling
730 Vancouver Dr.
Westerville, Ohio 43081
Defendant

/s/ Ryan Thomas
Ryan L. Thomas (0084828)
503 S. Front Street, Suite 250
Columbus, Ohio 43215
Counsel for Defendant

Franklin County Court of Common Pleas

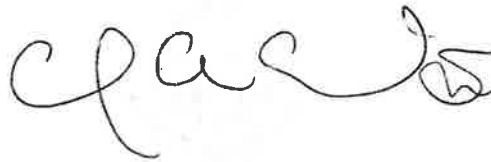
Date: 11-03-2023

Case Title: STATE OF OHIO EX REL OHIO ATTORNEY GENER -VS-
SAMUEL DARLING

Case Number: 21CV007390

Type: CONSENT JUDGMENT

It Is So Ordered.

A handwritten signature in black ink, appearing to read 'Carl A. Aveni II', with a stylized flourish at the end.

/s/ Judge Carl A. Aveni II