IN THE COURT OF COMMON PLEAS HIGHLAND COUNTY, OHIO

STATE OF OHIO, ex rel.

MICHAEL DEWINE

ATTORNEY GENERAL OF OHIO 30 East Broad Street, 14th Floor

Columbus, Ohio 43215

JUDGE COSS

CASE NO.

13 CN 0205

JUN 1 4 2013

Plaintiff,

v.

COMPLAINT, REQUEST FOR

DECLARATORY JUDGMENT,

INJUNCTIVE RELIEF, CONSUMER

c/o Kirit S. Joshi RESTITUTION, AND CIVIL PENALTIES Statutory Agent

1111 North Shore Boulevard

D/B/A East Main Mini Mart,

Shri Ganesha Enterprises, Inc.,

Hillsboro, Ohio 45133

Defendant.

JURISDICTION AND VENUE

- Plaintiff, Ohio Attorney General Michael DeWine, having reasonable cause to believe 1. that violations of Ohio's consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., and its Substantive Rules, Ohio Administrative Code, 109:4-3-01 et seq.
- 2. The actions of Defendant, hereinafter described, have occurred in Highland County and the State of Ohio, and as set forth below are in violation of the CSPA and its Substantive Rules.
- 3. This court has subject matter jurisdiction over this action pursuant to R.C. 1345.04.

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

- Defendant Shri Ganesha Enterprises, Inc., doing business as East Main Mini Mart ("East Main Mini Mart" or "Defendant"), is an Ohio corporation with its principal place of business located at 489 East Main Street, 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, 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 "Aromatic Incense."
- 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.
- On January 11, 2012, two confidential informants operating under the direction of the Highland County Sheriff's Office, went to Defendant's store located at 489 East Main

- Street, Hillsboro, Ohio 45133, for the purpose of purchasing some "K2." (Affidavit of Detective Sergeant Daniel Croy, Exhibit 1 at ¶3)
- 10. Upon approaching the check-out counter, there was a customer in front of the confidential informants purchasing "K2." (Id. at ¶5)
- 11. The confidential informants asked the customer if the product was any good and Defendant's clerk said, "Yes, it was good" and that she had others. (Id.)
- 12. At that point, the confidential informants asked to see the product, so Defendant's store clerk reached beneath the counter to obtain the products and showed the confidential informants three different types of "incense" that Defendant sold. (Id. at ¶6)
- 13. Defendant's clerk stated that "Mad Hatter" was popular and then mentioned which type of the product people liked best. (Id.)
- 14. Defendant's clerk then told the confidential informants that another store was selling K2, but hers was better and it was "guaranteed to get you high." (Id.)
- 15. The confidential informants purchased three packets of "incense" suspected to be K2 for a total of \$64.00. (Id. at¶ 7)
- 16. The three products purchased were labeled as (1) "Cloud 9 Mad Hatter" Incense, (2) "Darkness" Super XXX Aromatic Incense, and (3) "Funky Green Stuff Reggie's Blend" Aromatic Incense. (Id.)
- 17. Upon their purchase of the three packets labeled as "incense," Defendant's clerk also gave the confidential informants a pack of "JOB" slow burning rolling papers. (Id. at ¶8; Photographs of the "JOB" slow burning rolling papers, Exhibit 2)

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

- 18. The "Cloud 9 Mad Hatter" incense was sold in a 3 gram packet which was labeled "Not for human consumption." (Photographs of the "Cloud 9 Mad Hatter" packet, Exhibit 3)
- 19. When tested, the vegetation inside the "Mad Hatter" packet contained 1-(5-fluoropentyl)3-(1-naphthoyl)indole ("AM2201") ², whose chemical structure is substantially similar to
 1-pentyl-3-(1-naphthoyl)indole ("JWH-018"). (February 1, 2012 BCI&I Laboratory
 Report No. 12-10313 and February 2, 2012 Affidavit of BCI&I Laboratory Forensic
 Scientist Stanton Wheasler, Exhibit 4).
- 20. JWH-018 is a Schedule I Controlled Substance. (See R.C. 3719.41(C)(35)) (amended 2012)³
- 21. The "Darkness" "Super XXX Aromatic Incense" was sold in a 2 gram packet which was labeled ""FOR AROMATHERAPHY USE ONLY, NOT FOR HUMAN CONSUMPTION" and "NOT FOR SELL [sic] TO MINORS, 19+ ONLY." (Photograph of the "Darkness" packet, Exhibit 5)
- 22. The "Darkness" packet noted that it contained "PROPRIETARY BLEND OF HERBS AND SPICES, NATURAL AND SYNTHETIC SCENTS, OILS AND AROMATIC ENHANCERS." (Id.)
- 23. 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.)

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, 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 both Schedule I Controlled Substances. R.C. 3719.41(C)(67)(a).

- 24. 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-methylnaphth-1-oyl)indole ("JWH-122"), and 1-pentyl-3-(4-ethylnaphth-1-oyl)indole ("JWH-210") ⁴, all of which have chemical structures which are substantially similar to JWH-018. (See Exhibit 4).
- 25. The "Funky Green Stuff" was sold in a 2 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 6)
- 26. The "Funky Green Stuff" packet noted that it contained "proprietary blend of herbs and spices, natural and synthetic scents, oils and aromatic enhancers." (Id.)
- 27. The "Funky Green Stuff" packet noted that it "Does NOT Contain: JWH-018, 073, 081, 200, 250, HU-210, 211, CP-047, 497, 55, Cannabicyclohexanol or Salvia." (Id.)
- 28. 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 AM2201, JWH-122, and JWH-210, all of which have chemical structures which are substantially similar to JWH-018. (See Exhibit 4)
- 29. In addition, the vegetation inside the "Funky Green Stuff" packet also contained N,N-diallyl-5-methoxtryptamine ("5-MeO-DALT"), whose chemical structure is substantially similar to 5-methoxy-N,N-diisopropyltryptamine ("5-MeO-DIPT"). (See Exhibit 4)

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).

- 30. 5-MeO-DIPT is a Schedule I Controlled Substance. (See R.C. 3719.41 and R.C. 3719.43)

 (amended 2012)⁵
- 31. Defendant sold products in packets that claim that they are "not for human consumption," yet Defendant sold those products with rolling papers that can only be used for one purpose which is the smoking of the product.
- 32. "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)
- 33. "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)
- 34. Unlike typical incense, which is composed of certain biotic materials, the vegetation represented as "incense" and sold by Defendant was 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).
- 35. Defendant sold products labeled as "incense" which contained various illegal Schedule I Controlled Substances for which the ordinary and customary use for such products is to be smoked and consumed as a drug by humans.

⁵ 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).

36. 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

- 37. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Six (1-36) of this Complaint.
- 38. 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.
- 39. 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.
- 40. 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

- 41. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Six (1-36) of this Complaint.
- 42. 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.

43. 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

- 44. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Six (1-36) of this Complaint.
- 45. 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 included 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 Shri Ganesha Enterprises, Inc., under its own name or any other names,

including, but not limited to, East Main 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 Shri Ganesha Enterprises, Inc., doing business as East Main 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 Shri Ganesha Enterprises, Inc., doing business as East Main 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 Shri Ganesha Enterprises, Inc., doing business as East Main Mini Mart, to reimburse the Ohio Attorney General for all costs incurred in bringing this action.
- F. ORDER Defendant Shri Ganesha Enterprises, Inc., doing business as East Main 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 East Main Mini Mart, located at 489 East Main Street, Hillsboro, Ohio 45133, was selling a substance called "K2."
- 3. On January 11, 2012, two CI's, operating under the direction of the Highland County Sheriff's Office, went to the East Main Mini Mart for the purpose of purchasing some "K2". The CI's were given \$150.00 of pre-recorded money and sent into this store equipped with digital audio and video recorders.
- 4. After the January 11th 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 East Main Mini Mart.
- 5. The CI's stood in line at the checkout counter behind a customer purchasing "K2." After this customer completed his transaction, the CI's asked the customer if the product was any good and the store clerk said, "Yes, it was good" and that she had others.
- 6. The store clerk then reached beneath the counter and pulled out the three different kinds of "incense" they sold to customers. The clerk even mentioned that customers usually like the substance called "Mad Hatter" the best. The store clerk also told the CI's that another store was selling "K2" but that hers was better and it was "guaranteed to get you high."
- 7. The CI's purchased three packets of "incense" suspected to be K2 from the East Main Mini Mart for a total of \$64.00. The three packets were called "Mad Hatter," "Funky Green Stuff," and "Darkness."
- 8. The store clerk also gave the CI's a package of "JOB" slow burning rolling papers with their purchase.



- 9. That same day, the CI's turned over the purchased items to the Highland County Sheriff's Office.
- 10. On January 12, 2012, I submitted the substances in the three packets described above to the 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 Cray DET. SGT. DANIEL S. CROY
_	DET. SGT. DANIEL S. CROY
Sworn to and subscribed in my presence this, County	y of Highland, State of Ohio.
_	Jacqueire Zue 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



STATE'S EXHIBIT 2 - A



STATE'S EXHIBIT 2-0



STATE'S
EXHIBIT
3





Bureau of Criminal Identification and Investigation

Laboratory Report

To:

Highland County Sheriff's Office

BCI&I Laboratory Number:

12-10313

Det. Sgt. Croy

130 Homestead Ave.

Date:

February 01, 2012

Hillsboro OH 45133

Agency Case Number:

12PTF12

Offense:

Drug Trafficking

Subject(s):

East Main Mini Mart Sunoco

Victim(s):

State of Ohio

Submitted on January 12, 2012 by Det. Sgt. Croy:

1. Plastic bag containing packages containing unknown substance and box of rolling paper.

Findings

- 1.1. One (1) packet marked "Cloud 9 Mad Hatter" containing vegetation 2.9 grams found to contain 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201).
- 1.2. One (1) packet marked "Darkness" containing vegetation 1.9 grams found to contain 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).
- 1.3. One (1) packet marked "Funky Green Stuff Reggie's Blend" containing vegetation 1.8 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).
- 1.4. Rolling papers Not tested.

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).

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

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

Ohio Bureau of Criminal Identification & Invest. BCI&I London

Date: Agency Case:

12-10313 February 01, 2012 12PTF12

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.

AFFIDAYIT

(

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

 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.
- 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.
- Introduction to Forensic Drug Chemistry Course through West Virginia University Extended Learning.

EXPERIENCE

 Employed with the Ohio Bureau of Criminal Identification and Investigation since February 1, 2010. Duties include identifying controlled substances. 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 12-10313, 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 Floruana, 2, 2012 in London,

Madison County, Ohio.

c

STEPHANIE R. LEACH
Notary Public, State of Ohlo
My Commission Expires 22021

Wheel

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,



small Reggie's

9890106

Bend

For Aromatherapy Use Only. Not for sell to minors 19 Does NOT Contain: JWH-018,073,081,200,250, HU-210 CP-047,497,55, Çannabicyclohexanol, or Salva Contains: proprietary blend of herbs and spices. Warning-Misuse of this product may be harmful and synthetic scents, oils and aromatic er Use only as directed. Not for human cons liability for the incorrect or misuse of this product. Directions: place a small amount of incense over a The manufacturers and sellers of this product tak

STATE'S EXHIBIT

PENGAD 800-631-6989