

IN THE COURT OF COMMON PLEAS
CLARK COUNTY, OHIO

STATE OF OHIO, *ex rel.*

MICHAEL DEWINE

ATTORNEY GENERAL OF OHIO

Plaintiff/Relator,

v.

ALHMIDAT CORPORATION, LLC,

et al.

Defendants/Respondents.

:
: CASE NO. 13-CV-0117
:
: JUDGE RICHARD J. O'NEILL
:
: MAGISTRATE MELINDA REARDON
:
: AGREED ENTRY
: AND ORDER BETWEEN PLAINTIFF AND
: DEFENDANTS MUNIR AL HMIDAT AND
: ALHMIDT CORPORATION, LLC, D/B/A
: QUALITY FOOD MART 2 AND A/K/A
: QUALITY FOOD MARKET

PREAMBLE

This matter came to be heard upon the filing of a Complaint by Plaintiff, State of Ohio, acting through Ohio Attorney General Michael DeWine ("Plaintiff"), alleging that Defendants Alhmidat Corporation, LLC, Munir F. Al Hmidat, also known as Mike Howard, Fadi Shoukri, The Real Property at 127 Weinland Drive, New Carlisle, Ohio 45344 (Parcel ID No. 0100500031415012), and F.N. Partnership¹ violated Ohio's Consumer Protection and Public Nuisance laws. Specifically, Plaintiff's Complaint alleges that Defendants Alhmidat Corporation and Munir Alhmidat 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's claims regarding violations of Ohio's Public Nuisance laws were litigated in a Preliminary Injunction hearing held on April 4, 2013 and addressed in the parties' post-hearing briefs. On January 28, 2014, this Court issued the Magistrate's Decision Granting, In Part,

¹ Defendants Fadi Shoukri, The Real Property (Parcel ID No. 0100500031415012), and F.N. Partnership are not parties to this Agreed Entry.

State's Motion for Preliminary Injunction ("Magistrate's Decision"). This Court found that Defendant Al Hmidat owned and controlled the premises at 127 Weinland Drive, New Carlisle, Ohio 45344, was aware of the sale synthetic marijuana, and knowingly sold synthetic marijuana at that location. (Magistrate's Decision at 4) This Court found that the sale of a drug of abuse is per se harmful to the public welfare and is a nuisance. (Id.) Accordingly, this Court enjoined Defendants from the sale of any substance which many contain analog drugs, which would include any of the products referenced in Plaintiff's Complaint. Additionally, this Court ordered the closing of Defendant Quality Food Mart against its use for any purpose of prohibited conduct until a final decision is rendered in this case.²

Plaintiff has reached an agreement with Defendants Alhmidat Corporation and Munir Al Hmidat ("Defendants") regarding the outstanding CSPA claims in this case and this Agreed Entry and Order ("Agreed Entry") is intended to resolve all of the civil claims alleged or which could have been 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 Agreed Entry 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. Solely for the purpose of resolving this matter and with no admission or finding of wrongdoing, Defendants hereby consent to the imposition of this Agreed Entry regarding the CSPA violations, and to the rights of Plaintiff to enforce this Agreed Entry. Pursuant to R.C. 1345.10, this Agreed Entry is not admissible as *prima facie* evidence of the

² As the Magistrate's Decision was signed by both the Magistrate and this Court and no objections were filed within the time period outlined in Civ.R. 53, Plaintiff and Defendants Alhmidat Corporation and Al Hhmidat agree that the Magistrate's Decision became effective as the final judgment of the Court with respect to the nuisance issues.

facts on which it is based for any subsequent proceedings brought by any party under R.C. 1345.09. This Agreed Entry 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.

FINDINGS OF FACT

1. Defendant Alhmidat Corporation, LLC is an Ohio limited liability company registered and chartered under the laws of the State of Ohio and has its principal place of business located at 127 Weinland Drive, New Carlisle, Ohio 45344.
2. Defendant Alhmidat Corporation, LLC, conducts business under the trade name Quality Food Mart 2, which operates a retail store known as Quality Food Market³ at 127 Weinland Drive, New Carlisle, Ohio 45344.
3. Defendant Munir F. Al Hmidat, also known as “Mike Howard,” (“Al Hmidat”) is a resident of the State of Ohio and is the owner of Quality Food Market.
4. Plaintiff alleges that 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” or “potpourri.”
5. Plaintiffs allege that Defendants sold products labeled as “incense” and “potpourri” 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.
6. Plaintiffs allege that Defendants offered for sale and sold synthetic narcotics/illegal drugs as legal products.

³ Defendant Alhmidat Corporation shall be referred to as “Quality Food Market” throughout the remainder of this Agreed Entry.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter, issues, and parties to this Agreed Entry pursuant to R.C. 1345.04, R.C. 3767.03, and R.C. 4729.53.
2. The Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3) in that Clark 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 Clark County.
3. The CSPA, R.C. 1345.01 et seq., governs the business practices of the Defendants.
4. 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.
5. Defendants are “suppliers,” as defined in R.C. 1345.01(C), as Defendants were, at all times relevant herein, purportedly engaged in the business of effecting consumer transactions by soliciting, offering for sale, and selling synthetic narcotics/illegal drugs to individuals in Clark 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).
6. 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).
7. A supplier’s practice of failing to clearly and conspicuously disclose that its products contained Schedule I controlled substances and were thus illegal is an unfair and deceptive act or practice in violation of the CSPA, R.C. 1345.02(A).

8. A supplier's practice of failing to clearly and conspicuously disclose certain material exclusions related to its "incense" and "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 "incense" and "potpourri" products to contain statements that they did not contain any prohibited ingredients or that they only contain certain ingredients, while failing to disclose that those products contained 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).
9. 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.
10. 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.
11. A person or entity who commits, participates in the commission of, and/or abets the commission of violation of R.C. 2925.03, is liable for a public nuisance under R.C. 4729.35.
12. 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 Agreed 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 (6) through (9) violate the CSPA, R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder, in the manner set forth therein.
2. 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.
3. 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 (6) through (9).

4. 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).
5. 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 127 Weinland Drive, New Carlisle, Ohio 45344 (Parcel ID No. 0100500031415012) as a public nuisance.
6. IT IS FURTHER ORDERED that Defendants shall, for a period of two (2) years commencing on the filing date of this Agreed Entry, post a sign on each door of the business premises located at 127 Weinland Drive, New Carlisle, Ohio 45344 that states that Defendants do not sell synthetic narcotics/illegal drugs. The sign shall contain bold print in at least 28 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.**

7. 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 Agreed Entry, 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.

8. IT IS FURTHER ORDERED that 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 Fifteen Thousand Dollars (\$15,000.00) to the Office of the Ohio Attorney General's General Holding Account (R004), with Eight Thousand Dollars (\$8,000.00) suspended upon full compliance with the terms of this Agreed Entry. If Defendants fail to comply with all provisions in this Agreed Entry, the Eight Thousand Dollars (\$8,000.00) shall be immediately due and payable upon demand. The remaining balance of Seven Thousand Dollars (\$7,000.00) is due and payable upon execution of this Agreed Entry and shall be made by delivering a certified check or money order, payable to the "Ohio Attorney General's Office," to:

**Finance Assistance
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215**

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.

9. The Attorney General may assert any claim that Defendants have violated this Agreed Entry in a separate civil action to enforce this Agreed Entry or to seek any other relief afforded by law, including imposition of the suspended monetary payment. In any such

action or proceeding, relevant evidence of conduct that occurred before the filing date of this Agreed Entry 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.

10. IT IS FURTHER ORDERED that any violation of the terms of this Agreed Entry 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.

11. In the event the Ohio Attorney General must initiate legal action or incur any costs to compel Defendants to abide by this Agreed Entry, 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 payment to the State awarded herein, any such costs and reasonable attorneys' fees expended to proceed with such a motion for contempt that the Court may impose.

12. Failure of the Attorney General to timely enforce any term, condition, or requirement of this Agreed Entry shall not provide, nor be construed to provide, Defendants a defense for noncompliance with any term of this Agreed Entry or any other law, rule, or regulation; nor shall it stop or limit the Attorney General from later enforcing any term of this Agreed Entry or seeking any other remedy available by law, rule, or regulation.

13. Nothing in this Agreed Entry 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.

14. 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.

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

16. This Court shall retain jurisdiction to enforce compliance with this Agreed Entry.

IT IS SO ORDERED.

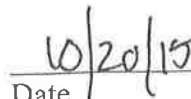
DATE

HON. JUDGE O'NEIL

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



MELISSA G. WRIGHT (0077843)



Date

Assistant Section Chief
Consumer Protection Section

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Principal Assistant Attorney General

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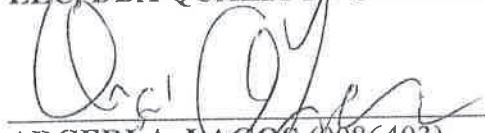
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FOR DEFENDANTS MUNIR F. AL HMDAT AND ALHMDAT CORPORATION,
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