

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE COUNTY OF KENT

DANA NESSEL, ATTORNEY GENERAL  
OF THE STATE OF MICHIGAN,

Petitioner,

No. 20-10-MS

v

HON. MARK A. TRUSOCK

Kooz Concepts International, Inc.,

Respondent.

\_\_\_\_\_ /

Andrea Moua (P83126)  
Darrin F. Fowler (P53464)  
Assistant Attorneys General  
Michigan Dep't of Attorney General  
Corporate Oversight Division  
P.O. Box 30736  
Lansing, MI 48909  
(517) 335-7632

\_\_\_\_\_ /

**ATTORNEY GENERAL'S *EX PARTE* PETITION FOR CIVIL  
INVESTIGATIVE SUBPOENA**

**Parties, Legal Authority, and Venue**

1. Michigan's Attorney General is authorized to file an *ex parte* petition with the Circuit Court requesting issuance of investigative subpoenas pursuant to Section 7 of the Michigan Consumer Protection Act ("MCPA"), MCL 445.907, which provides in pertinent part:

- (1) Upon the *ex parte* application of the attorney general to the circuit court in the county where the defendant is established or conducts business or, if the defendant is not established in this state, in Ingham county, the circuit court, if it finds probable cause to believe a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act, may, after *ex parte* hearing,

issue a subpoena compelling a person to appear before the attorney general and answer under oath questions relating to an alleged violation of this act....The subpoena may compel a person to produce the books, records, papers, documents, or things relating to a violation of this act.... [MCL 445.907]

2. Respondent Kooz Concepts International, Inc. (“Kooz Concepts”) is a Michigan limited liability company that has been in business for approximately 25 years. Kooz Concepts has conducted business both online and from its business address, located at 1740 44<sup>th</sup> St. SW, Suite 106, Wyoming, Michigan, 49509. Thus, this Court is an appropriate venue for this Petition.

3. The coronavirus pandemic has been a time of great uncertainty, panic, and confusion for the entire world. Unfortunately, the careless actions of Kooz Concepts have contributed to this specifically for Michigan residents and potentially put their health at risk. In a time when Michiganders are desperate to protect themselves and their families from becoming infected with the virus, Kooz Concepts disregarded obvious misinformation and conducted business as usual.

### **Factual Background**

4. The Attorney General first learned of the existence of Kooz Concepts when a consumer complaint was filed against another West Michigan business, Penny Pinchers, over concerns of price gouging on face masks. The complainant also said misrepresentations were being made about their quality. Penny Pinchers is a small grocer located in Battle Creek, Michigan. On April 6, 2020, Penny Pinchers posted on its public Facebook page that it was selling N95 medical masks for \$3.00 each. (Facebook screenshot, **Exhibit A**). The consumer complaint filed

with the Attorney General included a photo of the face masks being sold by Penny Pinchers. (AG consumer complaint of Karen P., **Exhibit B**).

5. The Centers for Disease Control has issued helpful guidance to assist citizens in understanding the difference between basic masks and N95s. (CDC Guidance, **Exhibit C**). This guidance clearly demonstrates that the masks sold by Penny Pinchers, as depicted in the photo accompanying the consumer complaint, were basic surgical masks and not N95s. Further, this guidance demonstrates the vast differences between a basic mask and an N95, and the large gap in protection they provide to the wearer.

6. On April 10, 2020, an Investigator from the Attorney General contacted Penny Pinchers to inquire about the masks being sold. The owner of Penny Pinchers, James Ziebell, confidently told the Investigator that the masks were 3-layer, N95 masks. Further, Mr. Ziebell informed the Investigator that he purchased the masks from a Grand Rapids-based supplier. Mr. Ziebell explained that he had many customers in his store asking for face masks, hand sanitizer, and other protective products, which prompted him to source the face masks from this Grand Rapids supplier (See James Ziebell Recording, April 10, 2020). Upon request, Mr. Ziebell sent the Attorney General an invoice showing he purchased 1,000 masks from Kooz Concepts International, Inc. on April 6, 2020, for \$1.20 per mask. (Penny Pinchers Invoice, **Exhibit D**).

7. Although one well-versed in different models of masks and respirators would know that the masks sold at Penny Pinchers pictured in Exhibit B are far

from N95s, many Michigan citizens do not have such background. In fact, Mr. Ziebell appears to have genuinely believed he was selling N95 masks to his customers. He believed this because the masks delivered to him by Kooz Concepts came in boxes with “N95” marked right on them. (Box Photo, **Exhibit E**).

Unfortunately, many consumers, including Mr. Ziebell, believe that when a mask is marketed as N95, that it truly is an N95, and that it will provide the higher level of protection. In reality, the simple surgical-type masks sold to Penny Pinchers by Kooz Concepts will provide little protection, and therein lies the danger.

8. Upon learning of Kooz Concepts and its role in misleading mask distribution, an Investigator from the Attorney General contacted the owner, Kraig Koeze, on April 13, 2020 (See Investigator’s Report, **Exhibit F**). Mr. Koeze informed the Attorney General Investigator that his business typically imports Chinese products, which are then sold at various trade shows. Mr. Koeze shared that his cousin works at a hospital and contacted him in desperate need of protective material due to the pandemic, so he used his Chinese contacts to see if he could find the protective equipment. He told the Attorney General Investigator that he obtained the “basic 3-ply masks” from a “reliable source” which was able to procure the masks in January 2020. From there, Mr. Koeze attempted to explain to the Investigator that the Chinese supplier had a “certificate” from the United States Food and Drug Administration (FDA) (See Kraig Koeze Recording April 13, 2020). To demonstrate that the companies he dealt with were legitimate. At the request of the investigator, Mr. Koeze later provided documentation to the Attorney General.

(Chinese Company Documentation, **Exhibit G**). Upon first look at the documents, it is immediately clear that these documents are suspicious at best. For example, certain lines of text on the documents are blurred or smudged. Two of the documents have what appears to be an FDA logo on them. Two documents appear to be demonstrating “FDA Registration” and titled “Fiscal Year 2020 Certification of Registration” with a series of meaningless text and numbers, with an unusual American flag graphic. The amount of confusing details on these documents are endless and raise red flags that Kooz Concepts, a business with over 25 years of experience, seems to have irresponsibly ignored.

9. Before actually supplying these documents, Mr. Koeze attempted to explain to the Attorney General Investigator that specific text on the documents is blurred or whited out so that a purchaser, such as Kooz Concepts, does not purchase products directly from the supplier, or prevents a purchaser from bypassing a middle man. Further, Mr. Koeze stated that the factories in China are “certified” by the FDA to make the masks but the masks themselves are not individually certified. He reiterated to the Investigator that these masks are not surgical, but then states his “interpretation” is that the masks are KN95s and not N95s. Later in the conversation, Mr. Koeze calls the masks he sold “cheap little string things”. (See Kraig Koeze Recording dated April 13, 2020). When asked about the N95 marking on the boxes sold to Penny Pinchers, Mr. Koeze did not have a clear explanation. He said on one hand he is not selling the masks in boxes to customers, but then says that Mr. Ziebell from Penny Pinchers may have received the masks from Kooz

Concepts in a box (See Kraig Koeze Recording dated April 14, 2020). The paper masks sold by Penny Pinchers, the Chinese documentation, and overall narrative by Mr. Koeze about his business and mask purchases leave the Attorney General with more questions than answers.

10. Given the ongoing nature of the coronavirus crisis and the ever-changing information given to the public on how to best protect themselves, the Attorney General is extremely concerned that Kooz Concepts is carelessly selling counterfeit or misleading personal protection equipment to Michigan citizens. Consumers who are not aware of the differences between a basic 3-ply mask and a coveted N95 respirator may be purchasing these essentially useless masks, thinking they are providing them that enhanced protection afforded by a true N95. (See CDC Guidance, **Exhibit C**). Mr. Ziebell is a key example. He took the packaging he received the masks in at face value and apparently believed that he was selling his customers N95, medical-grade masks. In reality, he was selling masks that his supplier, Mr. Koeze, told the Attorney General could be used for “janitorial” purposes. Perhaps most concerning to the Attorney General is that Mr. Koeze told the Investigator that Kooz Concepts has sold the same exact masks to other businesses than Penny Pinchers, including multiple nursing homes and a McDonald’s restaurant. Thus, residents or employees of a nursing home, housing potentially the most vulnerable population to the virus, could be exposed and unknowingly wearing a mask, or as Mr. Koeze refers to it, a “cheap little string thing” they think provides significant protection.

11. In light of the public health concerns raised by the apparent marketing of masks as N-95 To nursing homes and other businesses that are not capable of providing that level of protection, the Attorney General investigator emailed Mr. Koeze asking him to identify all purchasers of the masks by the next business day so that appropriate and potentially life-saving notifications could be made. Kooz Concepts refused to supply that, or any other information and ceased its cooperation with the Attorney General. (Email Response, **Exhibit H**). The potential dangers associated with having face masks used within a nursing home that are mistakenly believed to be N95s cannot be overstated. It is an environment that inherently requires close, personal contact among staff and residents. COVID-19 can be spread quickly in such settings. For example, a news story this week shows a nursing home in Richmond, Virginia has experienced a coronavirus outbreak that has already claimed the lives of 45 of its residents.

<https://www.nytimes.com/2020/04/14/us/coronavirus-nursing-homes.html>).

Furthermore, an assisted living facility in DeWitt, Michigan is in the midst of an outbreak that has already led to deaths of 4 residents.

<https://www.wilx.com/content/news/Four-people--569676071.html>).

12. The inaccurate representations perpetuated by Kooz Concepts put Michigan citizens in danger. The coronavirus presents a unique and urgent situation, and more information is needed quickly so proper warnings can be given to those businesses that purchased the masks.

13. There is probable cause to believe Respondent engaged in one or more of the following unfair trade practices prohibited by the MCPA by selling 3-ply, surgical masks obtained from China with an N95 designation:

- (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.

14. An investigation into the sales transactions, and customers of the Respondent, is appropriate.

### **Conclusion and Relief Sought**

Kooz Concepts International, Inc. has created dangerous confusion and is taking advantage of Michigan consumers through mechanisms prohibited under the MCPA as described above. These circumstances create authority for an investigation under MCL 445.907.

The Attorney General asks this Court to authorize an investigation under the MCPA. Through this investigation, the Attorney General will issue subpoenas for records from Kooz Concepts to shed light on the number of transactions, the purchasers, and the extent to which there are affected consumers. The Attorney General will specifically investigate the representations made and information shared by Kooz Concepts to potential buyers regarding its face masks. The Attorney General will also seek the investigative testimony of Kraig Koeze and any other employees whose names are unknown at this time. The Attorney General will also seek documents and testimony from both the supplier to Kooz Concepts and the entities it made sales to gain a full understanding of these transactions.

In light of the danger to the public health that may exist because of the reliance upon information suggesting these masks were N-95s, the Attorney General asks that this Court authorize service of the subpoena through an electronic mail message to the email account through which the special agent has already communicated with Mr. Koeze as shown in **Exhibit H**. And, the Attorney General asks that this Court shorten the time frame for Kooz Concepts to respond to the portion of the subpoena relating to identification of all nursing homes and other purchasers of the masks to be a period of not more than twenty-four hours after service of that subpoena.

A proposed order authorizing the issuance of subpoenas for this investigation is included as **Exhibit I**.

Respectfully submitted,

DANA NESSEL  
Attorney General

/s/Andrea Moua  
Andrea Moua (P83126)  
Darrin F. Fowler (P53464)  
Assistant Attorneys General  
Michigan Dep't of Attorney General  
Corporate Oversight Division  
P.O. Box 30736  
Lansing, MI 48909  
(517) 335-7632

Dated: April 16, 2020