

<p>DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112</p> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL</p> <p>Plaintiff,</p> <p>v.</p> <p>PAYMON'S MARKET, INC. D/B/A PAYMON'S MINI MARKET AND PAYMON ELLIOT GHAMARI, INDIVIDUALLY; AND RAHMATOLLAH GHAMARI, INDIVIDUALLY</p> <p>Defendants.</p>	<p>DATE FILED: January 21, 2014 9:29 AM FILING ID: 94ADF49520F1D CASE NUMBER: 2014CV30174</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 ADRIAN N. FORTEZA, 46496 SARAH PAGE JACKSON, 45212 Assistant Attorneys General Ralph L. Carr Judicial Center 1300 Broadway, 10th Floor Denver, CO 80203 jeffrey.leake@state.co.us Telephone: (720) 508-6000 FAX: (720) 508-6040 *Counsel of Record</p>	<p>Case No. Div.:</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. John W. Suthers is the duly-elected Attorney General of the State of Colorado and is authorized under C.R.S. § 6-1-103 to enforce the provisions of the CCPA.

3. Defendant RAHMATOLLAH GHAMARI operate a convenience store located at 1124 Yosemite Street, Aurora, Colorado, incorporated as PAYMON'S MARKET, INC. and doing business as PAYMON'S MINI-MARKET (all parties hereafter collectively referred to as "PAYMON'S" or "Defendants").

ACTS OF AGENTS

4. 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

5. 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.

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

RELEVANT TIMES

7. 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

8. 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. Defendants' deceptive and unfair business practices have also injured businesses operating legitimately and who forego the profit that can be made from the sale of spice products.

GENERAL ALLEGATIONS

I. "Spice" products are illegal and dangerous

9. Synthetic cannabinoids, commonly referred to as "spice," are psychoactive chemicals dissolved in solvent, applied to plant material, and smoked as a drug of abuse. 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.

10. 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).

11. "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).

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

13. "[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).

14. Effective July 1, 2011, the distribution of synthetic cannabinoids became a class 5 felony. C.R.S. § 18-18-406.2. The possession of synthetic cannabinoids became a class 2 misdemeanor, effective January 1, 2012. C.R.S. § 18-18-406.1.¹

¹ Effective July 1, 2013, the distribution of synthetic cannabinoids became a level 3 drug felony for offenses occurring after October 1, 2013. C.R.S. § 18-18-406.2. Effective July 1, 2013, the possession of synthetic cannabinoids became a level 2 drug misdemeanor for offenses occurring after October 1, 2013. C.R.S. § 18-18-406.1.

15. Spice is sometimes referred to as synthetic marijuana. This is a misnomer. Although marijuana and synthetic cannabinoids affect the same part of the brain, the chemistry and the effects of synthetic cannabinoids are quite different from marijuana. Various state public health departments and poison centers have identified the adverse health effects associated with smoking synthetic cannabinoids. These effects include agitation, vomiting, tachycardia, elevated blood pressure, seizures, paranoia, hallucinations, and non-responsiveness. See Exhibit A, at 97; see also Exhibit B, *Affidavit of Chris Holmes, M.D.*, at ¶¶ 4-5.

16. 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 C-*Affidavit of Sarah Bruhn, Rocky Mountain Poison and Drug Center* at ¶ 3, 5.

17. From January 1, 2011 to September 16, 2013, RMPDC received 154 calls where patients were exposed to synthetic cannabinoids in Colorado. Of these 154 patients, 69 (45%) were less than 20 years old. Twelve patients were under the age of 15, including one accidental exposure in a two-year old. More than 90% of those reporting harmful effects from spice (142 out of 154) were in a hospital when RMPDC was contacted, or were referred to a hospital for treatment. *Id.* at ¶¶6-7.

18. 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.

19. 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.

20. 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.

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

22. In September of 2013, Colorado experienced an unprecedented outbreak of synthetic cannabinoid exposures resulting in emergency department visits. The Colorado Department of Public Health and Environment (CDPHE) identified 263 emergency department visits occurring between 8/21/13 and 9/19/13

as associated with synthetic cannabinoids. Patient symptoms included agitation, paranoia, hallucinations and seizures. Some patients were violent, others unresponsive or even comatose. Some required intensive care unit treatment. Three deaths from this period are currently under investigation as potentially linked to synthetic cannabinoids. See **Exhibit D**, CDPHE Press Release 9/12/13. See **Exhibit E**, CDPHE Synthetic Marijuana Fact Sheet.

II. PAYMON'S sold illegal and dangerous spice products

23. In October of 2012, the Aurora Police Department received complaints on its Narcotics Tip Line reporting that Paymon's Mini Market was selling synthetic cannabinoids, commonly referred to as "spice" or "mamba." Paymon's Mini Market is a small convenience store which also sells groceries and cigarettes. One caller stated that Paymon's Mini Market sold a brand of spice product named "monkey" or "crazy monkey." See **Exhibit F-Affidavit of Tyler Van Eps, Aurora Police Department** at ¶2.

24. In response to these tips, Investigator Tyler Van Eps of the Aurora Police Department conducted an undercover purchase at the Paymon's store on October 16, 2012. *Id.* at ¶3.

25. During the undercover purchase, Investigator Van Eps asked the Paymon's clerk if he had any "monkey." The clerk answered affirmatively and retrieved a foil package labeled "Crazy Monkey" from a cabinet area under the cigarette display behind the counter. Investigator Van Eps purchased the package of Crazy Monkey for \$20. *Id.* at ¶4.

26. Investigator Van Eps submitted the package to the Aurora Police Department laboratory for testing. At the time of testing, the laboratory was unable to classify the contents of the package as a controlled substance. *Id.* at ¶5.

27. In November of 2012, Investigator Van Eps was informed by another police officer that Paymon's was still selling spice products. *Id.* at ¶6.

28. Investigator Van Eps conducted another undercover purchase from Paymon's on November 13, 2012. Investigator Van Eps asked the clerk if he had any products besides "monkey." The clerk answered affirmatively and retrieved several products from behind the counter. The products were labeled "T8C," "Mauiie Wauiie," and "Kush." Investigator Van Eps purchased the products for \$15.00, \$20.00 and \$20.00 respectively. *Id.* at ¶¶7-8.

29. Investigator Van Eps submitted the packages to the Aurora Police Department laboratory for testing. Again, the laboratory was unable to classify the contents of the packages as controlled substances. *Id.* at ¶9.

30. On June 14, 2013, Investigator Van Eps made another undercover purchase at Paymon's. *Id.* at ¶10.

31. Investigator Van Eps entered the store at approximately 3:25 p.m. and witnessed the clerk, whom he later identified through DMV photos as Rahmatollah Ghamari, collect an item from the cabinet area under the cigarette stand behind the counter. Rhamatollah Ghamari handed a spice product to a female customer standing on the other side of the counter. The female purchased the spice product along with wrapping papers that are commonly used to smoke spice. *Id.* at ¶11.

32. Investigator Van Eps then approached the counter and asked Rhamatollah Ghamari if he had any "monkey." Ghamari indicated that he had "Sexy Monkey," "Crazy Monkey," and "Mad Monkey" in \$15.00 and \$30.00 packages. *Id.* at ¶2.

33. Investigator Van Eps requested one package of Mad Monkey and one package of Sexy Monkey. Rhamatollah Ghamari grabbed a stack of about 15 foil packages from near the register and placed two on the counter. Investigator Van Eps purchased the items for \$30.00. *Id.* at ¶¶13-14.

34. Investigator Van Eps submitted the packages to the Aurora Police Department laboratory for testing. Again, the laboratory was unable to classify the contents of the packages as controlled substances. *Id.* at ¶16.

35. While the Aurora Police Department laboratory was unable to identify the chemicals in PAYMON's spice products, it is not unusual for spice products to evade forensic laboratory identification. As soon as forensic scientists identify previously unknown synthetic cannabinoids or analogs for purposes of law enforcement, manufacturers and distributors come up with new chemical compounds that initially evade detection. Identifying the new chemical compound "requires the expenditure of substantial scientific and investigative resources and continually leaves government scientists, regulators, and investigators one step behind the traffickers." See **Exhibit G**, *The Dangers of Synthetic Cannabinoids*, U.S. Dept. of Justice, *DEA Statement for the Record, Before the Senate Caucus on International Narcotics Control*, U.S. Senate (April 6, 2011) at 11-12.

36. On July 11, 2013, Investigator Chelsea Rosipajla from the Colorado Department of Revenue, Alcohol & Tobacco Enforcement, went to Paymon's Mini-Market to conduct an undercover tobacco compliance check. Investigator Rosipajla had been informed by officers from the Aurora Police Department that Paymon's was selling loose cigarettes and synthetic cannabinoids in violation of state law.

See **Exhibit H**, *Affidavit of Investigator Rosipajla, Colorado Department of Revenue*, at ¶ 2.

37. Investigator Rosipajla was accompanied by Investigator Mark Kelley, also with the DOR, and several other DOR investigators waited nearby. *Id.*

38. Investigators Rosipajla and Kelley entered the store at approximately 10:00 A.M. and begin to look around the store as if they were going to purchase some items. A male clerk, identified as Rahmatollah Ghamari was standing behind the counter. *Id.* at ¶3.

39. Investigator Rosipajla approached the front counter and register and asked Ghamari if she could buy two menthol cigarettes and he replied, “Three for a dollar.” *Id.* at ¶4.

40. Investigator Rosipajla then asked Ghamari if he had any “herbal blends” or “mamba.” Based on her training and prior experience, Investigator Rosipajla was aware that in Colorado, synthetic cannabinoids are commonly referred to as “herbal blends,” “mamba,” or “spice” by users and law enforcement. Rahmatollah Ghamari responded that he had a “small one” and pulled out a small plastic baggie containing a green leafy substance. *Id.* at ¶5.

41. Investigator Rosipajla asked Rahmatollah Ghamari if the spice product was going to get her “high” and he responded “Yes.” She asked if it was going to show up in a urinalysis and he replied “No.” *Id.* at ¶7.

42. Rahmatollah Ghamari showed the investigators two more spice products. One product was a green leafy substance in a clear plastic baggie, slightly larger than the product that Ghamari had just shown them. The other product was in a black package and was labeled “i-Blown.” *Id.* at ¶8.

43. The i-Blown product was packaged in a glossy, black plastic-foil packet with professional-style graphics, including small icons which gave the package the appearance of an i-Phone. *Id.* at ¶9

44. Investigator Rosipajla purchased the three spice products for \$22.00. *Id.* at ¶10.

45. After Investigators Kelly and Rosipajla left the store, other investigators from the DOR, entered Paymon’s Mini Market, carried out their compliance inspection, and found numerous packages of spice products. A total of 1181 spice products were removed. *Id.* at ¶11.

46. DOR removed several brands of spice products from Paymon's including Crazy Monkey, Mad Monkey, Sexy Monkey, and iBlown as well as unlabeled spice products. Investigator Rosipajla submitted samples of five brands to the Colorado Bureau of Investigation ("CBI") for testing. On November 18, 2013, CBI sent laboratory results to Investigator Rosipajla which showed that all five products tested positive for synthetic cannabinoids. *Id.* at ¶¶12-13. See **Exhibit I**, CBI Laboratory Results.

III. PAYMON'S failed to disclose to consumers that their spice products were potentially illegal.

47. Defendants sold spice products to consumers without warning consumers that the contents of the packages could contain illegal synthetic cannabinoids.

48. Defendants sold spice products with explicit representations that the spice was not a controlled substance under state or federal law.

49. The packaging for three of Defendants' spice products; Crazy Monkey, Sexy Monkey and Mad Monkey, contains identical representations regarding the products' legality including:

- a) "No Banned Chemical"
- b) "It's Legal"
- c) "100% Cannabinoid Free"
- d) "DEA Compliant"

50. Under Colorado law, all synthetic cannabinoids are banned. The labeling on the Crazy Monkey and Sexy Monkey spice products was deceptive because the spice products did contain a banned chemical compound, the synthetic cannabinoid, AB-PINACA. See **Exhibit I**, CBI Laboratory Results. Possession of illegal synthetic cannabinoid compounds is a Class 2 Misdemeanor. The deceptive labeling on the Crazy Monkey and Sexy Monkey spice products presented the product as legal and did not warn consumers that the contents were illegal.

51. The packaging on the iBlown 4g and iBlown 15g spice products does not warn consumers about the contents of the packaging, or its legality.

52. CBI's laboratory analysis showed that the iBlown products contained XLR-11, an illegal analog of the synthetic cannabinoid JWH-018. See **Exhibit I**, CBI Laboratory Results.

53. Additionally, Defendants sold unnamed spice products in clear packaging without any labeling and without any warnings about the contents or its legality.

54. CBI's laboratory analysis showed that the unnamed spice products sold by PAYMON'S contained two different synthetic cannabinoids, XLR-11 and AB-FUBINACA. See **Exhibit I**, CBI Laboratory Results.

55. Defendants readily sold these illegal spice products to consumers along with the typical, presumptively legal products that are commonly sold in grocery or convenience stores.

IV. PAYMON'S failed to disclose to consumers that their spice products came with a great risk of adverse health consequences.

56. The spice products sold by PAYMON'S posed a risk of potential physical harm to consumers. Defendants could not know exactly what chemicals were sprayed onto the spice products they sold. None of the packaging accurately discloses what chemical compounds were applied to the dried plant material.

57. Defendants sold spice products in packages falsely labeled as "botanical sachet" and "potpourri" knowing that these products were not going to be used for any purpose other than human consumption. The false labeling was not intended to deter consumers from ingesting the product, only to mask the products illegality.

58. Defendants knew that that labeling such as "botanical sachet," "potpourri," and "not for human consumption" is commonly associated with spice products and Defendants knew that their spice products would be abused and smoked as mind altering substances.

59. Despite knowledge that spice products are potentially harmful to consumers, Defendants sold their spice products without any accurate disclosures of what chemicals were actually present in the spice product.

60. Neither PAYMON'S, nor the packaging of the products they sold, advised consumers about what chemicals were sprayed on the spice products. Neither PAYMON'S, nor the packaging of the products they sold, disclosed to the consumer that the chemicals were unknown and potentially dangerous.

61. The Crazy Monkey and Sexy Monkey spice products' packaging was particularly misleading because it advised consumers that it did not contain any banned substance, when in fact, they contained AB-PINACA, an analog of APINACA, a banned synthetic cannabinoid that was linked to the August 2013 synthetic cannabinoid outbreak. See Exhibit J, Affidavit of Investigator Kenneth King, Colorado Attorney General's Office. See Exhibit I, CBI Laboratory Results.

62. The professional packaging, the wording on the packages, and the Defendants' willing sale of such products at a public store, misled consumers to believe that the spice products were legal and safe.

FIRST CLAIM FOR RELIEF

C.R.S. § 6-1-105(g)

63. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 62 of this Complaint.

64. PAYMON'S presented and sold spice products to consumers as if they were legal and safe, when they were not. Defendants were, at a minimum, reckless in making these claims as they could not be sure of these claims. Furthermore, it is likely that Defendants had knowledge, or at least reason to know, that the products they sold were not legal and safe.

65. Defendants marketed and sold 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. Defendants failed to determine what was contained in their products. The actual ingredients, which included synthetic cannabinoids, placed consumers at obvious risk for potential health problems and physical injury.

66. By means of the above-described conduct, Defendants have deceived, misled, and unlawfully acquired money from consumers while taking away sales from lawfully acting business.

SECOND CLAIM FOR RELIEF

C.R.S. § 6-1-105(e).

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

68. PAYMON'S sold spice products with labels that falsely represented that the spice products they sold were for purposes other than consumption. Defendants knew that their products would not be used as a "botanical sachet" or "potpourri" but instead would be ingested by consumers.

69. PAYMON'S sold spice product with labels that falsely stated the product was "DEA Compliant," without basis.

70. Defendants failed to provide accurate ingredient information while representing that the ingredients used in their produces were safe and legal.

71. Defendants made false representations as to the benefits of their products including the misrepresented benefit that purchasers would not be in possession of an illegal controlled substance.

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

THIRD CLAIM FOR RELIEF

C.R.S. § 6-1-105(u)

73. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 –72 of this Complaint.

74. PAYMON'S failed to disclose that the spice products they were selling might contain synthetic cannabinoids or other chemicals that could cause adverse health effects when ingested.

75. Defendants failed to disclose the contents and ingredients of the spice products they sold.

76. Defendants failed to disclose their lack of safeguards and quality control that would ensure the products they sold did not contain illegal controlled and dangerous substances.

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

FOURTH CLAIM FOR RELIEF

C.R.S. § 6-1-105(b)

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

79. PAYMON'S sold spice product with labels that falsely stated the product was "DEA Compliant," without basis.

80. Defendants 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.

81. 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), and (e) and (b).

B. An order preliminarily and 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. (2013).

E. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado, maximum civil penalties in an amount not to exceed \$2000 per violation pursuant to § 6-1-112(1)(a), C.R.S. (2013), or \$10,000 per violation pursuant to § 6-1-112(1)(c), C.R.S. (2013).

F. An order requiring Defendants to pay 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. (2013).

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

Dated this 21st day of January, 2014.

JOHN W. SUTHERS
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