

NO. 2016-52548

FILED
Chris Daniel
District Clerk
AUG 09 2016
Time: _____
By _____
Harris County, Texas
Deputy

THE STATE OF TEXAS,
AND THE CITY OF HOUSTON,

Plaintiff,

v.

SPICE BOUTIQUE, ET AL,

Defendants.

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IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS

ND
152 JUDICIAL DISTRICT

P. 16
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CASO

TEMPORARY RESTRAINING ORDER

Plaintiffs, the STATE OF TEXAS and CITY OF HOUSTON, have filed an original petition in this cause seeking a Temporary and Permanent Injunction and in the same petition presented an Application for a Temporary Restraining Order. Based on the findings below, the Application for Temporary Restraining Order is GRANTED.

This Court **FINDS** it has jurisdiction over the subject matter of this case and jurisdiction over the parties, and venue in the District Court is proper.

With respect to the Plaintiffs' claims under the Texas Deceptive Trade Practices–Consumer Protection Act, Tex. Bus. & Com. Code §§17.41–17.63, (“DTPA”), this Court **FINDS** that there is good cause to believe Defendants (as defined in this Order) have engaged in and are likely to engage in acts and practices that violate §§ 17.46(a) and (b) of the DTPA. The Court **FINDS** that this action is in the public interest and a Temporary Restraining Order should be issued to restrain and prevent the continuing acts and practices of Defendants (as defined in this Order) that may be violating the DTPA. DTPA § 17.47(b). The Court **FINDS** from the evidence set forth in Plaintiff's Original Petition, the affidavits, and attached exhibits, that unless Defendants are immediately restrained from the acts prohibited below, Defendants will continue to commit such acts before notice can be given and a hearing can be held on Plaintiff's request for a temporary

injunction. The State will suffer the following immediate and irreparable injury, loss or damage: interference with the public health, safety, peace, comfort and convenience of its citizens caused by the Defendants' sale of dangerous and illegal synthetic drugs from their retail establishments. This injury is irreparable because the sale of dangerous and illegal synthetic drugs is harmful to the public and is unlawful. Furthermore, the Court **FINDS** that unless Defendants are immediately restrained there is good cause to believe (a) Defendants will dissipate funds obtained from unlawful acts or practices that may be in violation of the DTPA before a temporary injunction hearing can be held and before full trial on the merits, and (b) immediate and irreparable damage will occur to the Court's ability to grant effective final relief for consumers—including restoration of money or property acquired by means of unlawful acts or practices, rescission or reformation of contracts, restitution, refund of monies paid and disgorgement of ill-gotten monies. DTPA § 17.47(a), (b), (d). An Order freezing certain accounts and assets controlled by Defendants as described herein is necessary to preserve monies and assets that may have been obtained by Defendants by unlawful acts or practices until a temporary injunction hearing and final trial can be held. DTPA § 17.47(a), (b), (d). The Court **FINDS** that there is good cause to believe irreparable loss or injury would occur unless Defendants are immediately enjoined. DTPA § 17.47(a). Issuance of this Temporary Restraining Order is in the public interest.

The Court **FINDS** that prior notice of Plaintiffs' Original Petition and Application for Temporary Restraining Order is not required before entry of this Order because the Court finds there is good cause to believe irreparable loss or injury would occur and dissipation of assets would occur as a result of such a delay. *Id.*

The Court **FINDS** this Temporary Restraining Order may be issued without bond posted by the State. DTPA § 17.47(b).

With respect to the Plaintiffs' claims to abate a common nuisance under Chapter 125 of the Texas Civil Practice & Remedies Code, the Court **FINDS** Plaintiffs are likely to succeed on the merits under § 125.002 and that a temporary restraining order is necessary to prevent the Defendants from maintaining a common nuisance. The Court further **FINDS** that the Plaintiffs are not required to post a bond in support of injunctive relief, and the Plaintiffs are not required to verify the allegations in support of its petition to abate the nuisance. Tex. Civ. Prac. & Rem. Code § 125.002(a); Tex. Civ. Prac. & Rem. Code § 6.002.

I. DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Defendants" shall mean Spice Boutique Partnership, Minh Dang; Tuan Dang; Phinam 888 Investments, LLC; Phinam Investments, LLC; and The Real Property Known As 12745 East Fwy., Houston, Texas.
2. "Spice Boutique Partnership" shall mean all businesses and individuals doing business as Spice Inc., Spice Boutique #1, Spice Boutique #2, Spice Boutique #3, T&M Video, TM Video, Spice Boutique USA, Spice610, Spice 610, Spice 610 Investments, LLC, and Spiceglo Investments, LLC, 24 HR DVD and Video.
3. "Controlled substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Groups 1, 1-A, 2, 2A, 3, or 4. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance, as defined in Tex. Health & Safety Code § 481.002(5).

4. "Controlled substance analogue" means (A) a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 2, or 2A; or (B) a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 2 or 2-A, as defined in Tex. Health & Safety Code § 481.002(6).

5. "Illicit Synthetic Drug" means (as defined in City of Houston Ordinance No. 2014-913):

(i) Any vegetative material, or herbal or plant material, however constituted, designed, intended, marketed, manufactured, or engineered, that contains any quantity of a synthetic chemical or synthetic chemical compound that has no legitimate relation to the advertised use of the product;

(ii) Any vegetative material, or herbal or plant material, with packaging or labeling that indicates, suggests, or implies that the substance is a substitute for or otherwise mimics the pharmacological effects of marijuana, a controlled substance or a controlled substance analogue as defined by § 481.002 of the Texas Health and Safety Code; and

(iii) Any vegetative material, or herbal or plant material offered for sale or sold with verbal or written representations regarding the purpose, methods, use, or effect of the substance that indicates, suggests, or implies that the substance mimics the pharmacological effects of marijuana, a controlled substance as defined by § 481.002 of the Texas Health and Safety Code.

6. "Herbal Incense" (as defined in City of Houston Ordinance No. 2014-913) means aromatic plant material, whether referred to as potpourri or otherwise, that is distributed in a loose, leafy, powder, or granular form or in a compressed block or blocks that can be crushed to result in

a powder or granular form, and can be placed into a pipe, cigarette paper, or other drug paraphernalia for purposes of ingestion by smoking, inhaling or other method, regardless of how the substance is labeled or marketed, including, but not limited to, whether or not such product is labeled as “not for human consumption.”

7. “Sell” and “sale” include offer for sale, advertise for sale, display for sale, keep for the purpose of sale, deliver, transfer, solicit and offer to buy, and every disposition for value.

8. “Ingestible Product” means a product that is intended to be inhaled, ingested, swallowed, or otherwise introduced into the human body.

9. “Subject Products” means products seized by law enforcement from Defendants’ stores at the real properties known as 12745 East Fwy, Houston, Texas; 9884 Southwest Freeway, Houston, Texas also known as 9896 Southwest Freeway, Houston, Texas; and 2590 South Loop W Freeway, Houston, Texas also known as 2574 South Loop W Freeway, Houston, Texas.

10. “Dangerous Drug” means a substance or a device or a drug that is unsafe for self-medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required by law to bear the legend:

(i) “Caution: federal law prohibits dispensing without prescription” or “Rx only” or another legend that complies with federal law; or

(ii) “Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.” *See* Tex. Health & Safety Code § 483.001(2). The term “Dangerous Drug” includes but is not limited to the substance known as sildenafil, the active ingredient in Viagra.

II. PRESERVATION OF EVIDENCE

IT IS ORDERED that the Defendants (as defined herein) and their officers, agents, servants, employees, and any other person or entity in active concert or participation with them—whether acting directly or through any corporation, company, partnership, trust, entity, subsidiary, division, or other device—who receive actual notice of this Order by personal service or otherwise, are hereby prohibited from the following:

(a) Transferring, concealing, destroying, altering or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials—including electronic documents—relating to the wholesale or retail purchase or sale of any Ingestible Products containing Controlled Substances, Controlled Substance Analogues, Illicit Synthetic Drugs, or Dangerous Drugs, as defined herein, that are currently or hereafter in the possession, custody or control of any Defendant, except in response to further Orders or subpoenas in this cause.

(b) Deleting, concealing, destroying, altering or removing from the jurisdiction of this Court any video recordings and surveillance depicting the interior and/or exterior of the store locations at the real properties known as 12745 East Fwy, Houston, Texas; 9884 Southwest Freeway, Houston, Texas also known as 9896 Southwest Freeway, Houston, Texas; and 2590 South Loop W Freeway, Houston, Texas.

IT IS ORDERED that the Defendants and their officers, agents, servants, employees, and any other person or entity in active concert or participation with them—whether acting directly or through any corporation, company, partnership, trust, entity, subsidiary, division, or other device—who receive actual notice of this Temporary Restraining Order by personal service or otherwise, shall not fail to operate and maintain surveillance cameras monitoring the store locations at the real properties known as 12745 East Fwy, Houston, Texas; 9884 Southwest

Freeway, Houston, Texas also known as 9896 Southwest Freeway, Houston, Texas; and 2590 South Loop W Freeway, Houston, Texas also known as 2574 South Loop W Freeway, Houston, Texas. The cameras shall capture the interior and exterior of the business, including but not limited to the area where the cashier is located, and be capable of recording. The recordings shall be maintained and operated any time the business is open to the public and shall display the date and time of the recording. The Defendants shall not fail to provide Plaintiffs' counsel with the recordings within 24 hours of request to review and copy the recording.

III. PROHIBITED BUSINESS CONDUCT

IT IS ORDERED that the Defendants and their officers, agents, servants, employees, and any other person or entity in active concert or participation with them—whether acting directly or through any corporation, company, partnership, trust, entity, subsidiary, division, or other device—who receive actual notice of this Order by personal service or otherwise, are hereby enjoined from engaging in the following conduct until further Order of this Court:

(a) Selling, offering for sale, distributing, offering to distribute, delivering, transferring, holding, storing, possessing, purchasing or offering to purchase any i) Controlled Substance, Controlled Substance Analogue, Illicit Synthetic Drug, or Dangerous Drug or ii) Ingestible Product or Herbal Incense containing a Controlled Substance, Controlled Substance Analogue, Illicit Synthetic Drug, or Dangerous Drug;

(b) Selling, offering for sale, distributing, offering to distribute, delivering, transferring, holding, storing, possessing, purchasing or offering to purchase any products labeled as potpourri, incense, bath salts, or herbal cigarettes, that contain a Controlled Substance, a Controlled Substance Analogue, an Illicit Synthetic Drug, or Dangerous Drug as defined herein;

(c) Selling, offering for sale, distributing, offering to distribute, delivering,

transferring, holding, storing, possessing, purchasing or offering to purchase any Ingestible Products labeled as “not for human consumption” when the product is intended to be used by consumers to inhale, ingest, or introduce into the human body;

(d) Selling, offering for sale, distributing, offering to distribute, delivering, transferring, holding, storing, possessing, purchasing or offering to purchase any Ingestible Products labeled as “legal” when Defendants know or have reason to suspect the products contain a Controlled Substance, a Controlled Substance Analogue, Illicit Synthetic Drug, or Dangerous Drug as defined herein;

(e) Selling, offering for sale, distributing, offering to distribute, delivering, transferring, holding, storing, possessing, purchasing or offering to purchase any Ingestible Products labeled as “lab certified” unless Defendants know that the product is certified by an actual, bona-fide laboratory, the operations and practices of which are certified by a generally-recognized third-party accreditation organization;

(f) Selling, offering for sale, distributing, offering to distribute, delivering, transferring, holding, storing, possessing, purchasing or offering to purchase any Ingestible Products that do not contain the name and location of the manufacturer or distributor on the package labeling;

(g) Selling, offering for sale, distributing, offering to distribute, delivering, transferring, holding, storing, possessing, purchasing or offering to purchase any substance or device designed to falsify drug test results, including but not limited to synthetic urine;

(h) Failing to provide a copy of this Temporary Restraining Order to all employees and agents of Defendants as soon as reasonably practical and obtain a signed receipt that the employees and agents have read and understand its terms.

IV. ASSET FREEZE

IT IS ORDERED that Defendants, as defined in this Order, and their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, shall be restrained from engaging in the following acts or practices until further Order of this Court:

(a) Transferring, withdrawing, liquidating, spending, concealing, encumbering, removing, dissipating, distributing, assigning, granting a lien or security interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, shares of stock, other assets, or any interest therein, or allowing same to occur, wherever located, that are:

(i) owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to any Defendant, as defined in this Order, including but not limited to, any accounts to which any Defendant has signatory authority, and specifically including, but not limited to the following accounts:

- Bank of America, Account No. XXXXX7882;
- Southwestern National Bank, Account No. XXXXX2229;
- Southwestern National Bank, Account No. CDXX798;
- JP Morgan Chase Bank N.A. (formerly Chase Manhattan), Account No. XXXXX6665;
- JP Morgan Chase Bank N.A., Account No. XXXXX8193;
- JP Morgan Chase Bank N.A., Account No. XXXXX7376;
- JP Morgan Chase Bank, N.A., Account No. XXXXX6730;
- JP Morgan Chase Bank, N.A., Account No. XXXXX9206;
- Wells Fargo Bank, (account number unknown);
- Frost Bank, Account No. (account number unknown);
- CapitalOne Bank, Account No. (account number unknown); or

(ii) in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, or belonging to, any other corporation, partnership, trust, or any other entity directly or indirectly owned, managed, or controlled by, or under common control of, any Defendant (as defined in this Order); and

(b) Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Defendant or subject to access, ownership or control by any Defendant, without providing Plaintiffs and the Court prior notice by motion seeking such access.

(c) Transferring, withdrawing, liquidating, spending, concealing, encumbering, removing, dissipating, distributing, assigning, granting a lien or security interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, shares of stock, other assets, or any interest therein, or allowing same to occur, wherever located, that are:

(i) owned, controlled, or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to any of the Defendants, including but not limited to, any accounts at financial institutions to which any Defendant has signatory authority and any accounts in which any of Defendant's owns any interest; in the actual or constructive possession of any Defendant; or

(ii) in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, or belonging to, any other corporation, partnership, trust, or any other entity directly or indirectly owned, managed, or controlled by, or under common control of, any Defendant.

IT IS ORDERED that any financial institution—including, but not limited to Bank of America, JPMorgan Chase Bank, Southwestern National Bank, Wells Fargo Bank, Frost Bank—

or any business entity or person, maintaining or having custody or control of funds, accounts, or assets of any kind in the name and/or for the benefit of the above-named Defendants as defined herein, or to which Defendants have access or signatory power, who receive actual notice of this Order by personal service, email, facsimile transmission, or otherwise, shall 1) hold and retain within its control any of the assets, funds, accounts or other property described in Section IV, and 2) shall prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of the assets, funds, accounts or other property, except as permitted in accordance with Section V of this Order.

The funds, property, and assets affected by this Section of this Order shall include both existing assets and assets acquired by any Defendant as defined herein after the effective date of this Order and which are acquired in violation of this Order.

V. MODIFICATION OF ASSET FREEZE

IT IS ORDERED that if any of the parties, persons, or entities referenced in this Order agree in writing, through their authorized representatives or counsel, to specify that certain funds or assets be or remain frozen, or that certain funds or assets be released from the asset freeze ordered in Section IV of this Order, then such parties or entities may do so. Any financial institution holding funds or assets subject to the freeze under Section IV of this Order shall comply with any written directive relating to the freezing or unfreezing of any bank account or asset referenced in this Order, without further Order of this Court, provided such written directive is signed by an Assistant Attorney General or Assistant County Attorney representing the State of Texas and an authorized representative or attorney of such Defendant, person or entity with

custody or control of the bank account or asset involved. Nothing in this Order shall preclude any party from filing a motion seeking a modification of this Order from the Court.

VI. EXPEDITED DISCOVERY

IT IS ORDERED that Plaintiffs shall be granted leave to conduct expedited discovery. Any discovery taken or propounded by the Plaintiffs for purposes of the Temporary Injunction hearing is in addition to, and not subject to, any limits on the quantity of permissible discovery provided for in the Texas Rules of Civil Procedure or the rules of this Court. Any limitations and conditions set forth in the Texas Rules of Civil Procedure or the rules of this Court regarding subsequent depositions of an individual shall not apply to depositions pursuant to this Section:

(a) Plaintiffs may take the deposition of any witness upon a two (2) days' notice to the attorneys for all parties, if known, including taking telephonic, video, written, and other depositions with a request for production of documents prior to any scheduled temporary injunction hearing and prior to Defendants' answer date.

(b) Defendants shall provide the following information to counsel for the Plaintiffs and a statement, signed by Defendants and notarized, certifying that the information is true and accurate within three (3) business days of receiving actual notice of this Order:

(i) Identification and description of all accounts and assets as described in Section IV of this Order held or controlled by Defendants at any time during the two (2) years prior to the effective date of this Order, including the names and locations of the financial institutions holding such accounts or assets, the last three digits of any account numbers, the balance of the accounts on the effective date of this Order, and the nature, description, location and estimated value of any other assets;

(ii) Identification and location of any safe deposit box, commercial mail box, or storage facility that is either titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access or control by any Defendant or other party subject to Section IV of this Order in whole or in part;

(iii) Identification of any Defendant or other party that has attempted to access any account, safe deposit box, storage facility, or other asset subject to Section IV since the effective date of this Order; and,

(iv) If the account, safe deposit box, storage facility, or other asset subject to Section IV of this Order has been closed or removed, the date closed or removed, the balance or value on said date, and the current location of the removed funds or assets, and the identity of any immediate and subsequent transferees of such funds or assets.

(c) Defendants shall provide representatives of Plaintiffs access to inspect and copy, within five (5) business days of a written request by Plaintiff, all records pertaining to each such account or asset subject to Section IV of this Order, including but not limited to, account statements, account applications, corporate resolutions, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debt and credit instruments, cashier's check receipts, money Orders, wire transfer receipts, 1099 forms and safe deposit box logs.

VII. SCHEDULING OF TEMPORAY INJUNCTION HEARING

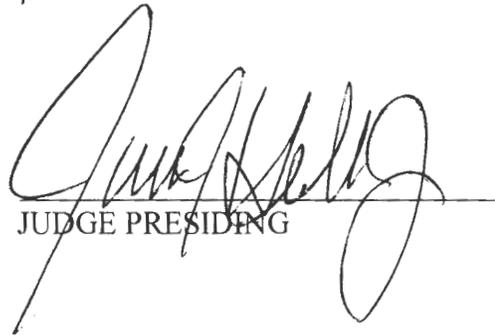
IT IS ORDERED that Defendants in this cause be and hereby are commanded forthwith to comply with this Order from the date of entry until and to the fourteenth (14th) day after entry or until further Order of this Court.

The Clerk of the above-entitled Court shall forthwith issue a Temporary Restraining Order in conformity with the law and the terms of this Order.

This Order shall be effective without the execution and filing of a bond because Plaintiffs are exempt from such bond under Tex. Civ. Prac. & Rem. Code § 6.001 and DTPA § 17.47(b).

A temporary injunction hearing is set for 8/19/16 2016 at 1:30 o'clock, p.m.

Signed this 9th day of August, 2016 at 10:35 o'clock, A.m.


JUDGE PRESIDING

ENTRY REQUESTED BY:

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Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

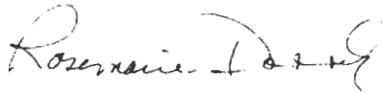
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