

<p>DISTRICT COURT, COUNTY OF EL PASO, STATE OF COLORADO 270 South Tejon Colorado Springs, Colorado 80903</p> <hr/> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL</p> <p>Plaintiff,</p> <p>v.</p> <p>POPO WEE MART, LLC AND JIN JU KIM, INDIVIDUALLY, AND WANHEE LEE, 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 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.</p> <p>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 JIN JU KIM operates a convenience store located at 1875 S. Academy Boulevard, Colorado Springs, Colorado incorporated as POPO WEE MART, LLC. Defendant WANHEE LEE, is the husband of JIN JU KIM, and assists JIN JU KIM with the operation of the POPO WEE MART store. (All parties are hereafter collectively referred to as “PoPo Wee Mart” 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 Colorado Springs, Colorado, in El Paso County. Therefore, venue is proper in El Paso 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. 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.

15. The possession of synthetic cannabinoids became a class 2 misdemeanor, effective January 1, 2012. C.R.S. § 18-18-406.1. 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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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**.

22. 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.*

23. 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 221 emergency department visits between 8/21/13 and 9/19/13 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 “Summary of a Synthetic Marijuana-Related Illness Outbreak Investigation, Colorado, 2013.”

II. PoPo Wee Mart sold illegal and dangerous spice products

24. In November of 2013, Detective Kenneth Owens of the Colorado Springs Metro Vice, Narcotics and Intelligence Division (Metro VNI) received information that PoPo Wee Mart, a business located at 1875 S. Academy Boulevard in Colorado Springs, Colorado, was selling, and possibly manufacturing, spice products. See **Exhibit E-Affidavit of Kenneth Owens, Metro VNI**.

25. In response to this information, Detective Owens conducted an undercover purchase at PoPo Wee Mart on November 7, 2013. *Id.* at ¶3.

26. During the undercover purchase, Detective Owens entered PoPo Wee Mart and was attended at the counter by a woman, later identified as the owner of PoPo Wee Mart, Jin Ju Kim. Detective Owens asked Jin Ju Kim if she had any “10X,” a common brand of spice. Jin Ju Kim responded that she did not have any 10X. Detective Owens asked if Jin Ju Kim had anything like 10X, to which she responded that she did have other types. Jin Ju Kim retrieved a blue bag from under the counter and stated that she had “Sexy Monkey,” “Gorilla,” and “Scooby Doo.” Detective Owens purchased a small, cylindrical container of Sexy Monkey for \$30.00. *Id.* at ¶4.

27. Detective Owens submitted the container of Sexy Monkey to the Colorado Springs Police Department Metro Forensic Crime Laboratory for testing. The laboratory analysis showed that the Sexy Monkey product contained two types of illegal synthetic cannabinoids, XLR-11 and JWH-018. *Id.* at ¶5.

28. Two weeks later, on November 21, 2013, Detective Owens conducted another undercover purchase at PoPo Wee Mart. Detective Owens purchased a packet of “Sexy Zombie” and packet of “Joker” from Jin Ju Kim for a total of \$65.00. Lab analysis showed that the Sexy Zombie spice product contained AB-FUBINACA, and that the Joker spice product contained, XLR-11, both illegal synthetic cannabinoids. *Id.* at ¶6.

29. After a third undercover purchase on December 11, 2013, in which he purchased another packet of Sexy Zombie, Detective Owens sought and obtained a search warrant to search PoPo Wee Mart. On December 18, 2013, investigators from the Metro VNI and the Colorado Springs Tactical Enforcement Unit (“Tactical Enforcement Unit”) executed the search warrant on PoPo Wee Mart. *Id.* at ¶7-8.

30. Detective Chace Passanante entered the store first to carry out pre-raid surveillance. While he was in the store, Detective Passanante observed a man

(later identified as Wanhee Lee, the husband of defendant Jin Ju Kim) assist a customer with the purchase of a suspected spice product. The customer complained that the price for the product used to be \$5.00, but was now \$10.00. Jin Ju Kim told the customer that he could have the suspected spice product for \$5.00. See Exhibit E-Affidavit of Chace Passanante, Metro VNI.

31. During the search, Metro VNI seized 1,505 commercially packaged spice products. The product names included “King Gorilla,” “Down 2 Earth Climaxxx,” “Diablo Botanical Incense,” “Alice in Wonderland,” “Bizaro,” “Joker,” “Sexy Monkey,” “Hammer Head,” “100% Pure Evil,” “Scooby Snax Potpourri,” “Cloud 9 Mad Hatter Incense,” “Smoke XXX Aromaterapic Potpourri,” “WTF Next Generation Herbal Potpourri,” “California Dreams,” “Dead Man Walking,” “Down 2 Earth Reggae,” and “Mad Monkey,” ” See Exhibit E-Affidavit of Kenneth Owens, Metro VNI. *Id.* at ¶9.

32. Metro VNI also removed 156 unlabeled clear plastic bags containing suspected cannabinoids. Jin Ju Kim told investigators that she purchases larger quantities of spice products and then repackages them into the clear plastic bags for the customers’ “convenience.” *Id.* at ¶10.

33. During the execution of the search warrant, Detective Owen explained to Jin Ju Kim the purpose for the search and explained that the spice products sold by her store were illegal. *Id.* at ¶11.

34. Despite this explanation, despite the substantial presence of law enforcement in the store on December 18, 2013, and despite the removal of all spice products, PoPo Wee Mart continued to sell spice products.

35. In January of 2014, one month after executing the search warrant, Detective Owens received information that PoPo Wee was again selling spice products. Based on this information, Detective Owens carried out another undercover buy during which Wanhee Lee sold suspected spice products. Metro VNI executed a second search warrant on February 18, 2014. *Id.* at ¶12.

36. Jin Ju Kim’s brother, Terry Kim, was operating the store at the time the second search warrant was executed. Mr. Kim had several packets of spice and approximately \$6,000.00 in cash in his pocket. A small bag containing commercially packaged spice products was found behind the counter, including some of the same brand names that were seized on December 18, 2013. Mr. Kim also consented to a search of his vehicle outside the store. Metro VNI found commercially packaged spice and loose bulk spice hidden beneath the spare tire in the trunk of his vehicle. *Id.* at ¶13.

III. PoPo Wee Mart failed to disclose to consumers that their spice products were potentially illegal.

37. PoPo Wee Mart sold spice products to consumers without warning that the products could contain illegal synthetic cannabinoids. To the contrary, the labeling on the “Sexy Zombie” spice sold by PoPo Wee Mart stated:

- “This product contains only legal chemical[sic]”
- “No banned chemical”

38. Under Colorado law, all synthetic cannabinoids are banned. The labeling on the Sexy Zombie spice product was deceptive because it contained the illegal synthetic cannabinoid, AB-FUBINACA.

39. Possession of any synthetic cannabinoid is a Level 2 Drug Misdemeanor. PoPo Wee Mart effectively sold “misdemeanors” to its customers, while leading them to believe the product was legal.

40. Almost all of the commercially packaged spice products sold by PoPo Wee Mart contained misleading statements about its legality. Defendants sold spice products with explicit representations that the spice was not a controlled substance under state or federal law.

41. Additionally, PoPo Wee Mart sold unnamed spice products in clear packaging without any labeling and without any warnings about the contents or its legality.

42. 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. PoPo Wee Mart failed to disclose to consumers that their spice products came with a great risk of adverse health consequences.

43. The spice products sold by Po Po Wee Mart 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.

44. Defendants sold spice products in packages falsely labeled as “herbal incense,” “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.

45. 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.

46. Despite potential harm to consumers, Defendants sold their spice products without any accurate disclosures of what chemicals were actually present in the spice products

47. The labeling on the “Joker” spice product described the product as a “Legal Herbal Sachet” suggesting that its contents are herbal, versus synthetic, and implying that the product is safe.

48. In reality, the “Joker” spice product was far from safe. The Colorado Springs Police Department Metro Forensic Crime Laboratory analyzed the contents of the “Joker” spice product and determined that it contained, XLR-11, an illegal synthetic cannabinoid.

49. On May 16, 2013, the DEA deemed XLR-11 to be an “imminent public safety hazard” as part of the process of temporary placement of XLR-11 into its Schedule I of federally controlled substances. The DEA cited to the Centers for Disease Control and Prevention’s study which linked XLR-11 to acute kidney failure, as well as the various other adverse health effects associated with synthetic cannabinoids, including vomiting, anxiety, agitation, irritability, seizures, hallucinations, tachycardia, elevated blood pressure, and loss of consciousness.

50. 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)

51. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 50 of this Complaint.

52. Defendants 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 knew, or should have known that the products they sold were not legal and safe.

53. 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.

54. 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).

55. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 54 of this Complaint.

56. Defendants sold spice products with labels that falsely represented that the spice products they sold were for purposes other than consumption. Defendants sold these products knowing they would not be used as a “botanical sachet” or “potpourri” but instead would be ingested by consumers as a drug..

57. Defendants sold spice product with labels that falsely suggested that the product was sanctioned by governmental agencies, including the DEA, such as “DEA Compliant.”

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

59. 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.

60. 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)

61. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 –60 of this Complaint.

62. Defendants 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.

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

64. 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.

65. 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)

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

67. Defendants sold spice products with labels that falsely suggested that the product was sanctioned by governmental agencies, including the DEA. Defendants made false representations as to the approval or certification of their product by labeling it “DEA Compliant” without basis.

68. 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 and approved for sale by all governmental regulators.

69. 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 8th day of May, 2014.

JOHN W. SUTHERS
Attorney General

s/ Jeffrey M. Leake

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