

**STATE OF OHIO, *ex rel.***  
**MICHAEL DEWINE**  
**ATTORNEY GENERAL OF OHIO**  
**30 East Broad Street, 14<sup>th</sup> Floor**  
**Columbus, Ohio 43215**

V.

**Defendant.**

: JUDGE

CLERK

: COMPLAINT, REQUEST FOR  
: DECLARATORY JUDGMENT,  
: INJUNCTIVE RELIEF, CONSUMER  
: RESTITUTION, AND CIVIL PENALTIES

**FILED**  
COMMON PLEAS COURT  
HIGHLAND COUNTY, OHIO  
JUN 14 2013  
*D. J. Hodson*  
HIGHLAND COUNTY CLERK OF COURTS

**FOR  
ENT.**

1

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 Jasmeen Enterprises, Inc., doing business as Rocky Road Sunoco and also known as Rocky Road Mini Mart ("Rocky Road Mini Mart" or "Defendant"), is an Ohio corporation with its principal place of business located at 1111 North Shore Drive, Hillsboro, Ohio 45133.
6. Defendant is a "supplier," as defined in R.C. 1345.01(C), as Defendant was, and had 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 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 1111 North Shore

- Drive, Hillsboro, Ohio 45133 for the purpose of purchasing some “K2.”<sup>1</sup> (Affidavit of Detective Sergeant Daniel Croy, Exhibit 1 at ¶3)
10. The confidential informants approached the counter and requested to purchase “K2.” (Id. at ¶5)
  11. Defendant’s clerk said he did not have K2, but had something like it and that “a lot of people buy it.” (Id.)
  12. Defendant’s clerk said he had “Funky Green.” (Id.)
  13. The confidential informants then asked the clerk if he had anything different besides “Funky Green,” to which the clerk replied “yeah” and then reached beneath the counter to obtain the products and showed the confidential informants the three different types of “incense” that Defendant sold. (Id.)
  14. The confidential informants purchased two packets of “incense” suspected to be K2 for a total of \$40.20. (Id. at ¶6)
  15. The two products purchased were labeled as (1) “Cloud 9 Mad Hatter” Incense, and (2) “Darkness” Super XXX Aromatic Incense. (Id.)
  16. The “Cloud 9 Mad Hatter” incense was sold in a 3 gram packet which was labeled “Not for human consumption.” (Photographs of “Cloud 9 Mad Hatter” packet, Exhibit 2)
  17. When tested, the vegetation inside the “Mad Hatter” packet contained 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (“AM2201”), whose chemical structure is substantially similar to 1-pentyl-3-(1-naphthoyl)indole (“JWH-018”). (February 1, 2012 BCI&I Laboratory

---

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



Report No. 12-10096 and February 2, 2012 Affidavit of BCI&I Laboratory Forensic Scientist Stanton Wheasler, Exhibit 3).<sup>2</sup>

18. JWH-018 is a Schedule I Controlled Substance. (See R.C. 3719.41(C)(35)) (amended 2012)<sup>3</sup>
19. The “Darkness” Super XXX Aromatic Incense was sold in a 2 gram packet which was labeled “FOR AROMATHERAPY USE ONLY, NOT FOR HUMAN CONSUMPTION” and “NOT FOR SELL [*sic*] TO MINORS, 19+ ONLY.” (Photographs of “Darkness” packet, Exhibit 4)
20. The “Darkness” packet noted that it contained a “PROPRIETARY BLEND OF HERBS AND SPICES, NATURAL AND SYNTHETIC SCENTS, OILS AND AROMATIC ENHANCERS.” (Id.)
21. The “Darkness” packet noted that it “Does NOT Contain: JWH-018,073,081,200,250, HU-210,211, CP-047,497,55, Cannabicyclohexanol, or Salvia.” (Id.)
22. Although the “Darkness” packet claimed it did not contain certain illegal or prohibited ingredients, when tested, the vegetation inside the “Darkness” packet did contain AM2201, 1-pentyl-3-(4-ethylnaphth-1-oyl)indole (“JWH-210”), 1-pentyl-3-(4-methylnaphth-1-oyl)indole (“JWH-122”), all of which have chemical structures which are substantially similar to JWH-018. (See Exhibit 3).

---

<sup>2</sup> The original lab report and affidavit for Exhibit 3 are in the possession of the Highland County Sheriff’s Office.

<sup>3</sup> At the time of the transaction at issue, AM2201 was a controlled substance analog 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 and JWH-018 are Schedule I Controlled Substances. R.C. 3719.41(C)(67)(a).

23. "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>)
24. "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>)
25. Unlike typical incense which is composed of certain biotic materials, the products represented as "incense" and sold by Defendants 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.deal.gov](http://www.deal.gov)).
26. 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.
27. Defendant offered for sale and sold synthetic narcotics/illegal drugs as legal products.

**PLAINTIFF'S CAUSE OF ACTION:**

**VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT**

**COUNT I**

**UNFAIR AND DECEPTIVE ACTS AND PRACTICES**

28. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Seven (1-27) of this Complaint.
29. 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.

30. 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.
31. 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**

32. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Seven (1-27) of this Complaint.
33. 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.
34. 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**

35. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-Seven (1-27) of this Complaint.



36. 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 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 Jasmeen Enterprises, Inc., under its own name or any other names, including, but not limited to, Rocky Road 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 Jasmeen Enterprises, Inc., doing business as Rocky Road 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 Jasmeen Enterprises, Inc., doing business as Rocky Road 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 Jasmeen Enterprises, Inc., doing business as Rocky Road Mini Mart, to reimburse the Ohio Attorney General for all costs incurred in bringing this action.
- F. ORDER Defendant Jasmeen Enterprises, Inc., doing business as Rocky Road 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, 14<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
(614) 466-8169; (866) 528-7423 (facsimile)  
[melissa.wright@ohioattorneygeneral.gov](mailto:melissa.wright@ohioattorneygeneral.gov)



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 Rocky Road Mini Mart, located at 1111 North Shore Drive, Hillsboro, Ohio 45133, 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 Rocky Road Mini Mart 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 13<sup>th</sup> 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 Rocky Road Mini Mart.
5. The CI's approached the checkout counter and asked to purchase "K2". The store clerk said he did not have "K2" but had something like it and that "a lot of people buy it". The store clerk said he had "Funky Green". The CI asked if he had anything different to which the clerk stated "yeah". The clerk then reached beneath the counter and pulled out the three different kinds of "incense" they sold to customers.
6. The CI's purchased two packets of "incense" suspected to be K2 from the Rocky Road Mini Mart for a total of \$40.20. The two packets were called "Mad Hatter" Incense and "Darkness" Incense.
7. That same day, the CI's turned over the purchased items to the Highland County Sheriff's Office.
8. On March 9, 2012, I submitted the substances in the two packets described above Ohio Bureau of Criminal Identification and Investigation (BCI) Laboratory with instructions to test for the presence of a controlled substance.

STATE'S  
EXHIBIT

1

FURTHER AFFIANT SAYETH NAUGHT.

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

Sworn to and subscribed in my presence this 14<sup>th</sup> 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







**Not for  
human consumption**

**The manufacturer  
and/or seller of this product  
is not responsible for misuse.**

**For more info please go to:  
[www.doud9blend.com](http://www.doud9blend.com)**



# 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: 12-10096

Date: February 01, 2012

Agency Case Number: 12R0018

Offense: Possession  
Subject(s): Sunoco  
Victim(s): State of Ohio

### Submitted on January 06, 2012 by Det. Sgt. Croy:

1. Plastic bag containing package containing vegetation (HCSO #1).

### Findings

1. One (1) packet marked "Funky Green Stuff - Reggie's Blend" containing vegetation - 1.9 grams - found to contain 5-methoxy-N,N-diallyltryptamine (5-MeO-DALT), 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201), 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122), and 1-pentyl-3-(4-ethyl-1-naphthoyl)indole (JWH-210).

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

The chemical structures of 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201), 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122), and 1-pentyl-3-(4-ethyl-1-naphthoyl)indole (JWH-210) are all substantially similar to 1-pentyl-3-(1-naphthoyl)indole (JWH-018).

STATE'S  
EXHIBIT

3

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

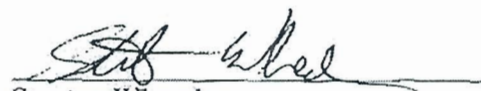

[X] BCI & I-London Office  
P.O. Box 365  
London, OH 43140  
Phone:(740)845-2000

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



Ohio Bureau of Criminal Identification & Investigation  
BCI&I London

Laboratory: 12-10096  
Date: February 01, 2012  
Agency Case: 12R0018

  
Stanton Wheasler  
Forensic Scientist  
740-845-2623  
Stanton.Wheasler@ohioattorneygeneral.gov  


Analytical findings offered above were determined using accepted forensic drug chemistry methods.

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, Stanton W. Wheasler, being duly sworn state 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 Chemistry from The Ohio State University, Columbus, Ohio, awarded June 2007. Coursework in General Chemistry, Organic Chemistry, Analytical Chemistry, Physical Chemistry, Inorganic Chemistry, Forensic Science, Biochemistry, Biology, Physics, and Calculus.

### TRAINING

1. Specialized training in the identification of controlled substances from the Ohio Bureau of Criminal Identification and Investigation's Forensic Chemistry Laboratory in London, Ohio.
2. The Drug Enforcement Administration's Forensic Chemist Seminar, offered at the DEA Special Testing and Research Laboratory in Dulles, Virginia
3. Marijuana Identification Course offered by the Ohio Peace Officers Training Academy in London, Ohio.
4. Introduction to Forensic Drug Chemistry Course through West Virginia University Extended Learning.

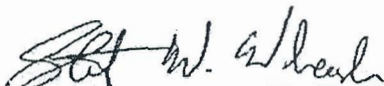
### EXPERIENCE

1. Employed with the Ohio Bureau of Criminal Identification and Investigation since February 1, 2010. Duties include identifying controlled substances.

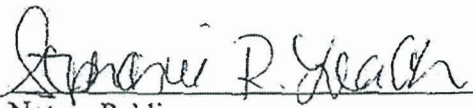
2. Employed by Boehringer Ingelheim Roxane Incorporated from June 2007 until January 2010. Duties were to identify and determine the purity of raw drug substances prior to their manufacture into human pharmaceutical products.

I further attest that in case number 12-10096, 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.

  
Stanton W. Wheasler

Sworn and acknowledged before me on February 2, 2012 in London, Madison County, Ohio.

  
Notary Public



STEPHANIE R. LEACH  
Notary Public, State of Ohio  
My Commission Expires 3/26/14

OHIO REVISED CODE 2925.51 (C) & (D)

THE ATTACHED LAB REPORT IS PRIMA FACIE 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.



*Darkness*

Promo  
2g  
Pack

**SUPER XXX AROMATIC INCENSE SMALL**

FOR AROMATHERAPY USE ONLY, NOT FOR HUMAN CONSUMPTION

NOT FOR SELL TO MINORS, 19+ ONLY

CONTAINS- PROPRIETARY BLEND OF HERBS AND SPICES, NATURAL  
AND SYNTHETIC SCENTS, OILS AND AROMATIC ENHANCERS

Does NOT Contain: JWH-018,073,081,200, 250, HU-210,211,  
CP-047,497,55, Cannabicyclohexanol, or Salvia

WARNING- MISUSE OF THIS PRODUCT MAY BE HARMFUL OR FATAL.  
USE ONLY AS DIRECTED.

THE MANUFACTURER 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.

01/12/17  
182-1#8411-21

PENGAD 800-631-6989

STATE'S  
EXHIBIT

4-A



50 Pack

## SUPER XXX AROMATIC INCENSE SMALL

FOR AROMATHERAPY USE ONLY, NOT FOR HUMAN CONSUMPTION

NOT FOR SELL TO MINORS, 19+ ONLY  
CONTAINS- PROPRIETARY BLEND OF HERBS AND SPICES, NATURAL  
AND SYNTHETIC SCENTS, OILS AND AROMATIC ENHANCERS

Does NOT Contain: JWH-018,073,081,200, 250, HU-210,211,  
CP-047,497,55, Cannabicyclohexanol, or Salvia

**WARNING- MISUSE OF THIS PRODUCT MAY BE HARMFUL OR FATAL.  
USE ONLY AS DIRECTED.**

THE MANUFACTURER 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.**