

4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that some of Defendant's actions complained of herein, and out of which this action arose, occurred in Highland County, Ohio.

DEFENDANT

5. Defendant Arya Enterprise, Inc., doing business as North End Mini Mart ("North End Mini Mart" or "Defendant"), is an Ohio corporation with its principal place of business located at 950 North Washington Street, Greenfield, Ohio 45123.
6. Defendant is a "supplier," as defined in R.C. 1345.01(C), as Defendant was, and has been, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting, offering for sale, and selling synthetic narcotics/illegal drugs which were represented as "incense" products to individuals in Highland County and other counties 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).

STATEMENT OF FACTS

7. Defendant was, and has been at all relevant times, 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 "Aromatic Incense."
8. Defendant sold the synthetic narcotics/illegal drugs in plastic packets that failed to disclose the full list of ingredients and further omitted the illegal ingredients contained in the product.
9. On January 13, 2012, two confidential informants operating under the direction of the Highland County Sheriff's Office, went to Defendant's store located at 950 North

Washington Street, Greenfield, Ohio 45123 for the purpose of purchasing some “K2”.¹
(Affidavit of Detective Sergeant Daniel Croy, Exhibit 1 at ¶3)

10. The confidential informants approached the counter and asked if the store had “K2.” (Id. at ¶5)
11. Defendant’s clerk said yes, they had “Funky Green” and had two different packs – a small 3 gram pack and a 5 gram pack. (Id.)
12. The confidential informants then asked Defendant’s clerk if it was any good, to which the clerk replied that a lot of people buy it, with some coming from Washington Courthouse and Leesburg. (Id.)
13. The confidential informants then asked Defendant’s clerk if they had any pipes. (Id.)
14. Defendant’s clerk responded by showing them a \$1.99 “Glass Ball Pen” which was actually a pipe. (Id.)
15. Defendant’s clerk then proceeded to show the confidential informants how the ink pen worked as a pipe. (Id.; Photograph of pipe disguised as an ink pen, Exhibit 2)
16. The confidential informants purchased a packet of “incense” suspected to be K2 for \$27.99 and the “ink pen” for a total price of \$32.08. (Exhibit 1 at ¶6)
17. The product purchased was labeled as “Funky Green Stuff – Reggie’s Blend” Aromatic Incense. (Id.)
18. The “Funky Green Stuff” incense was sold in a 5 gram packet which was labeled “For Aromatherapy Use Only” and “Not for sell [*sic*] to minors, 19+ only.” (Photograph of the “Funky Green Stuff” packet, Exhibit 3)

¹ “K2” a brand of synthetic cannabis which contains various synthetic cannabinoids which are Schedule I Controlled Substances. (See R.C. 3719.41(C)(67))

19. The “Funky Green Stuff” packet noted that it contained a “proprietary blend of herbs and spices, natural and synthetic scents, oils and aromatic enhancers.” (Id.)
20. The “Funky Green Stuff” packet also contained the following label: “Does NOT Contain: JWH-018,073,081,200,250, HU-210,211, CP-047,497,55, Cannabicyclohexanol or Salvia.” (Id.)
21. Although the “Funky Green Stuff” packet claimed it did not contain certain illegal or prohibited ingredients, when tested, the vegetation inside the “Funky Green Stuff” packet did contain N,N-diallyl-5-methoxytryptamine (“5-MeO-DALT”), whose chemical structure is substantially similar to 5-methoxy-N,N-diisopropyltryptamine (“5-MeO-DIPT”). (May 21, 2012 BCI&I Laboratory Report No. 12-12727 and May 25, 2012 Affidavit of BCI&I Laboratory Forensic Scientist Jessica Kaiser, Exhibit 4).²
22. 5-MeO-DIPT is a Schedule I Controlled Substance. (See R.C. 3719.41 and R.C. 3719.43) (amended 2012)³
23. The vegetation inside the “Funky Green Stuff” packet also contained 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (“AM2201”), 1-pentyl-3-(4-methylnaphth-1-oyl)indole (“JWH-122”), and 1-pentyl-3-(4-ethylnaphth-1-oyl)indole (“JWH-210”), all of which have chemical structures substantially similar to 1-pentyl-3-(1-naphthoyl)indole (“JWH-018”). (See Exhibit 4).

² The original lab report and affidavit for Exhibit 4 are in the possession of the Highland County Sheriff’s Office.

³ At the time of the transaction at issue, 5MeO-DALT was a controlled substance analog to 5-MeO-DIPT, a Schedule I Controlled Substance under R.C. 3719.41 and R.C. 3719.43. Effective December 20, 2012, House Bill 334 amended R.C. 3719.41. Under the superseding statute, 5MeO-DALT is now a Schedule I Controlled Substance. See R.C. 3719.41(C)(40).

24. JWH-018 is a Schedule I Controlled Substance. (See R.C. 3719.41(C)(35)) (amended 2012)⁴
25. “Incense” is defined as “material used to produce a fragrant odor when burned” or “the perfume exhaled from some spices and gums when burned.” (<http://www.merriam-webster.com/dictionary/incense>)
26. “Aromatherapy” is defined as “massage of the body and especially of the face with a preparation of fragrant essential oils extracted from herbs, flowers, and fruits” or “the use of aroma to enhance a feeling of well-being.” (<http://www.merriam-webster.com/dictionary/aromatherapy>)
27. Unlike typical incense which is composed of certain biotic materials, the vegetation represented as “incense” products and sold by Defendant were coated with illegal and dangerous synthetic compounds that, when consumed, mimic the psychoactive and physiological effects of Tetrahydrocannabinol (“THC”), the active ingredient in cannabis, which is also an illegal Schedule I Controlled Substance. (See R.C. 3719.41(C)(27)) (www.dea.gov)
28. Defendant sold products labeled as “incense” which contained various 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.
29. Defendant offered for sale and sold synthetic narcotics/illegal drugs as legal products.

⁴ At the time of the transaction at issue, AM2201, JWH-122, and JWH-210 were controlled substance analogs to JWH-018, which was listed as a Schedule I Controlled Substance under R.C. 3719.41(C)(35). (See R.C. 3719.01(HH) and 3719.031). Effective December 20, 2012, House Bill 334 amended R.C. 3719.41. Under the superseding statute, AM2201, JWH-122, JWH-210, and JWH-018 are Schedule I Controlled Substances. R.C. 3719.41(C)(67)(a).

PLAINTIFF'S CAUSE OF ACTION:

VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT I

UNFAIR AND DECEPTIVE ACTS AND PRACTICES

30. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Nine (1-29) of this Complaint.
31. Defendant has committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by offering for sale and selling synthetic narcotics/illegal drugs as legal products.
32. Defendant has committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by failing to clearly and conspicuously disclose that its products contained substances whose chemical structures are substantially similar to illegal Schedule I Controlled Substances, thus making the products illegal.
33. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant has committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT II

UNCONSCIONABLE ACTS OR PRACTICES

34. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Nine (1-29) of this Complaint.
35. Defendant has committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), by offering for sale and selling synthetic narcotics/illegal drugs as legal products.

36. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendant has committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT III

EXCLUSIONS AND LIMITATIONS IN ADVERTISEMENTS

37. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Nine (1-29) of this Complaint.
38. Defendant has committed unfair and deceptive acts and practices 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), by failing to clearly and conspicuously disclose, certain material exclusions related to its “incense” products. Specifically, while Defendant’s “incense” products contained statements that they did not include contain any prohibited ingredients or that they only contained certain ingredients, Defendant failed to disclose that the products contained other substances whose chemical structures are substantially similar to illegal Schedule I Controlled Substances, thus making the products illegal.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

- A. ISSUE A DECLARATORY JUDGMENT declaring that each act or practice described in Plaintiff’s Complaint violates the CSPA, R.C. 1345.01 et seq., and its Substantive Rules, in the manner set forth in this Complaint.
- B. ISSUE PERMANENT INJUNCTIVE RELIEF, pursuant to R.C. 1345.07, enjoining Defendant Arya Enterprise, Inc., under its own name or any other names, including, but not limited to, North End Mini Mart, and all persons acting on behalf of Defendant,

directly or indirectly, through any corporate or private device, partnership or association, jointly and severally, from engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq., and its Substantive Rules.

- C. ISSUE PERMANENT INJUNCTIVE RELIEF enjoining Defendant Arya Enterprise, Inc., doing business as North End Mini Mart, from acting as a supplier and soliciting or engaging in any consumer transactions in the State of Ohio as a supplier until the final ordered resolution of this matter is satisfied in its entirety.
- D. ASSESS, FINE AND IMPOSE upon Defendant Arya Enterprise, Inc., doing business as North End Mini Mart, a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein, pursuant to R.C. 1345.07(D).
- E. ORDER Defendant Arya Enterprise, Inc., doing business as North End Mini Mart, to reimburse the Ohio Attorney General for all costs incurred in bringing this action.
- F. ORDER Defendant Arya Enterprise, Inc., doing business as North End Mini Mart, to pay all court costs associated with this action.
- G. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Attorney General



MELISSA G. WRIGHT (0077843)
Senior Assistant Attorney General
Counsel for Plaintiff, Ohio Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215-3428
(614) 466-8169; (866) 528-7423 (facsimile)
melissa.wright@ohioattorneygeneral.gov
Counsel for Plaintiff, State of Ohio

STATE OF OHIO

)

AFFIDAVIT OF

)

SS:

COUNTY OF HIGHLAND

)

DET. SGT. DANIEL S. CROY

AFFIDAVIT

I, Detective Sergeant Daniel S. Croy, being first duly sworn according to law, depose and say that I am of full legal age, have personal knowledge of all the facts herein, and am competent to testify to the matter set forth. Further, I state that:

1. I am a Detective Sergeant with the Highland County Sheriff's Office. In this position I am involved in a variety of investigations, some of which involve the use of confidential informants (CI's) to gather information.
2. The Highland County Sheriff's Office received information that the Sunoco Station, located at 950 Washington Street, Greenfield, Ohio 45123, was selling a substance called "K2".
3. On January 13, 2012, two CI's, operating under the direction of the Highland County Sheriff's Office, went to the Sunoco Station on Washington Street for the purpose of purchasing some "K2." The CI's were given pre-recorded money and sent into this store equipped with digital audio and video recorders.
4. After the January 13th visit, I reviewed the recordings and conducted an interview with the CI's. The interview and recordings established the following description of their transaction at the Sunoco Station on Washington Street.
5. The CI's approached the checkout counter and asked to purchase "K2". The store clerk said yes, they had "Funky Green" in two different packs – a small 3 gram pack and a 5 gram pack. The clerk pulled the packs from behind the counter and showed the CI's. The CI asked the store clerk if it was any good, to which the clerk replied that a lot of people buy it, with some coming from Washington Courthouse and Leesburg. The CI's asked the clerk if they had any pipes. The store clerk responded by showing them a \$1.99 "Glass Ball Pen" which was actually a pipe. The store clerk then showed the CI's how the pen worked as a pipe.
6. The CI's purchased a packet of "incense" suspected to be K2 for \$27.99 and the "ink pen" pipe from the Sunoco Station on Washington Street for a total of \$32.08. The packet was called "Funky Green Stuff" Aromatic Incense.
7. That same day, the CI's turned over the purchased items to the Highland County Sheriff's Office.

STATE'S
EXHIBIT

1

8. On April 17, 2012, I submitted the substance in the packet described above to Ohio Bureau of Criminal Identification and Investigation (BCI) Laboratory with instructions to test for the presence of a controlled substance.

FURTHER AFFIANT SAYETH NAUGHT.

Det. Sgt. Daniel S Croy
DET. SGT. DANIEL S. CROY

Sworn to and subscribed in my presence this 14th day of November, 2012
in the City of Hillsboro, County of Highland, State of Ohio.

Jacqueline Zoe Barrera
NOTARY PUBLIC
My Commission Expires 4-20-14

JACQUILINE ZOE BARRERA
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES APR. 20, 2014
RECORDED IN HIGHLAND COUNTY, OHIO



PENGAD 800-631-6989

STATE'S
EXHIBIT

2

5/18/12

Funky Green Stuff

Aromatic Incense

Promo
58%
Pack

27.99

Reggie's
Blend

large

9890305

For Aromatherapy Use Only. Not for sell to minors, 19+ only.
Does NOT Contain: JWH-018, 073, 081, 200, 250, HU-210, 211,
CP-047, 497, 55, Cannabicyclohexanol, or Salvia
Contains: proprietary blend of herbs and spices, natural
and synthetic scents, oils and aromatic enhancers.
Warning-Misuse of this product may be harmful or fatal.
Use only as directed. Not for human consumption.
The manufacturers and sellers of this product take no responsibility or
liability for the incorrect or misuse of this product. Made in the USA.
Directions: place a small amount of incense over a lit charcoal in an
incense burner and enjoy the wonderful aroma that fills the room.



MIKE DeWINE

★ OHIO ATTORNEY GENERAL ★

Bureau of Criminal Identification and Investigation

Laboratory Report

To: Highland County Sheriff's Office
Det. Sgt. Croy
130 Homestead Ave.
Hillsboro OH 45133

BCI&I Laboratory Number: 12-12727

Date: May 21, 2012

Agency Case Number: 12R0059

Offense: Drug Trafficking
Subject(s): Sunoco Washington Street
Victim(s): State of Ohio

Submitted on April 17, 2012 by Det. Sgt. Croy:

1. Plastic bag containing package marked Funky Green Stuff, ink pen.

Findings

1. Foil pouch labeled "Funky Green Stuff" containing vegetation - 4.8 grams - found to contain N,N-diallyl-5-methoxytryptamine (5-MeO-DALT), 1-(5-fluoropentyl)-3-(naphth-1-oyl)indole (AM2201), 1-pentyl-3-(4-methylnaphth-1-oyl)indole (JWH-122), and 1-pentyl-3-(4-ethylnaphth-1-oyl)indole (JWH-210).

The chemical structure of N,N-diallyl-5-methoxytryptamine (5-MeO-DALT) is substantially similar to 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT).

The chemical structures of 1-(5-fluoropentyl)-3-(naphth-1-oyl)indole (AM2201), 1-pentyl-3-(4-methylnaphth-1-oyl)indole (JWH-122), and 1-pentyl-3-(4-ethylnaphth-1-oyl)indole (JWH-210) are substantially similar to 1-pentyl-3-(1-naphthoyl)indole (JWH-018).

STATE'S
EXHIBIT

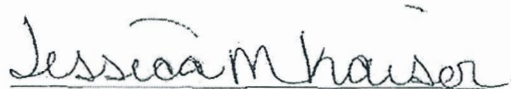
4

Please address inquiries to the office indicated, using the BCI&I case number.

[] BCI & I-Bowling Green Office
1616 E. Wooster St.-18
Bowling Green, OH 43402
Phone:(419)353-5603

[X] BCI & I-London Office
P.O. Box 365
London, OH 43140
Phone:(740)845-2000

[] BCI & I-Richfield Office
4055 Highlander Pkwy. Suite A
Richfield, OH 44286
Phone:(330)659-4600



Jessica M. Kaiser

Forensic Scientist

(740) 845-2447

Jessica.Kaiser@ohioattorneygeneral.gov



Based on scientific analyses performed, this report contains opinions and interpretations by the analyst whose signature appears above. Examination documentation and any demonstrative data supporting laboratory conclusions are maintained by BCI and will be made available for review upon request.

A F F I D A V I T

STATE OF OHIO)
)
COUNTY OF MADISON) SS:
)
)

I, Jessica M. Kaiser, being duly sworn states as follows:

I am an Ohio Bureau of Criminal Identification and Investigation (BCI&I) Laboratory employee and performing laboratory analysis is part of my regular duties. My education, training and experience for performing analyses of material are outlined as follows:

EDUCATION

1. Bachelor of Science degree in Forensic Science with a Minor in Criminal Justice from Defiance College, Defiance, Ohio, 2005. Courses in General Chemistry, Organic Chemistry, Quantitative Analysis, Physics, Forensic Science, Biochemistry, Criminal Justice, Criminal Law.

TRAINING

1. Specialized training in the analysis of controlled substances at the Kansas Bureau of Investigation in Great Bend, Kansas.
2. Basic Drug Identification Workshop with MAFS in Kansas City, Kansas.
3. Drug Enforcement Administration Forensic Chemist Seminar with the Drug Enforcement Administration Research and Testing Laboratory in Dulles, VA.
4. Gas Chromatography Maintenance and Troubleshooting Workshop with the Midwestern Association of Forensic Scientists in Indianapolis, Indiana.
5. Advances in Analytical Techniques for Analysis of Drugs of Abuse with the Midwestern Association of Forensic Scientists in Orlando, Florida.
6. The Chemistry of Clan Labs Workshop with the Midwestern Association of Forensic Scientists in Kansas City, Missouri.
7. Certified by the American Board of Criminalistics in Drug Analysis.

EXPERIENCE

1. Employed with the Ohio Bureau of Criminal Identification and Investigation since March 16, 2012 identifying controlled substances.
2. Employed with the Kansas Bureau of Investigations from February 27, 2006 through September 30, 2011, identifying controlled substances.
3. Interned with the Springfield, Ohio Police Department Laboratory May 2004 through August 2004, assisting in controlled substance analysis and working in the various sections of the laboratory.

I further attest that in case number 12-12727, scientifically accepted tests were performed with due caution and evidence was handled in accordance with established and accepted procedures while in the custody of BCI&I's laboratory.

FURTHER AFFIANT SAYETH NAUGHT.

Jessica M. Kaiser
Jessica M. Kaiser

Sworn and acknowledged before me on May 25, 2012, in London,
Madison County, Ohio.

Graig M. B. L.
Notary Public



JENNIFER L. BRUBAKER
Notary Public, State of Ohio
My Commission Expires 4/19/15

OHIO REVISED CODE 2925.11 (C) & (D)

THE ATTACHED LAB REPORT IS PRIME EVIDENCE OF THE
CONTENT, IDENTITY, WEIGHT OR NUMBER OF UNIT DOSES OF THE
SUBJECT SUBSTANCE AND IS ADMISSIBLE WITHOUT FURTHER
TESTIMONIAL EVIDENCE

THE ACCUSED HAS THE RIGHT TO DEMAND THE REPORT SIGNER'S
TESTIMONY AND CAN DEMAND THE REPORT SIGNER'S TESTIMONY BY
SERVING A DEMAND FOR THE REPORT SIGNER'S TESTIMONY UPON
THE PROSECUTING ATTORNEY WITHIN 7 DAYS FROM THE DATE THE
ACCUSED OR THE ACCUSED'S ATTORNEY RECEIVES THE ATTACHED
LAB REPORT