

STATE OF MICHIGAN
IN THE 17TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF KENT

DANA NESSEL, ATTORNEY GENERAL OF
THE STATE OF MICHIGAN, *ex rel*
The People of the State of Michigan,

Petitioner,

v

KOOZ CONCEPTS INTERNATIONAL, INC.,

Respondent.

No. 20-10-MS

HON. MARK A. TRUSOCK

Andrea Moua (P83126)
Darrin Fowler (P53464)
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Corporate Oversight Division
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ASSURANCE OF VOLUNTARY COMPLIANCE

Dana Nessel, Attorney General of the State of Michigan, on behalf of the State of Michigan and Kooz Concepts International, Inc. (Kooz Concepts), hereby execute and agree to be bound by this Assurance of Voluntary Compliance (Assurance).

This Assurance concerns the resolution of alleged violations of the Michigan Consumer Protection Act (MCPA), 1976 PA 331, as amended, MCL 445.901 *et seq.* Kooz Concepts agrees not to contest any terms of this Assurance.

The parties agree that the entry into this Assurance by Kooz Concepts is not an admission or agreement with respect to any legal or factual issues dealt with in this Agreement.

THEREFORE, the parties agree as follows:

I. Jurisdiction

1.1 The Department of Attorney General (the Department) has jurisdiction over the subject matter of this Assurance pursuant to MCL 445.905 and 445.910. Kooz Concepts waives all objections and defenses that it may have as to the jurisdiction of the Department over the matters covered by this Assurance.

II. Parties Bound

2.1 This Assurance binds Kooz Concepts, whether acting through associates, principals, officers, directors, employees, representatives, successors or assigns, or through any other subsidiary, corporation, assumed name or business entity. Kooz Concepts is responsible for compliance with the terms of this Assurance, and must ensure that all employees, contractors, subcontractors, agents and representatives comply with the terms of this Assurance.

III. Definitions

3.1 "Kooz Concepts" refers to Kooz Concepts International, Incorporated, and all employees; agents; representatives; and contractors for Kooz Concepts.

3.2 "Assurance" means this Assurance of Voluntary Compliance.

3.3 "COD" means the Michigan Department of Attorney General, Corporate Oversight Division.

3.4 "Ex Parte Petition" means the Ex Parte Petition for Civil Investigative Subpoenas filed with the Kent County Circuit Court on April 16, 2020.

3.5 "Parties" means COD and Kooz Concepts, collectively.

3.6 All other terms shall have the meaning specifically defined in the MCPA.

IV. COD's informal inquiry related to Kooz Concepts.

4.1 On April 8, 2020, the Attorney General received a consumer complaint regarding face masks being sold at a Battle Creek, Michigan grocer called Penny Pinchers. In this complaint, the consumer stated that a package of 10 thin, paper material masks were being sold at Penny Pinchers for \$30.00, when the same type of masks typically sell for approximately 58 cents apiece. An Investigator from the Attorney General's Office contacted the owner of Penny Pinchers to inquire into the masks being sold. The owner of Penny Pinchers, Mr. Ziebell, informed the Investigator that the masks were N95 masks and he purchased 3,000 masks from Kooz Concepts. The face masks purchased by Penny Pinchers from Kooz Concepts were delivered in boxes labeled that contained the words "N95 Filter Layer" on the label. Therefore, Penny Pinchers believed they were genuine N95 masks and marketed them to the public as such. The owner of Penny Pinchers supplied photos of the boxes to the Attorney General investigator.

4.2 The Attorney General Investigator next contacted Mr. Kraig Koeze, the owner of Kooz Concepts, to inquire into his face mask sales. Mr. Koeze informed the Investigator that he imported the masks from China but did not believe they were true N95s. Mr. Koeze referred to the masks as "basic three-ply masks" and "not surgical", however, Mr. Koeze did also refer to the masks as KN-95s. Mr. Koeze also told the Investigator that he sold the same masks to several other Michigan businesses, including nursing homes. Mr. Koeze informed the Attorney General Investigator that he believed the masks came from a legitimate supplier that was registered or approved by the United

States Food and Drug Administration.

4.3 The masks sold by Kooz Concepts were neither N-95s nor KN-95s. This complaint and resulting information implicate the Michigan Consumer Protection Act. In relevant part, section 1 of the Michigan Consumer Protection Act prohibits:

(a) Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

(c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

(e) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(aa) Causing coercion and duress as the result of the time and nature of a sales presentation.

The Attorney General filed an Ex Parte Petition for Civil Investigative Subpoenas with Kent County Circuit Court on April 16, 2020 as a result of Mr. Koeze's refusal to continue cooperating with the Attorney General's requests. This Court issued an Order Authorizing Civil Investigative Subpoenas on April 17, 2020, and subpoenas were issued to Kooz Concepts. Mr. Koeze, by and through his attorney, provided the Attorney General's Office documents demonstrating where Kooz Concepts sold face masks and related pricing. Through this documentation, the Attorney General learned that Kooz Concepts acquired face masks from a Chinese supplier at a cost of 84 – 85 cents per piece. Kooz Concepts sold 11,100 masks to Michigan businesses, with prices ranging from 98 cents per mask to \$2.00 per mask. Further, the Attorney General learned that Kooz Concepts profited \$1,750.00 from its face mask sales to Penny Pinchers alone. In the meantime, the Attorney General contacted the other businesses Kooz Concepts sold

face masks to confirm they were aware the face masks were not true N95s.

4.4 In entering into the Assurance, the mutual objective of the parties is to resolve, without litigation, COD's potential claims under the MCPA for preliminary and permanent injunctive relief, as well as the potential claims for payment of damages and reimbursement of the Department's costs and expenses related to the informal inquiry. The entry into this Agreement by Kooz Concepts is not an admission of liability with respect to the particular claims of any individual consumer. Kooz Concepts is offering this Assurance to avoid the time and expense of litigating this matter.

V. Implementation of Compliance Measures

V.1 To the extent that Kooz Concepts may have engaged in any unfair or deceptive business practices in the State of Michigan, including any violations of the MCPA, Kooz Concepts shall immediately cease and desist such practices. While Kooz Concepts may continue to sell goods, it gives assurance it will no longer sell face masks, or any face mask represented as an N95, KN-95, or comparable filtration designation. Further, Kooz Concepts gives assurance it will establish an internal policy to ensure all consumer goods it distributes for sale are properly labeled and do not contain any false or misleading designations. To the fullest extent possible under Kooz Concepts' control, such policy shall apply to the products themselves as well as the packaging of any product. Further, Kooz Concepts will not knowingly sell, market, drop ship, or promote products that do not comply with this policy.

V.2 Kooz Concepts understands that by accepting these assurances, the Attorney General and COD are making no representation as to its adequacy in selling products, or compliance with the MCPA. In other words, if the Attorney General receives

consumer complaints or other information in the future suggesting that Kooz Concepts has violated, or is violating, the MCPA, Kooz Concepts' implementation of these assurances shall not deprive COD from taking any appropriate action described in these laws.

VI. Financial obligations

6.1 Kooz Concepts will make a payment to the Attorney General's COD in the total amount of \$1,750.00. This payment will be accomplished through a check or money order made payable to the State of Michigan. This sum is to compensate the citizens of Michigan for costs associated with the investigation giving rise to this Assurance. The payment will be due to the Attorney General within 14 days of the effective date of this Assurance.

6.2 Should the payment anticipated under this agreement not be timely made, an additional \$5 per day shall be added for each calendar day of delinquency. COD will give notice of the delinquency and resultant costs to Kooz Concepts by email and first-class mail. Kooz Concepts understands the COD reserves the right to commence a lawsuit for collection of the obligations under this agreement should any payment be more than fourteen days late.

6.3 The payments to the State of Michigan anticipated by Section 6.1 shall be sent to the attention of Andrea Moua Assistant Attorney General, Corporate Oversight Division, P.O. Box 30736, Lansing, MI 48909.

VII. Release

VII.1 Upon the Effective Date, the COD hereby releases and discharges Kooz Concepts and any of its entities, affiliates, subsidiaries, predecessors, successors or assigns, and each and all of its past or present officers, directors, associates,

shareholders, controlling persons, representatives, employees, attorneys, counselors, advisors, or agents, from any and all civil or administrative claims, demands, rights, actions, causes of action, and liabilities, of any kind or nature whatsoever, that are related to sale of face masks prior to the Effective Date. This release does not apply to the sale of masks beyond what the Attorney General has identified through the Ex Parte Petition and accompanying Subpoena *Duces Tecum*, including the alleged acts, failures to act, omissions, misrepresentations, facts, events, transactions, statement, occurrences or other subject matter which were or could have been set forth, alleged, complained of or otherwise referred to in the Ex Parte Petition. This release does not apply to Kooz Concepts' sale of any other products. Nothing herein shall be construed as a waiver or release of claims asserted or that may be asserted by individual consumers.

VIII. General Provisions

8.1 This Assurance is binding upon, inures to the benefit of, and applies to the parties and their successors-in-interest. This Assurance does not bind any Division of the Michigan Department of the Attorney General other than COD. Nor does this Assurance bind the Public Service Commission or any other agencies, boards, commissions or offices of the State of Michigan.

8.2 This Assurance does not affect, expand or limit the rights of any private party to pursue any available remedy or remedies pursuant to applicable law, except that any common law right of set off would still be applicable. Further, this Assurance does not create any private right or cause of action to any third party.

8.3 This Assurance does not constitute an approval by the Attorney General of any of Kooz Concepts' business practices and Kooz Concepts must not make any

representation to the contrary.

8.4 No change or modification of this Assurance is valid unless in writing and signed by all parties.

8.5 Within three business days of the Effective Date of this Assurance, COD will file a copy of this Assurance with the Kent County Circuit Court in the above-captioned matter, as well as with the Ingham County Circuit Court as anticipated by MCL 445.905.

8.6 Unless a temporary restraining order is sought, COD will make reasonable efforts to provide written notice in the event that COD believes Kooz Concepts to be in noncompliance with any provision of this Assurance, setting forth the basis for such belief.

IX. Signatories

9.1 Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Assurance and to legally bind such party to the terms and conditions of this Assurance. If this Assurance is signed by a corporate officer or representative, by signing you acknowledge that you have had the opportunity to consult with an attorney acting on behalf of the corporation before executing this document.

X. Effective Date

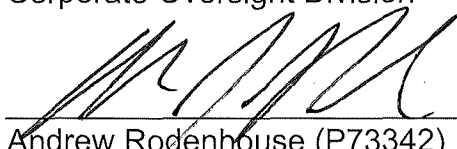
10.1 The effective date of this Assurance is the date upon which the COD representative signs this Assurance. Electronic signatures, as confirmed through electronic mail messages, shall be deemed sufficient and binding for purposes of this Assurance.

Dated: July 8, 2020

By: 
Andrea Moua (P83126)
Assistant Attorney General

Michigan Dep't of Attorney General
Corporate Oversight Division

Dated: July 8, 2020

By: 

Andrew Rodenhouse (P73342)
Attorney for Respondent