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| <p>DISTRICT COURT, BOULDER COUNTY, COLORADO Boulder County Justice Center 1777 Sixth Street. Boulder CO 80302</p> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL</p> <p>Plaintiff,</p> <p>v.</p> <p>YONGBRO CORPORATION D/B/A TOBACCO KING, SANG LEAMING, INDIVIDUALLY</p> <p>Defendants.</p> | <p style="text-align: center;">▲ COURT USE ONLY ▲</p> |
| <p>JOHN W. SUTHERS, Attorney General JAY B. SIMONSON, 24077* First Assistant Attorney General JEFFREY M. LEAKE, 38338 Assistant Attorney General Ralph L. Carr Judicial Center 1300 Broadway, 10th Floor Denver, CO 80203 Telephone: (720) 508-6000 FAX: (720) 508-6040 *Counsel of Record</p> | <p>Case No.</p> |
| <p>COMPLAINT</p> | |

INTRODUCTION

1. This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, §§ 6-1-101 *et seq.*, C.R.S. (2013) (“CCPA”), to enjoin and restrain Defendants from engaging in certain unlawful deceptive trade practices, for restitution to injured consumers, for statutorily mandated civil penalties, for disgorgement, and other relief as provided in the CCPA.

PARTIES

2. Defendant YONGBRO CORPORATION operates a tobacco store located in Longmont, Colorado doing business as Tobacco King (“TOBACCO KING”). Defendant Sang Leaming (“LEAMING”) is the owner of TOBACCO KING.

ACTS OF AGENTS

3. Whenever reference is made in this Complaint to any act or practice of Defendants, such allegation shall be deemed to mean that the principals, owners, employees, independent contractors, agents, and representatives of such Defendants performed, directed, or authorized such act or practice on behalf of said Defendants, while actively engaged in the scope of their duties.

JURISDICTION AND VENUE

4. Pursuant to C.R.S. §§ 6-1-103 and 6-1-110, this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

5. The violations alleged herein occurred, in part, in Boulder County. Therefore, venue is proper in Boulder County, Colorado, pursuant to C.R.S. § 6-1-103 and Colo. R. Civ. P. 98 (2013).

RELEVANT TIMES

6. This action is timely brought pursuant to C.R.S. § 6-1-115 in that it is brought within three years of the date on which Defendants engaged in false, misleading, and deceptive acts which violate the CCPA, and the Defendants continue to engage in false, misleading acts and practices which violate the CCPA.

PUBLIC INTEREST

7. Through the unlawful practices of their business or occupation, Defendants have deceived, misled, and financially injured numerous consumers. Therefore, these legal proceedings are in the public interest and are necessary to safeguard citizens from Defendants' unlawful business activities.

GENERAL ALLEGATIONS

I. TOBACCO KING sold harmful spice products

8. Synthetic cannabinoids are psychoactive chemicals dissolved in solvent, applied to plant material, and smoked as a drug of abuse. They are sold in "head shops" and tobacco and convenience stores under labels such as "synthetic marijuana," "herbal incense," "potpourri," and "spice." See **Exhibit A**, Tracy Murphy, M.D. et.al, *Acute Kidney Injury Associated with Synthetic Cannabinoid Use-Multiple States, 2012*, Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention, Vol. 62, No. 6 (Feb. 15, 2013), at 97.

9. Synthetic cannabinoids are often packaged in colorful wrappers bearing labels such as “not for human consumption” or “incense,” although health professionals and legal authorities know these products are smoked like marijuana. See **Exhibit A**, at 97.

10. In Colorado, synthetic cannabinoids are commonly referred to as “spice” by users and law enforcement. See **Exhibit B**, *Affidavit of Investigator Rosipajla, Colorado Department of Revenue*, at ¶ 4.

11. Synthetic cannabinoids are sometimes referred to as synthetic marijuana. This is a misnomer. Other than the fact that marijuana and synthetic cannabinoids affect the same part of the brain, the chemistry and the effects of synthetic cannabinoids are quite different than marijuana. See **Exhibit A**, at 97; see also **Exhibit I**, *Affidavit of Chris Holmes, M.D.*, at ¶¶ 4-5.

12. On June 28, 2012, Investigators Chelsea Rosipajla and Clyde Anderson of the Colorado Department of Revenue, Alcohol & Tobacco Enforcement conducted a tobacco compliance check at TOBACCO KING, located at 2255 Main Street in Longmont, Colorado. See **Exhibit B**, at ¶ 2.

13. As part of the compliance check, investigators sent an under-aged minor operative into the store to purchase a pack of cigarettes. A female clerk, Yung H. Leaming, sold cigarettes to the minor without asking for any proof of age. See **Exhibit B**, at ¶ 3.

14. When the investigators went into the store they observed two plastic display cases containing products that they suspected were illegal synthetic cannabinoids or “spice” (hereafter referred to as “spice products”). The products were professionally packaged and placed next to legally-sold smoking paraphernalia. See **Exhibit B**, at ¶¶ 4-5.

15. When asked by the investigators about the spice products in the display case, Ms. Leaming phoned her son LEAMING. LEAMING is the owner of TOBACCO KING. LEAMING arrived at the store and told the investigators that all of his spice products were legal. He stated he was given a lab report that the products were legal for sale in Colorado. See **Exhibit B**, at ¶¶ 5-6.

16. Investigator Rosipajla explained to LEAMING that based on her prior experience with these types of products, she believed that the products contained illegal synthetic cannabinoids. Investigator Rosipajla explained that products labeled as “Plant Food,” “Potpourri,” and “Not for Human Consumption,” and sold alongside glass pipes, rolling papers and lighters frequently test positive for synthetic cannabinoids. Investigator Rosipajla has previously submitted spice

products to the Colorado Bureau of Investigations (“CBI”) for testing and reviewed the positive lab results. See **Exhibit B**, at ¶¶ 8-9.

17. LEAMING also showed the investigators several large boxes containing various brands of spice products located behind the display shelves. The product names included Happy Tiger, Scooby Snax, Cosmic Kratom, Black Magic, Mad Hatter, 2012, High Roller Plant Food, Prism, Jamaican, and Funkey Monkey. See **Exhibit B**, at ¶ 10.

18. The investigators removed the spice products from the store and told LEAMING they would submit samples of the product for testing to the CBI. Investigator Rosipajla told LEAMING that the products would be returned if they were determined to be legal. See **Exhibit B**, at ¶ 11.

19. The investigators removed a total of 1,049 containers or packets of spice products from TOBACCO KING. See **Exhibit B**, at ¶ 12; see also **Exhibit D-Evidence/Property Report**.

21. Two weeks later, on July 10, 2012, the Longmont Police Department received a complaint from the mother of a teenager who had been smoking a spice product called Black Magic. See **Exhibit E-Affidavit of Darren Bloom, Longmont Police Department**.

22. The mother observed that her son had been acting “crazy” while under the effects of Black Magic. The mother had heard that TOBACCO KING was selling Black Magic so she went to TOBACCO KING to verify that the store sold Black Magic. See **Exhibit E**, at ¶ 5. See **Exhibit J-Affidavit of Carey Ferguson**, at ¶ 8.

23. The mother asked a female clerk if the store sold Black Magic. The clerk went to the back room, brought out a package of Black Magic, and sold it to the mother. After purchasing the spice product, the mother called the Longmont Police Department. See **Exhibit J**, at ¶¶ 9-10.

24. Officer Darren Bloom went to TOBACCO KING to investigate the mother’s complaint. Officer Bloom asked about LEAMING’s spice products and LEAMING showed Officer Bloom a box containing 51 containers of various spice products, with the same names as the previously removed spice products; Black Magic, Funkey Monkey, 2012, and Jamaican. See **Exhibit E**,

25. Officer Bloom removed the 51 containers of spice products. LEAMING showed Officer Bloom a purported laboratory report for some of the spice products

stating that the spice products did not contain illegal synthetic cannabinoids. See **Exhibit E**, at ¶¶ 8, 11. See **Exhibit K-AI BioTech letter**.

26. Investigator Rosipajla submitted samples to CBI of all the products removed on June 25, 2012. CBI tested five of the products. The products labeled as Happy Tiger, Scooby Snax and Black Magic tested positive as containing an illegal analog of the synthetic cannabinoid JWH-018. The sample of Cosmic Kratom did not contain any controlled substances, however, the High Roller Plant Food tested positive for an analog of a controlled substance, Schedule II amphetamines. See **Exhibit B**, at ¶¶ 13-14. See **Exhibit F-Affidavit of M. Scott Webb**. See **Exhibit C-Colorado Bureau of Investigations lab report**.

II. LEAMING and TOBACCO KING failed to disclose to consumers that their spice products were potentially illegal.

27. Synthetic cannabinoids were added to the definition of a “controlled substance” under Colorado law, effective July 1, 2011. C.R.S. § 18-18-102(5).

28. “Synthetic cannabinoid’ means any chemical compound that is chemically synthesized and either: (I) has been demonstrated to have binding activity at one or more cannabinoid receptors; or (II) is a chemical analog or isomer of a compound that has been demonstrated to have binding activity at one or more cannabinoid receptors.” C.R.S. § 18-18-102(34.5).

29. “Synthetic cannabinoid’ includes, but is not limited to the following substances:.....(III) JWH-018...” C.R.S. § 18-18-102(34.5)(b).

30. “[A]nalog’ means any chemical that is substantially similar in chemical structure to a chemical compound that has been determined to have binding activity at one or more cannabinoid receptors.” C.R.S. § 18-18-102(34.5)(d).

31. Colorado made the distribution of synthetic cannabinoids a class 5 felony, effective July 1, 2011. C.R.S. § 18-18-406.2.

32. Colorado made the possession of synthetic cannabinoids a class 2 misdemeanor, effective January 1, 2012. C.R.S. § 18-18-406.1.

33. LEAMING and TOBACCO KING sold spice products to consumers without warning consumers that the contents of the packages could contain illegal synthetic cannabinoids.

34. LEAMING provided law enforcement with a purported lab report claiming to show that the spice products were legal. The lab report was produced by a company called AI Biotech at the request of Smart Smokes, LLC, a company

from Albany, New York that sold the spice products to TOBACCO KING. See **Exhibit E**, at ¶ 8, 12. See **Exhibit K**. See **Exhibit L-Smart Smokes invoice**.

35. The AI Biotech lab report states that the lab tested “Bag A” containing Dead Man Walking Prism, Extreme, Dead Man Walking, Funky Monkey and Jamaican. See **Exhibit K**.

36. The AI Biotech lab report states that the listed spice products were tested for the presence of thirty-four (34) synthetic cannabinoids, including five (5) synthetic cannabinoids compounds designated as illegal controlled substances by the Drug Enforcement Agency (“DEA”). The lab report states that none of the 34 listed synthetic cannabinoids were detected. *Id.*

37. The lab report does not contain any reference to Colorado law. Under Colorado law, all synthetic cannabinoids are illegal, not merely those designated by federal law. *Id.*

38. The lab report does not refer to *analogs* of synthetic cannabinoids that have been specifically designated as illegal under federal and Colorado law. The lab report claims that the lab tested for the presence of JWH-018, an illegal synthetic cannabinoid, under federal and Colorado law. Three of TOBACCO KING’S spice products that were analyzed by the CBI tested positive as containing an illegal analog of JWH-018. See **Exhibit K**. See **Exhibit C**.

39. The report references potential criminal, civil and administrative penalties arising from the distribution of illegal synthetic cannabinoids. See **Exhibit K**.

40. The report further advises that the Illinois Attorney General’s office does not accept the laboratory results as valid and that the results shall not be used as evidence of compliance with the Illinois Controlled Substances Act. *Id.*

41. The AI Biotech lab report is effectively a warning to distributors that spice products are under the scrutiny of the DEA and other law enforcement agencies, and could be potentially illegal.

42. Consumers, on the other hand, had no warning that TOBACCO KING’S spice products were potentially illegal. The contents of the AI Biotech report were not shared with consumers.

43. To the contrary, TOBACCO KING sold spice products that were professionally packaged and labeled in a manner that made them appear to be presumptively legal. Additionally, TOBACCO KING prominently displayed spice

products along with legal smoking accessories, such as cigarette lighters, further strengthening the representation that the spice products were unquestionably legal.

44. Black Magic is one of the eleven different brands of spice products that Tobacco King sold. The packaging for Black Magic is a professionally designed and manufactured plastic foil type packet. The outside of the package states that the product is “JWH-018 Free,” suggesting that the product is legal. In fact, Black Magic contained an analog of the illegal synthetic cannabinoid, JWH-018. TOBACCO KING prominently displayed the spice products for sale along with other legal items.

45. Possession of synthetic cannabinoids, including analogs of designated synthetic cannabinoids such as JWH-018, is a Class 2 Misdemeanor. LEAMING and TOBACCO KING were essentially selling potential misdemeanors to consumers who presumed that the spice products being sold by LEAMING and TOBACCO KING were legal.

III. LEAMING and the TOBACCO KING failed to disclose to consumers that their spice products came with a great risk of adverse health consequences.

46. In addition to being potentially illegal, the spice products sold by LEAMING and TOBACCO KING were potentially harmful to consumers. LEAMING and TOBACCO KING would have no idea what chemicals were sprayed onto the spice products they sold. The packaging for the spice products does not state the contents.

47. The packaging for Black Magic told consumers that the spice product was “JWH-018 Free.” The packaging did not tell consumers that Black Magic contained an equally dangerous JWH-018 analog.

48. Three of the spice products sold by LEAMING and TOBACCO KING (Happy Tiger, Scooby Snax and Black Magic) contained an illegal analog of the synthetic cannabinoid JWH-018. See **Exhibit C**.

49. Various state public health departments and poison centers have described the adverse health effects associated with smoking synthetic cannabinoids. See **Exhibit A**; see **Exhibit H-Affidavit of Sarah Bruhn, Rocky Mountain Poison and Drug Center**.

50. In Colorado, the Rocky Mountain Poison and Drug Center (“RMPDC”) is a call center which receives medical inquiries on how to best diagnose and treat

exposures to poison and drugs. RMPDC routinely receives calls about synthetic cannabinoid ingestion. See **Exhibit H**, at ¶ 3, 5.

51. From January 1, 2011 to September 16, 2013, RMPDC received 154 calls where patients were exposed to synthetic cannabinoids in Colorado. *Id.* at ¶ 6.

52. 69 out of 154 patients (45%) were less than 20 years old. Twelve patients were under the age of 15, including one accidental exposure in a two-year old. 142 out of 154 patients (92%) were already in a hospital when RMPDC was contacted, or were referred to a hospital for treatment. *Id.* at ¶ 7.

53. The majority of calls regarding patients who had ingested synthetic cannabinoids reported symptoms such as agitation/irritability, increased heart rate, drowsiness/lethargy, confusion, and hallucinations/delusions. *Id.* at ¶ 8.

54. RMPDC also had a cluster of five patients who attended the same party where they had smoked a spice product. All five suffered acute kidney damage. *Id.* at ¶ 9.

55. Kidney damage is evidenced by increased accumulation of waste products in the blood. If this waste is not removed, patients feel extremely ill. Continued use of spice products can lead to kidney failure. During acute kidney failure, the kidneys are operating at less than 10 percent of normal function. Acute kidney failure can be fatal and requires intensive treatment. *Id.* at ¶ 10.

56. On February 15, 2013, the Centers for Disease Control and Prevention (“CDC”) reported that synthetic cannabinoid use has been associated with acute kidney injury after examining a cluster of 16 reported cases that occurred between March and December 2012 in six states (Wyoming, Oregon, Rhode Island, New York, Kansas). See **Exhibit A**.

57. The CDC found that no single synthetic cannabinoid compound explained all 16 cases of acute kidney injury. However, several of the cases involved a previously unknown synthetic cannabinoid, XLR-11. *Id.* at 97.

58. The CDC’s study highlights the fact that unknown chemical compounds in spice products, such as XLR-11, are just as likely to harm consumers as known illegal synthetic cannabinoids such as JWH-018.

59. LEAMING and TOBACCO KING could not be sure what chemicals were sprayed on the spice products they sold. They knew, however, that consumers purchase the spice products to get high. They knew that purchasers would ingest the unknown chemicals despite the “not for human consumption” labeling. Despite deceptive labeling of the products as “plant food” or “incense” or “potpourri,”

LEAMING and TOBACCO KING knowingly sold the products for human consumption.

60. Almost all of the spice products that were removed from LEAMING and TOBACCO KING had packaging which stated that the product was “Not for Human Consumption.”

61. Wording such as “Not for Human Consumption,” “Plant Food” or “Potpourri” are so common on spice products that the wording essentially identifies these products as spice products, particularly when the product is placed alongside drug paraphernalia.

62. By placing spice products alongside accessories for smoking the spice products, LEAMING and TOBACCO KING clearly promoted the products to consumers as being intended for consumption.

63. Despite knowledge that Spice products are potentially harmful to consumers, LEAMING and TOBACCO KING sold their spice products without any disclosures.

64. Neither LEAMING, nor TOBACCO KING, nor the packaging of the products they sold, advised consumers about what chemicals were sprayed on the spice products. Neither LEAMING, nor TOBACCO KING nor the packaging of the products they sold, disclosed to the consumer that the chemicals were unknown and potentially dangerous. The Black Magic packaging was particularly misleading because it advised consumers that it was “JWH-018 Free” and yet it was sprayed with an equally illegal and equally dangerous JWH-018 analog.

65. The prominent display, the professional packaging, the wording on the packages, combined with LEAMING and TOBACCO KING’s willingness to sell the spice products, misled consumers to believe that the spice products were legal and safe.

FIRST CLAIM FOR RELIEF

(Represents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another) C.R.S. § 6-1-105(g)

66. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 65 of this Complaint.

67. LEAMING and TOBACCO KING presented and sold spice products to consumers as if they were legal and safe when they knew that they had very little

information regarding the spice products' legality, and that the spice products they were selling were likely to be illegal.

68. LEAMING and TOBACCO KING presented and sold spice products to consumers as if they were legal and safe when they had no knowledge as to what chemicals were sprayed on the spice products, including synthetic cannabinoids, placing consumers at obvious risk of potential health problems and physical injury.

69. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from the public.

SECOND CLAIM FOR RELIEF

(Failure to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction.) C.R.S. § 6-1-105(u)

70. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 69 of this Complaint.

71. LEAMING and TOBACCO KING failed to disclose that the spice products they were selling might contain synthetic cannabinoids and could cause adverse health effects when ingested.

72. LEAMING and TOBACCO KING failed to disclose the contents and ingredients of the spice products they sold.

73. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from the public.

THIRD CLAIM FOR RELIEF

(Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith. C.R.S. § 6-1-105(e).

74. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 73 of this Complaint.

75. LEAMING and TOBACCO KING falsely represented that the spice products it sold were for purposes other than consumption. Defendants knew that their products would not be used as incense, plant food, or potpourri and instead would be ingested.

76. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from the public.

FOURTH CLAIM FOR RELIEF

(Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property) C.R.S. § 6-1-105(b)

77. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 76 of this Complaint.

78. LEAMING and TOBACCO KING sold product labeled as “JWH-018 Free” and misrepresented their spice products as legal and safe.

79. LEAMING and TOBACCO KING sold spice products to consumers through the use of professional packaging and placement with other legal smoking products to falsely represent that the spice products were legal and safe.

80. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from the public.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against Defendants and for the following relief:

A. An order declaring Defendants’ above-described conduct to be in violation of the CCPA, C.R.S. § 6-1-105(1)(g),(u),(e) and (b).

B. An order permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with Defendants with notice of such injunctive orders, from selling spice products and engaging in any deceptive trade practices as defined in and proscribed by the CCPA and as set forth in this Complaint.

C. Additional appropriate orders necessary to prevent Defendants’ continued or future deceptive trade practices.

D. A judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to § 6-1-110(1), C.R.S. (2012).

E. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado, civil penalties in an amount not to exceed \$2000 per

violation pursuant to § 6-1-112(1)(a), C.R.S. (2012), or \$10,000 per violation pursuant to § 6-1-112(1)(c), C.R.S. (2012).

F. An order requiring Defendants to pay damages and the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to § 6-1-113, C.R.S. (2012).

G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Dated this 30th day of September, 2013.

JOHN W. SUTHERS
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s/ Jeffrey M. Leake

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