

People v Sonjia Posh Boutique L.L.C.

2022 NY Slip Op 30981(U)

March 25, 2022

Supreme Court, New York County

Docket Number: Index No. 453970/2021

Judge: Laurence Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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THE PEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL OF THE STATE
OF NEW YORK,

Petitioner,

- v -

SONJIA POSH BOUTIQUE L.L.C., TANDRIA FAULKNER
d/b/a PRESTIGIOUS MARKETING CONCEPTS, INC.,

Respondent.

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INDEX NO. 453970/2021

MOTION DATE 01/13/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 23, 24, 26, 27, 30 were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

Upon the foregoing documents, the instant Petition is resolved as follows:

Petitioner commenced the instant Petition by filing same on December 15, 2021, together with an Order to Show Cause seeking a Temporary Restraining Order, seeking an Order, pursuant to Executive Law § 63(12) and GBL Article 22-A, 1. permanently enjoining Respondents, SONJIA POSH BOUTIQUE L.L.C., TANDRIA FAULKNER d/b/a PRESTIGIOUS MARKETING CONCEPTS, INC. from violating Executive Law § 63(12), GBL Article 22-A, §§ 349 and 350, and from engaging in the fraudulent, deceptive, and illegal practices alleged herein, including enjoining Respondents from offering or accepting payment for any consumer goods which they do not have in their possession and available for sale; 2. permanently enjoining Respondents from engaging in any consumer business within the State of New York until a \$100,000 performance bond is filed with the Attorney General by a surety or bonding company licensed by and in good standing with the New York State Department of Insurance, guaranteeing that Respondents comply with any injunction that may be entered herein, the proceeds of that bond

to provide a fund for restitution to consumers defrauded or damaged by the past or future conduct of Respondents, and to ensure payment of penalties and costs herein; 3. directing Respondents to provide an accounting to the Attorney General of the names and addresses of each consumer from whom Respondents collected sums for game consoles or other consumer goods, and the amount of monies received from each consumer, whether such goods were delivered and the date of delivery and the amount of any refund provided to each consumer; 4. to the extent not previously provided, directing Respondents to provide an accounting to the Attorney General that identifies all assets for each Respondent and the names and addresses of all banks, savings and loan associations, brokerages, payment service providers (including but not limited to Apple Pay, PayPal, Venmo, and Zelle), and other financial depositories located inside and outside of New York at which Respondents maintain any account(s) or have the right to have funds credited to them in any account(s), together with the account numbers and titles; 5. requiring Respondents to pay full restitution to consumers who have been harmed by their conduct and, after all consumers have been provided full restitution, providing restitution to any salesperson who has been harmed by Respondents' conduct; 6. directing Respondents to disgorge all profits resulting from the illegal, deceptive, and fraudulent acts described herein; and 7. granting Petitioner civil penalties up to \$5,000 per violation for violations of GBL Article 22-A, pursuant to GBL § 350-d; 8. granting Petitioner statutory costs in the amount of \$2,000 pursuant to New York's Civil Practice Law Rules § 8303(a)(6). The instant proceeding was served upon respondents on December 20, 2021 and December 21, 2022.

In an Order dated January 26, 2022, this Court issued an Interim Order extending the temporary restraining Order, temporarily restraining respondents from advertising or accepting any new orders for goods that Respondents do not have in their possession and available for sale;

temporarily restraining respondents from transferring, converting, or otherwise disposing of any assets that they own, possess or control and temporarily restraining respondents financial institutions from paying out, transferring, honoring drafts or checks against or setting off or assigning to itself or to any other person or firm such assets for each Respondent, pending a full decision on the merits of this action. On January 26, 2022, this Court held a hearing in this matter. Respondents have failed to file any papers in response to the instant Petition.

Pursuant to Executive Law § 63(12) the NYAG is authorized to bring an action for injunctive and other relief when a person or business engages in repeated or persistent fraudulent or illegal conduct. The test of fraudulent conduct under Executive Law § 63(12) is whether the act “has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud.” *People v. Gen. Elec. Co.*, 302 A.D.2d 314, 314 (1st Dep’t 2003). Executive Law § 63(12) protects “not only the average consumer, but also ‘the ignorant, the unthinking and the credulous.’” *Id.* Violation of state or federal law constitutes illegality within the meaning of Executive Law § 63(12). See *State v. Princess Prestige*, 42 N.Y.2d 104, 107 (1977). Illegal conduct under Executive Law § 63(12) includes violations of the states’ deceptive practices and false advertising statutes, GBL §§ 349 and 350. *People v. Applied Card Systems, Inc.*, 27 A.D.3d 104, 106-7 (3d Dep’t 2005); 301 A.D.2d 1006, 1007-10 (3d Dep’t 2003). GBL § 349(a) declares unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.” GBL § 350 prohibits false advertising that is “misleading in a material respect.” Representations are deceptive under GBL §§ 349 and 350 if they have the capacity to mislead or deceive a reasonable person. *Gaidon v. Guardian Life Ins. Co. of Am.*, 94 N.Y.2d 330, 348 (1999)

In support of the instant Petition, Petitioner submits Affidavits and supporting documentation, which establish as follows:

Respondent, Tandria Faulkner, operates an online sales business under the names “Prestigious Marketing Concepts, Inc.” and “Sonjia Posh Boutique L.L.C.” In fall 2020, Sony and Microsoft announced the release of the PlayStation 5 and Xbox Series X and S video game consoles (together the “Game Consoles”), respectively, with a set release date in November, in time for the holiday season. Respondents told consumers in New York and elsewhere that they had the ability to procure these items before the holiday season and accepted hundreds of thousands of dollars’ worth of orders from numerous consumers for these items, with the promise that they would be delivered in time for the holiday season. Respondents did not ship the game consoles by the holidays and many consumers never received the products they ordered. When consumers asked for refunds, Respondents failed to provide either the game console or a refund to many of them. Respondents claim that some of the funds received by consumers are frozen in a Venmo account. However, Respondents had actually transferred funds from Venmo to Ms. Faulkner’s account at Aspire Federal Credit Union.

Since January of 2021, The New York State Office of Attorney General (“NYAG”) has received approximately 96 complaints from individual consumers (hereinafter collectively referred to as “Consumers”) including at least 57 from New Yorkers. 61 complaints from consumers are currently unresolved. Based upon approximately 96 consumer complaints, 22 consumer affidavits, an affidavit from a Prestigious salesperson, social media advertisements, and financial information for Respondents, Petitioner submits evidence of repeated fraudulent and illegal business practices pursuant to Executive Law § 63(12), including violations of General Business Law (“GBL”) Article 22. Ms. Faulkner continues to advertise video game consoles, electronics, and other high-end goods for sales online. Petitioners have further established that between September 2020 and April 2021, Ms. Faulkner had transferred hundreds of thousands of

dollars from the @sonjiaposhboutique Venmo account to three linked accounts: \$266,455.83 to a bank account at Aspire Federal Credit Union, \$79,378.75 to a card associated with Bank of America and \$42,722.96 to a card associated with Sutton Bank. As such, Petitioner has established its entitlement to the relief demanded in the Petition.

ORDERED that Respondents are permanently enjoined from violating Executive Law § 63(12), GBL Article 22-A, §§ 349 and 350, and from engaging in the fraudulent, deceptive, and illegal practices alleged herein, including enjoining Respondents from offering or accepting payment for any consumer goods which they do not have in their possession and available for sale; and it is further

ORDERED that Respondents are permanently enjoined from engaging in any consumer business within the State of New York until a \$100,000 performance bond is filed with the Attorney General by a surety or bonding company licensed by and in good standing with the New York State Department of Insurance, guaranteeing that Respondents comply with any injunction that may be entered herein, the proceeds of that bond to provide a fund for restitution to consumers defrauded or damaged by the past or future conduct of Respondents, and to ensure payment of penalties and costs herein; and it is further

ORDERED that Respondents shall, within sixty days of service of a copy of this Order, together with Notice of Entry, provide an accounting to the Attorney General of the names and addresses of each consumer from whom Respondents collected sums for game consoles or other consumer goods, and the amount of monies received from each consumer, whether such goods were delivered and the date of delivery and the amount of any refund provided to each consumer; and it is further


ORDERED that Respondents shall, within sixty days of service of a copy of this Order, together with Notice of Entry, provide an accounting to the Attorney General that identifies all assets for each Respondent and the names and addresses of all banks, savings and loan associations, brokerages, payment service providers (including but not limited to Apple Pay, PayPal, Venmo, and Zelle), and other financial depositories located inside and outside of New York at which Respondents maintain any account(s) or have the right to have funds credited to them in any account(s), together with the account numbers and titles; and it is further

ORDERED that Respondents shall pay full restitution to consumers who have been harmed by their conduct and, after all consumers have been provided full restitution, providing restitution to any salesperson who has been harmed by Respondents' conduct; and it is further

ORDERED that Respondents shall disgorge all profits resulting from the illegal, deceptive, and fraudulent acts described herein; and it is further

ORDERED that following the completion of the above accountings, Petitioner shall be granted civil penalties up to \$5,000 per violation for violations of GBL Article 22-A, pursuant to GBL § 350-d and statutory costs in the amount of \$2,000 pursuant to New York's Civil Practice Law Rules § 8303(a)(6), upon submission of a proposed judgment for same; and is further

ORDERED that the Temporary Restraining Order issued January 26, 2022 shall remain in place.

<u>3/25/2022</u> DATE	 LAURENCE LOVE, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE	