

FILED
 IN THE COURT OF COMMON PLEAS
 ASHTABULA COUNTY, OHIO

STATE OF OHIO, *ex rel.*
 ATTORNEY GENERAL
 MICHAEL DEWINE

2014 JAN 21 : A 11: 24

TAMI PENTER
 CLERK OF COURTS
 COMMON PLEAS COURT
 ASHTABULA CO OH
 JUDGE RONALD W. VETTEL

CASE NO. 2013 CV 00108

Plaintiff/Relator,

v.

BLUE DRAGON LEATHER, et al.

Defendants/Respondents.¹

:
 :
 : DEFAULT JUDGMENT ENTRY AND
 : ORDER AGAINST DEFENDANTS
 : BLUE DRAGON LEATHER, RICHARD
 : LEAVITT, AND DAVID NOTTINGHAM

This cause came to be heard upon Plaintiff/Relator's Motion for Default Judgment against Defendants/Respondents Blue Dragon Leather, Richard K. Leavitt ("Leavitt"), and David Arthur Nottingham ("Nottingham") ("Defendants"), pursuant to Civ. R. 55(A).² Defendants were properly served in this matter and have failed to file an answer to Plaintiff's Complaint or defend against this motion or appear before the Court in any manner. The Court finds the motion well taken and hereby grants and sustains Plaintiff/Relator's Motion for Default Judgment. The Court, based on that motion and Plaintiff Complaint, hereby renders the following Default Judgment Entry and Order.

¹ The action brought pursuant to the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq., only applies to Defendants/Respondents Blue Dragon Leather and Richard Leavitt. The action brought pursuant to Ohio's Public Nuisance laws pertains to all named Defendants/Respondents in this matter, including Defendant/Respondent David Arthur Nottingham.

² Pursuant to a Motion to Dismiss filed by Plaintiff, this Court dismissed Defendant Nottingham from this action on January 10, 2014. Therefore, the default judgment shall only apply to Defendants Blue Dragon Leather and its owner, Richard K. Leavitt.

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FINDINGS OF FACT

1. Defendant Blue Dragon Leather was an Ohio sole proprietorship, Richard K. Leavitt, proprietor, with its principal place of business formerly located at 3315 North Ridge Road East, Unit #700, Suite 480, Ashtabula, Ohio 44004.
2. Defendant Richard Leavitt ("Leavitt") is a resident of the State of Ohio and Ashtabula County and was the owner of Blue Dragon Leather.
3. Defendant Leavitt, at all times relevant hereto, operated, dominated, controlled and directed the activities of Blue Dragon, causing, personally participating in, and/or ratifying the acts and practices of Blue Dragon, as described in Plaintiff's Complaint.
4. Specifically, Defendant Leavitt participated personally in the unfair, deceptive, and unconscionable acts and practices described in Plaintiff's Complaint as he personally sold synthetic narcotics/illegal drugs as legal products to an undercover special agent. Accordingly, Leavitt is liable for those acts in which he personally participated as well as the acts of Blue Dragon, its employees and other agents because Leavitt controlled and/or directed these acts.
5. David Nottingham ("Nottingham") is a resident of the State of Ohio and Ashtabula County, Ohio and was an employee of Blue Dragon.
6. Defendants were, at all relevant times, engaged in the business of soliciting, offering, and selling, *inter alia*, synthetic narcotics/illegal drugs to consumers which were represented as "Potpourri."
7. Defendants sold synthetic narcotics/illegal drugs in packets that failed to disclose the full list of ingredients contained in the products and further omitted the illegal ingredients contained in the products.

8. Between December 31, 2012 and January 30, 2013, the Ohio Bureau of Criminal Identification and Investigation ("BCI&I"), the Trumbull/Ashtabula Group Law Enforcement Task Force ("TAG"), and the Ohio State Board of Pharmacy conducted undercover investigations into Defendants' sale of synthetic narcotics/illegal drugs as legal products.
9. On three separate occasions - December 31, 2012, January 25, 2013, and January 30, 2013 - BCI&I Special Agent Scott Stranahan ("S/A Stranahan"), operating in an undercover capacity at the direction of BCI&I, TAG, and the Ohio State Board of Pharmacy, went to Blue Dragon and purchased products from Defendants that were labeled as "potpourri" but which contained illegal Schedule I Controlled Substances.
10. On December 31, 2012, S/A Stranahan, operating in an undercover capacity, went to Blue Dragon, located at 3315 North Ridge Road East, Unit #700, Suite 480, Ashtabula, Ohio 44004, for the purpose of purchasing synthetic narcotics/illegal drugs.
11. Upon entering Blue Dragon, S/A Stranahan approached a display case containing packages of cigarette wrapping papers and was approached by an employee of Blue Dragon, later determined to be David Nottingham.
12. Nottingham asked S/A Stranahan if was "looking for anything specific."
13. In response, S/A Stranahan asked Nottingham if they had any "spice for sale."
14. Nottingham told S/A Stranahan that he had used the "wrong word" and that his store had "potpourri and incense" for sale. Nottingham then retrieved two unmarked grey containers from a shelf behind the display case.

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15. Nottingham pulled three different packages of "potpourri" from the container and told S/A Stranahan that the 10 gram packet of "Scooby Snax" sold for \$60.00, the 4 gram packet of "Scooby Snax" sold for \$32.00 and the packet of "Caution" sold for \$32.00.
 16. Nottingham also informed S/A Stranahan that the 10 gram packet of "Scooby Snax" was the "best value."
 17. S/A Stranahan purchased a 10 gram packet of "potpourri" suspected to be synthetic narcotics from Nottingham for a total of \$60.00. The 10 gram packet of "potpourri" was labeled as "Scooby Snax" and claimed that it was a "Legal Herbal Sachet" and it "NOT FOR HUMAN CONSUMPTION."
 18. The front of the "Scooby Snax" packet noted that it "Does not contain AM2201 or any DEA Banned *[sic]* Substance."
 19. The back of the "Scooby Snax" packet contained the following notice: "DISCLAIMER: This product has been certified by laboratory analysis and does not contain JWH-012, 073, CP47, 497, HU-210 or any other chemical and/or ingredients prohibited by state or federal law. The product is designed specifically for aromatic potpourri use and is not meant to be burned, smoked, or incinerated in any manner. It should be kept out of the reach of children. The manufacturer, wholesaler, and/or retailer are not responsible for any misuse of this product by the consumer."
 20. In addition, the back of the "Scooby Snax" packet also contained warnings that read: "Must be 18 or older to purchase" and "KEEP OUT OF THE REACH OF CHILDREN."
 21. Although the "Scooby Snax" packet claimed it did not contain any illegal or prohibited ingredients, when tested, the vegetation inside the packet of "Scooby Snax" Potpourri did

- contain [1-(5-fluoropentyl)indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone ("XLR11").
22. In addition, the vegetation inside the "Scooby Snax" Potpourri contained (1-pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone ("UR-144").
 23. XLR11 is a Schedule I Controlled Substance. (See R.C. 3719.41(C)(41))
 24. UR-144 is a Schedule I Controlled Substance. (See R.C. 3719.41(C)(42))
 25. On January 25, 2013, S/A Stranahan, again operating in an undercover capacity, went to Blue Dragon, located at 3315 North Ridge Road East, Unit #700, Suite 480, Ashtabula, Ohio 44004, for the purpose of purchasing synthetic narcotics/illegal drugs.
 26. Upon entering Blue Dragon, S/A Stranahan saw David Nottingham, the same employee from whom he'd made the previous purchase on December 31, 2012.
 27. Nottingham asked S/A Stranahan if he was "looking for anything specific."
 28. In response, S/A Stranahan asked Nottingham if they had any "potpourri and incense" for sale.
 29. In response, Nottingham turned around and obtained a cardboard box which contained two empty cardboard Duracell battery packages. He reached into one of the Duracell packages and removed three foil envelopes and placed them on the counter.
 30. Two of the foil envelopes were yellow and labeled "Caution." The third envelope was black with a multi-colored design and was labeled "Down2Earth Climaxxx Power Plant Fragrant Potpourri."
 31. Nottingham told S/A Stranahan that "Caution" was sold for \$32.00 and that the "Down2Earth" was sold for \$60.00. Nottingham also said that "Down2Earth" was the "best value" because it contained ten grams of "potpourri."

32. As S/A Stranahan had made a prior purchase of "Scooby Snax," he asked Nottingham if he had any more of that type.
33. In response, Nottingham said he did not have any envelopes of "Scooby Snax" available for sale and indicated he was unable to obtain additional quantities.
34. S/A Stranahan purchased one packet of "Down2Earth Climaxxx Power Plant Fragrant Potpourri," suspected to be synthetic narcotics, from Nottingham for a total of \$60.00.
35. The packet of "Down2Earth Climaxxx Power Plant Fragrant Potpourri" was sold in a 10 gram packet and contained the following warnings on the back: "Not for consumption. Keep out of reach of children. Must be 18 or older to purchase."
36. The "Down2Earth Climaxxx Power Plant Fragrant Potpourri" packet claimed that it was "Lab Certified" and contained the following notice on the back: "Does not contain JWH-018, JWH-073, JWH-200, CP47, 497, HU-210, HU-211, AM-694, Cannabicyclohexanol, or any other prohibited ingredients."
37. Although the "Down2Earth Climaxxx Power Plant Fragrant Potpourri" packet claimed it did not contain any illegal or prohibited ingredients, when tested, the vegetation inside the packet of "Down2Earth Climaxxx Power Plant Fragrant Potpourri" did contain the illegal substance UR-144.
38. On January 30, 2013, S/A Stranahan, again operating in an undercover capacity, went to Blue Dragon, located at 3315 North Ridge Road East, Unit #700, Suite 480, Ashtabula, Ohio 44004, for the purpose of purchasing synthetic narcotics/illegal drugs.
39. Upon entering Blue Dragon, S/A Stranahan observed a male employee, who was later identified as Richard Leavitt, the owner of Blue Dragon seated behind the grey service counter.

40. While S/A Stranahan was walking through store, Leavitt asked him if he was "looking for anything specific."
41. S/A Stranahan asked Leavitt if they had any "potpourri or incense" available for sale.
42. In response, Leavitt replied by saying he had potpourri but wanted to know what brand S/A Stranahan wanted. S/A Stranahan asked Leavitt if they had any "Scooby Snax" available, to which Leavitt replied that he did not have "Scooby Snax" available for sale because it was recently "banned."
43. Leavitt continued to say that the company which produced the "Scooby Snax" brand was in the process of making a new product but he could not provide a date he would have "Scooby Snax" available for sale in his store.
44. Leavitt told S/A Stranahan that he currently had the brand names "California Dreams," "Caution" and "Berry Needle" available for sale.
45. S/A Stranahan asked Leavitt if he had any "Down2Earth" potpourri available for sale, to which Leavitt confirmed that he did have "Down2Earth" available for sale.
46. S/A Stranahan asked Leavitt if he would be willing to sell ten packets of the "Caution" brand potpourri for \$180.00, but after entering a series of numbers into a calculator on the counter, Leavitt indicated he was unable to sell ten packages of the "Caution" brand potpourri for \$180.00.
47. S/A Stranahan then asked Leavitt if he would be willing to sell a quantity of "Down2Earth" potpourri for \$180.00, to which Leavitt agreed to sell S/A Stranahan three packets of "Down2Earth" brand potpourri for \$180.00.

48. From a cabinet door under the counter, Leavitt pulled out a large white plastic "Target Store" bag out of which he removed three packets of "Down2Earth" "potpourri" and placed them on top of the counter.
49. S/A Stranahan purchased three packets of "Down2Earth" "potpourri," suspected to be synthetic narcotics, from Leavitt for a total of \$180.00.
50. Two packets of the "Down2Earth" "potpourri" were sold in 10 gram packets and were labeled as "Down2Earth Climaxxx Power Plant Fragrant Potpourri."
51. Each of the two "Down2Earth Climaxxx Power Plant Fragrant Potpourri" packets contained the following warnings on the back: "Not for consumption. Keep out of reach of children. Must be 18 or older to purchase."
52. Additionally, each of the two "Down2Earth Climaxxx Power Plant Fragrant Potpourri" packets claimed that it was "Lab Certified" and contained the following notice on the back: "Does not contain JWH-018, JWH-073, JWH-200, CP47, 497, HU-210, HU-211, AM-694, Cannabicyclohexanol, or any other prohibited ingredients."
53. The third packet of "Down2Earth" "potpourri" was sold in a 10 gram packet and was labeled as "Down2Earth Climaxxx Pineapple Fragrant Potpourri."
54. The "Down2Earth Climaxxx Pineapple Fragrant Potpourri" packet contained the following warning on the back: "NOT FOR CONSUMER. KEEP AWAY FROM CHILDREN. MUST BE 18 OR OLDER TO PURCHASE."
55. Additionally, the "Down2Earth Climaxxx Pineapple Fragrant Potpourri" packet claimed that it was "Lab Certified" and contained the following notice on the back: "DOES NOT CONTAIN JWH-018, JWH-073, JWH-81, JWH-122, JWH-200, JWH-250, JWH-398,

CP47, 497, HU-210, HU-211, AM-694, CANNABICYCLOHEXANOL, OR ANY OTHER PROHIBITED INGREDIENTS.”

56. Although each of the three “Down2Earth Climaxxx Fragrant Potpourri” packets claimed they did not contain any illegal or prohibited ingredients, when tested, the vegetation inside all three packets of “Down2Earth Climaxxx Fragrant Potpourri” did contain the illegal substance UR-144.
57. “Potpourri” is defined as “a mixture of flowers, herbs, and spices that is usually kept in a jar and used for scent.” (<http://www.merriam-webster.com/dictionary/potpourri>)
58. Unlike typical potpourri, which is composed of naturally fragrant plant materials, the vegetation represented as potpourri and sold by Defendants is 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)
59. Defendants sold products labeled as “Potpourri” which contained 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.
60. Defendants offered for sale and sold synthetic narcotics/illegal drugs as legal products.
61. Defendant Leavitt, at all relevant times, authorized, directed, ratified, and personally committed or participated in the acts and practices described in Paragraphs (6) – (60) above.

CONCLUSIONS OF LAW

62. The Court has jurisdiction over the subject matter, issues and parties to this action pursuant to R.C. 1345.04, R.C. 3767.03, and R.C. 4729.53.
63. The Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Ashtabula County.
64. The business practices of Defendants Blue Dragon and Leavitt, as described herein and in Plaintiff's Complaint, are governed by the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder, by Chapter 3767 of the Revised Code.
65. The Ohio Attorney General, acting on behalf of the citizens of Ohio, and in the best interest of this state, is the proper party to commence this action under the authority of the 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.
66. Defendants Blue Dragon and Leavitt are "suppliers," as defined in R.C. 1345.01(C), as Defendants Blue Dragon and Leavitt were, 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, misrepresented as "potpourri" products, to individuals in Ashtabula 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).
67. Defendants Blue Dragon Leather and Leavitt have 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.

68. Defendants Blue Dragon Leather and Leavitt have 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 their products contained Schedule I controlled substances, thus making the products illegal.
69. Defendants Blue Dragon Leather and Leavitt have 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.
70. Defendants Blue Dragon Leather and Leavitt have 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 their "potpourri" products. Specifically, while Defendants' "potpourri" products contained statements that they did not contain any prohibited ingredients or that they only contained certain ingredients, Defendants Blue Dragon Leather and Leavitt failed to disclose that the products contained other Schedule I controlled substances, thus making the products illegal.
71. Defendant Richard Leavitt participated personally in the unfair, deceptive, and unconscionable acts and practices described herein and in Plaintiff's Complaint as he personally sold synthetic narcotics/illegal drugs as legal products to an undercover special agent. Accordingly, Richard Leavitt is liable for those acts in which he personally participated as well as the acts of Blue Dragon Leather, its employees and other agents because Richard Leavitt controlled and/or directed those acts.

72. Defendants have committed, participated in the commission of, and/or aided and abetted in the commission of felony violations of R.C. 2925.03, Trafficking in Drugs, and are thus liable of maintaining a public nuisance under R.C. 3719.10.

73. Defendants have committed, participated in the commission of, and/or abetted the commission of violations of R.C. 2925.03, a law of the State of Ohio controlling the distribution of a drug of abuse. A violation of any law of Ohio controlling the distribution of a drug of abuse constitutes a public nuisance under R.C. 4729.35.

74. Violations of R.C. 2925.03 unreasonably interfere with the public right to health, safety, peace, and comfort, thereby creating a public nuisance.

75. Defendants have violated Chapter 2925 of the Revised Code and have therefore maintained a nuisance subject to abatement pursuant to Chapter 3767 of the Revised Code.

THEREFORE, IT IS 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 set forth in the Findings of Fact Paragraphs (6) through (61) and enumerated in the Conclusions of Law set forth above in Paragraphs (67) through (75) above violate the CSPA, R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder, in the manner set forth in Plaintiff's Complaint.
2. It is further DECLARED that, in accordance with R.C. 3767.02, Defendants are liable of maintaining a nuisance, in violation of R.C. 3719.10, R.C. 4729.35, and R.C. 2925.03.
3. It is further DECLARED that the property formerly located at 3315 North Ridge Road East, Unit #700, Suite 480, Ashtabula, Ohio 44004 (Parcel ID Nos. 030520000100 and 030520000401) is a public nuisance as defined in R.C. 3719.10, R.C. 4729.35, and R.C. 2923.42, and that Defendants are liable of maintaining that nuisance.

4. Defendants, under their own names or any other names, 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 (67) through (75).
5. 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., and the Substantive Rules enacted thereunder.
6. 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).
7. Defendant Richard K. Leavitt is hereby PERMANENTLY ENJOINED from operating, owning, having an ownership or other equitable interest in, a retail grocery, drive-thru beverage, or convenience store or assuming any position that affords Defendant Leavitt

the authority or ability to set policies and procedures for the business, or dominate, control, or direct the business activities and sales conduct of the business.

8. It is ORDERED that Defendants be taxed Three Hundred Dollars (\$300.00) in accordance with R.C. 3767.09.
9. Defendants are jointly and severally liable for investigatory costs in an amount to be determined at a future date set by this Court.
10. Defendants are jointly and severally assessed a civil penalty in an amount to be determined at a future date set by this Court.
11. Defendants are jointly and severally liable for all costs associated with bringing this action, including all court costs.

IT IS SO ORDERED.

DATE



JUDGE RONALD W. VETTEL

Respectfully submitted,

MICHAEL DEWINE
Attorney General



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Blue Dragon Leather, A Sole Proprietorship, c/o Richard K. Leavitt, Owner
3913 Ninevah Road, Ashtabula, Ohio 44004

Richard K. Leavitt, Individually and as Owner of Blue Dragon Leather
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