

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

DANA NESSEL, ATTORNEY GENERAL
OF THE STATE OF MICHIGAN,
Petitioner,

No. 19- -MS

v.

HON. CHRISTOPHER P.
YATES

BLVCK PODS, LLC and
BLVCKEDPODS, LLC,

Respondent.

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***EX PARTE* PETITION FOR CIVIL INVESTIGATIVE SUBPOENAS**

Introduction

As the holidays approach, consumers are checking off items on their shopping lists. Many of those lists this year likely include black wireless earphones—a popular item similar to Apple Inc.'s iconic white AirPods. While there are many websites that sell such earphones, a consumer may be more apt to buy from a website that “goes viral” on social media websites. This would be especially true if the website advertised that its products were “100% custom and unique” and led

consumers to believe the items were produced and shipped from a Midwestern city such as Grand Rapids.

This petition concerns two related Grand Rapids businesses—Blvck Pods, LLC and BlvckedPods, LLC, which sell such earphones. Based on complaints received from the Better Business Bureau (BBB) and information publicly available online, the Attorney General has probable cause to believe these companies have violated and continue to violate the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.* Accordingly, the Attorney General seeks this Court’s authorization to proceed with an investigation.

Parties, Legal Authority, and Venue

1. The Michigan Attorney General is authorized to file an *ex parte* petition with the circuit court requiring issuance of an investigative subpoena under section 7 of the Act, MCL 445.907, which provides in pertinent part:

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 an *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 an alleged violation of this act. MCL 445.907(1).

2. Respondent Blvck Pods, LLC is a Michigan limited liability company.

It was organized in April 2019 by its resident agent, Angel Gonzalez of Grand Rapids. (Blvck Pods, LLC Information, attached as Exhibit 1.)

3. Respondent BlvckedPods, LLC is a Michigan limited liability company. It was organized in September 2019 by its resident agent, Tara Gonzalez of Grand Rapids. (BlvckedPods, LLC Information, attached as Exhibit 2.)

4. Respondents have conducted business in the State of Michigan and elsewhere by selling wireless earphones to consumers through the internet.

5. Kent County is an appropriate venue for this Petition.

Factual Allegations

6. In spring 2019, Blvck Pods, LLC began selling black wireless earphones through the website www.blvckpod.com.

7. After receiving numerous complaints from consumers around the world regarding Blvck Pods, LLC, the Better Business Bureau (BBB) forwarded the complaints to the Attorney General. (BBC Complaints, attached as Exhibit 3.)

8. The complaints received generally alleged that the products ordered from www.blvckpod.com did not work properly, the business did not fulfill its guarantees, the products were not shipped promptly or have never been shipped, the business did not promptly refund customers, and the like.

9. As a result of its business practices, Blvck Pods, LLC began to receive negative media attention.

10. On May 31, 2019, West Michigan's Fox 17 published a story regarding Blvck Pods, LLC, after it was contacted by a consumer that had ordered earphones from www.blvckpod.com and never received them. (5/31/2019 Fox 17 story, attached as Exhibit 4, available online at <https://fox17online.com/2019/05/31/gr-earbuds-business-facing-global-complaints-for-failing-to-deliver/>.)

11. Fox 17 interviewed Angel Gonzalez regarding the consumer's allegations. Mr. Gonzalez explained that his 16-year-old son and a friend were the true owners of the business. Further, the teenagers had been having a Chinese manufacturer ship the products directly from China to consumers, which caused issues. (*Id.*)

12. Fox 17 also interviewed Mr. Gonzalez' son, Isaiah. Isaiah explained that they had recently sent the manufacturer \$75,000 to cover about 5,000 orders, and they planned to send another \$100,000 in the next few days. (*Id.*)

13. Based on Isaiah's statements, it appears Blvck Pods, LLC total cost per product sold is approximately \$15.00.

14. On July 10, 2019, Fox 17 published a second story regarding Blvck Pods, LLC. At that time, another consumer had contacted Fox 17 and reported that he never received earphones that he ordered on April 26, and the company's website was now down. (7/10/2019 Fox 17 story, attached as Exhibit 5, available online at <https://fox17online.com/2019/07/10/complaints-persist-for-grand-rapids-online-earbuds-business/>.)

15. Based on consumer complaints and the Gonzalezes' own statements, it appears the Gonzalez family was operating a drop shipping business.

16. Drop shipping businesses have become prevalent in recent years. Drop shipping businesses accept orders from consumers, but then have the orders fulfilled by a source in a different location. Sources are frequently located overseas, such as in China. This practice allows the drop shipping business to profit by

charging consumers more than the source charges the drop shipping business to produce and ship the product to the consumer.

17. While drop shipping is not *per se* unlawful in Michigan, improperly operated drop shipping businesses raise concerns under the MCPA.

18. Although www.blvckpod.com is no longer operational, many consumers that filed complaints with the BBB have never had their concerns addressed by Blvck Pods, LLC, despite the BBB's intervention.

19. The BBB preserved a copy of the www.blvckpod.com website that was supplied by a consumer that filed a complaint regarding Blvck Pods, LLC. (www.blvckpod.com Screenshot, attached as Exhibit 6.)

20. The www.blvckpod.com website provided that its product, Blvck Pods, were "100% Custom and Unique" and "[b]ased on our own Pod Concept, our technologies are fully authentic." The website then provided the following business address: 601 Livingston, Grand Rapids, Michigan, 49503, USA. (*Id* at p 05.)

21. According to consumer Erick D. of Broken Arrow, Oklahoma, Blvck Pods, LLC sent him an email stating that his order had not been shipped because "our local post office is having a hard time shipping out our Blvck Pods due to high volume!" (Exhibit 3, p 08.)

22. Neither the www.blvckpod.com website nor the email to Erick D. acknowledged that the products were manufactured and shipped directly from China.

23. The www.blvckpod.com website stated that Blvck Pods were “[n]ot your average pods” and that the company was “[h]ome to the original Matte Black Pods.” The website also warned customers to “beware of FAKE BlvckPod Stores!” And the company’s refund policy noted the pods were “custom made.” The website also promised the pods would stop playing audio when removed from ears. (Exhibit 6, p 02-p 03.)

24. Consumer Kenny K. of Malaysia noted that the earphones he purchased from Blvck Pods, LLC did not automatically pause audio when removed from ears. (Exhibit 3, p 032 – p 033.)

25. Despite the advertisements on www.blvckpod.com website, many consumers complained to the BBB that the advertised products were never shipped to them after purchase. (Exhibit 3.)

26. The www.blvckpod.com website indicated that it had “limited stock” and that the “[o]ffer only lasts for first 150 orders,” presumably to induce consumers to make an immediate purchase without researching the company. (Exhibit 6, p 02.)

27. It appears Blvck Pods, LLC nonetheless did not limit the offer to the first 150 orders, as, according to consumers that filed complaints with the BBB, the company later represented to consumers that the company had insufficient supply to fulfill the paid-for orders. (Exhibit 3.)

28. The www.blvckpod.com website indicated it would allow a consumer to return or exchange if the product arrived damaged or did not work from the factory. (Exhibit 6, p 023.)

29. Consumer Alex L. of New York, New York complained to the BBB that he was sent a defective product and requested a replacement. He contacted Blvck Pods, LLC multiple times but, two and half months later, he had not received a replacement product. Instead, the company again sent him the tracking information for the original order. (Exhibit 3, p 018.)

30. As of May 2019, the www.blvckpod.com website indicated that if orders were immediately placed, they would be shipped within 2 weeks. (Exhibit 6, p 02.)

31. Consumer Nikolas B. of Gilbert, Arizona ordered earphones on April 21, 2019. Blvck Pods, LLC sent him an email stating the pods would ship in 24-48 hours. On May 11, 2019, he still had not received his order. Likewise, consumer John D. of Fort Hood, Texas ordered pods on May 7, 2019, but had not received them as of June 18, 2019. (Exhibit 3, p 02, p 07.)

32. Consumers also were not promptly refunded for products purchased from the www.blvckpod.com website.

33. Consumer Bryan G. of Plano, Texas purchased earphones from www.blvckpod.com on May 7, 2019. He reached out to Blvck Pods, LLC many times because he never received his order. He asked for a refund, but as of July 1, 2019, he had received neither his order nor a refund. (Exhibit 3, p 012.)

34. The www.blvckpod.com website charged consumers \$49.95 for a pair of earphones, a price advertised as cut from \$159.95. (Exhibit 6, p 01.) Chinese website www.alibaba.com, a website frequently used by drop shippers, sells similar products from around \$3.00 to \$25.00.

35. In September 2019, a new limited liability company was formed in Michigan—BlvckedPods, LLC. The company was organized by resident agent Tara Gonzalez and the registered address is the same as that of Blvck Pods, LLC. (Exhibit 2.)

36. It is believed that Tara Gonzalez is the spouse of Angel Gonzalez.

37. In recent months, websites very similar to www.blvckpod.com have become popular on the internet—www.blvcknoir.com and www.blvckedpods.com. (www.blvcknoir.com and www.blvckedpods.com Screenshots, attached as Exhibits 7 and 8.)

38. Consumer reviews available online for these new websites mirror those received by the BBB regarding Blvck Pods, LLC. (See, e.g. Trust Pilot reviews for BlvckNoir and Blvckedpods, attached as Exhibits 9 and 10, available online at <https://www.trustpilot.com/review/blvcknoir.com> and <https://www.trustpilot.com/review/blvckedpods.com>.)

39. On September 15, 2019, online journalist Paula Neal Mooney hypothesized that www.blvcknoir.com and www.blvckpod.com were launched by the same founders, noting that the two websites are “eerily similar[.]” (9/15/2019 Medium.com story, attached as Exhibit 11, available online at <https://medium.com/@paulanealmooney/is-blvcknoir-the-same-blvckpod-scam-or-great-marketing-66f0988654a1>.)

40. The www.blvcknoir.com website sells a product called “Matte BlackPods 2.” (Exhibit 7.)

41. The www.blvckedpods.com website sells a product called “BlvckPods V3.” It also includes many of the same statements previously displayed on www.blvckpod.com, such as “[o]ur Matte Blvck Pods are 100% Custom and Unique. Based on our own Pod Concept, our technologies are fully authentic.” However, this website claims the product was “Designed with [HEART EMOJI] in NYC[.]” (Exhibit 8, p 016, p 024.)

Violations of the Act

42. Under the MCPA, the following are considered unfair, unconscionable, or deceptive business practices:

- (b) Using deceptive representations or deceptive designations of geographic origin in connection with 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.
- (g) Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented.
- (i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions.
- (n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.
- (q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided.
- (s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.
- (u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement,

advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.

(z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.

[MCL 445.903(1).]

43. As demonstrated by the foregoing factual allegations, the Attorney General has probable cause to believe Respondents have engaged, and continue engaging, in the deceptive activities identified in the preceding paragraph.

Conclusion and Relief Requested

Based on the above, the Attorney General seeks authorization to issue subpoenas compelling Respondents to provide:

- (1) A list of all websites Respondents currently operate or have previously operated since January 2019 that offer goods for sale to consumers.
- (2) A list of all sources Respondents utilize or have utilized to fulfill and/or ship orders to consumers. For each listed source, copies of all correspondence with that source and any contracts or agreements Respondents have with that source.
- (3) All contracts and agreements with third parties, including but not limited to advertising partners and social media influencers, regarding the advertisement and sale of products sold on Respondents' websites.
- (4) Documentation of all orders received from consumers since January 2019 that remain unfulfilled, noting whether the consumer has been refunded. For the consumers that have been refunded, proof of that refund.
- (5) Copies of all correspondence with consumers since January 2019.
- (6) Patent or other intellectual property information regarding Respondents' "100% Custom and Unique" pod concept/technology.

(7) Copies of Respondents' stock and/or inventory records since January 2019.

(8) For each Respondent, a copy of the limited liability company membership agreement, any management agreements, and any other agreements reflecting manner of operations and sharing of revenues or profits.

(9) Copies of Respondents' financial records since January 2019, showing all revenue and expenditures and identifying all bank and online payment accounts in which revenues have been collected, maintained, or distributed to.

The Attorney General also seeks investigative testimony from Respondents' representatives, Angel, Tara, and Isaiah Gonzalez, to gain more information about Respondents' business practices.

Respectfully submitted,

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