

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

Plaintiff,

v.

Discount Smokers & Gifts, Inc.,
c/o Cathy Chung
Statutory Agent
981 S. South Street
Wilmington, Ohio 45177

Defendant.

CASE NO. 14CV00004

JUDGE

FILED
COMMON PLEAS COURT
HIGHLAND COUNTY, OHIO

JAN 08 2014

HIGHLAND COUNTY, OHIO

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

JURISDICTION AND VENUE

1. Plaintiff, Ohio Attorney General Michael DeWine, having reasonable cause to believe 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

5. Defendant Discount Smokers & Gifts, Inc., also known as Discount Smokes & Gifts ("Discount Smoke & Gifts"), is an Ohio corporation which formerly operated a business located 342 Jefferson Street, Greenfield, Ohio 45123¹.
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, and selling, *inter alia*, "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 relevant times, engaged in the business of soliciting, offering, 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 packets that failed to disclose the full list of ingredients and further omitted the illegal ingredients contained in the product.

¹ On or about December 29, 2012, Cathy Jung, the owner of Discount Smokers & Gifts, Inc., sold the Greenfield store located at 342 Jefferson Street, Greenfield, Ohio 45123, and all inventory, to Robert Domino. A new business, Discount Smokes & Gifts, LLC, owned by Chastity V. Zayas-Domino, now operates from the 342 Jefferson Street location. Neither Ms. Zayas-Domino, Mr. Domino, nor Discount Smokes & Gifts, LLC are parties to this litigation.

9. On April 4, 2012, investigators from the Highland County Sheriff's Office and a Special Agent with the Ohio Bureau of Criminal Identification and Investigation ("BCI&I"), went to Defendant's store located at 342 Jefferson Street, Greenfield, Ohio 45123 for the purpose of purchasing some "K2."² (Affidavit of Detective Sergeant Daniel Croy, ¶3, Exhibit 1)
10. The BCI&I Special Agent purchased a packet of "incense" suspected to be K2. (Id. at ¶4)
11. The product purchased was labeled as "Shock Wave." (Id.)
12. The "Lime" "Shock Wave" incense was sold in a 3.5 gram packet which was labeled "NOT FOR HUMAN CONSUMPTION." (Photographs of the "Shock Wave" packet, Exhibit 2)
13. The "Shock Wave" packet also contained the following label: "Contains None Of The Following: JWH-018, JWH-073, JWH-081, JWH-200, JWH-250, JWH-398, HU-210, HU-211, or CP 47,497. (Id.)
14. Although the packet of "Shock Wave" claimed it did not contain certain illegal or prohibited ingredients, when tested, the vegetation inside the "Shock Wave" packet did contain 1-(5-fluoropentyl)-3-(1-naphthoyl)indole ("AM2201"), the chemical structure of which is substantially similar to 1-pentyl-3-(1-naphthoyl)indole ("JWH-018"). (May 21, 2012 BCI&I Laboratory Report No. 12-12725 and May 25, 2012 Affidavit of BCI&I Forensic Scientist Jessica Kaiser, Exhibit 3)³.

² "K2" is a brand of synthetic cannabis which contains various synthetic compounds which are Schedule I controlled substances. (See R.C. 3719.41(C)(67))

³ The original lab report and affidavit for Exhibit 3 are in the possession of the Highland County Sheriff's Office.

15. JWH-018 is a Schedule I Controlled Substance. (See R.C. 3719.41(C)(35)) (amended 2012)⁴
16. “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>)
17. Unlike typical incense, which is composed of certain biotic materials, the vegetation represented as “incense” and sold out of Defendant’s premises 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)
18. 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, were sold out of Defendant’s premises.
19. The synthetic narcotics/illegal drugs referred to in the foregoing paragraphs were offered for sale and sold as legal products.

⁴ 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, both AM2201 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

20. Paragraphs 1-19 of this Complaint are incorporated herein by reference.
21. 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.
22. 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.
23. 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

24. Paragraphs 1-19 of this Complaint are incorporated herein by reference.
25. 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.
26. 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

27. Paragraphs 1-19 of this Complaint are incorporated herein by reference.
28. 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 various substances identified as illegal Schedule I controlled substances, 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

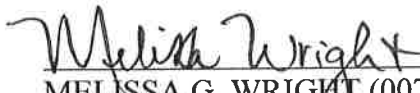
WHEREFORE, Plaintiff respectfully prays that this Court:

- 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 Discount Smokers & Gifts, Inc., under its own name, the name Defendant Discount Smokes & Gifts, or any other names, 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 Discount Smokers & Gifts, Inc. 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 Discount Smokers & Gifts, Inc. 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 Discount Smokers & Gifts, Inc. to reimburse the Ohio Attorney General for all costs incurred in bringing this action.
- F. ORDER Defendant Discount Smokers & Gifts, Inc. 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)
Assistant Section Chief
Consumer Protection Section
Counsel for Plaintiff, Ohio Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215-3428
(614) 466-8169; (866) 528-7423 (facsimile)
melissa.wright@ohioattorneygeneral.gov

STATE OF OHIO

COUNTY OF HIGHLAND

)
)
)

SS:

AFFIDAVIT OF

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 agents from the Ohio Bureau of Criminal Identification and Investigation (BCI).
2. The Highland County Sheriff's Office received information Discount Smokes & Gifts, located at 342 Jefferson Street, Greenfield, Ohio 45123, was selling a substance called "K2".
3. On April 4, 2012, investigators from the Highland County Sheriff's Office and a BCI Special Agent went to Discount Smokes & Gifts for the purpose of purchasing some "K2."
4. The BCI Special Agent purchased a 3.5 gram packet of "incense" suspected to be K2 from Discount Smoke & Gifts. This packet was called "Shock Wave".
5. That same day, the BCI Special Agent turned over the purchased items to the Highland County Sheriff's Office.
6. On April 17, 2012, I submitted the substance in the packet described above to 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

STATE'S
EXHIBIT
1



STATE'S
EXHIBIT

2

Contains
None Of The Following:
JWH-018 JWH-073 JWH-081
JWH-200 JWH-250 JWH-398
HU-210 HU-211 or CP-47,497



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: 12-12725

Date: May 21, 2012

Agency Case Number: 12R0420

Offense: Drug Trafficking
Subject(s): Smoke & Gifts (Jefferson)
Victim(s): State of Ohio

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

1. Plastic bag containing plastic package of opened Shock Wave.

Findings

1. Foil pouch labeled "Shock Wave" containing vegetation - 2.8 grams - found to contain 1-(5-fluoropentyl)-3-(naphth-1-oyl)indole (AM2201); the chemical structure of which is substantially similar to 1-pentyl-3-(1-naphthoyl)indole (JWH-018)

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.

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

☒ 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

Page 1 of 1

STATE'S
EXHIBIT

3

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

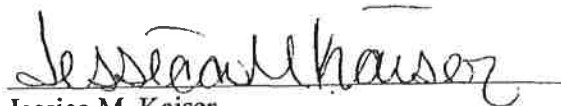
1. Specialized training in the analysis of controlled substances at the Kansas Bureau of Investigation in Great Bend, Kansas.
2. Basic Drug Identification Workshop with MAFS in Kansas City, Kansas.
3. Drug Enforcement Administration Forensic Chemist Seminar with the Drug Enforcement Administration Research 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 12-12725, 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

Sworn and acknowledged before me on May 25, 2013 in London,
Madison County, Ohio.


Notary Public



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

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