

JAMES TROUPIS  
CIRCUIT COURT, BR. 3

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

WISCONSIN DEPARTMENT OF  
AGRICULTURE, TRADE AND  
CONSUMER PROTECTION  
2811 Agriculture Drive  
Post Office Box 8911  
Madison, WI 53708-8911,

FILED

JUN 15 2016

DANE COUNTY CIRCUIT COURT

Plaintiff,

v.

Case No. 16CX13

Complex Forfeiture: 30109

FAROOQ SHAHZAD  
5763 Longwood Lane  
Fitchburg, WI 53711-7212,

and

CAPITOL PETROLEUM LLC  
2570 Rimrock Road, Suite 200  
Madison, WI 53713,

Defendants.

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SUMMONS

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THE STATE OF WISCONSIN

To each person named above as a defendant:

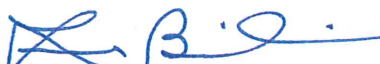
You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Wis. Stat. ch. 802, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Dane County Circuit Court, 215 South Hamilton Street, Madison, Wisconsin, 53703, and to Lewis W. Beilin, Assistant Attorney General, plaintiff's attorney, whose address is Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated at Madison, Wisconsin this 15<sup>th</sup> day of June, 2016.

BRAD D. SCHIMEL  
Wisconsin Attorney General

  
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LEWIS W. BEILIN  
Assistant Attorney General  
State Bar #1038835

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CIVIL COMPLAINT FOR TEMPORARY AND PERMANENT INJUNCTIVE  
RELIEF, CIVIL FORFEITURES AND OTHER REMEDIES

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The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP"), by its attorneys, Wisconsin Attorney General Brad D. Schimel, and Assistant Attorney General Lewis W. Beilin, brings this civil enforcement action against Farooq Shahzad and Capitol Petroleum LLC alleging violations of Wisconsin law arising from their marketing and sale of synthetic cannabinoids. The

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State seeks temporary and permanent injunctive relief, civil forfeitures, and any other relief the Court should deem appropriate pursuant to law.

## **PARTIES**

1. Plaintiff Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") has its principal offices at 2811 Agriculture Drive, Madison, WI 53708. DATCP is represented in this action by the Wisconsin Department of Justice. The address of the Wisconsin Department of Justice is 17 West Main Street, Post Office Box 7857, Madison, Wisconsin 53707-7857.

2. Defendant Farooq Shahzad is an adult resident of the State of Wisconsin. He resides at 5763 Longwood Lane, Fitchburg, WI 53711-7212.

3. Defendant Capitol Petroleum LLC is a Wisconsin domestic limited liability company. The address of its principal place of business and of its registered agent, who is Mr. Shahzad, is 2750 Rimrock Road, Suite 200, Madison, Wisconsin 53713. Capitol Petroleum is engaged in the business of operating thirteen gasoline filling stations and convenience stores in the Madison, Wisconsin area. See [http://www.capitolpetroleumllc.com/site/index.php?option=com\\_content&view=article&id=61&Itemid=133](http://www.capitolpetroleumllc.com/site/index.php?option=com_content&view=article&id=61&Itemid=133).

## **JURISDICTION AND VENUE**

4. Wisconsin Statutes § 100.182(5)(a) authorizes DATCP to commence a civil action seeking temporary and permanent injunctive relief for violations of Wis. Stat. § 100.182. Wis. Stat. § 100.26(4) further provides that the Court may impose civil forfeitures of between \$50 and \$200 for each violation of Wis. Stat. § 100.182.

5. Venue is appropriate in Dane County because the defendants reside in this county and conduct substantial business here.

### FACTS

6. Beginning no later than August 2013, defendant Capitol Petroleum LLC, acting through its employees and agents, has offered to sell, and has sold, certain products labeled as “potpourri” and “incense.” At all times relevant to this *Complaint*, defendant Shahzad has had knowledge of, and/or the ability to control the activities of the employees and agents of Capitol Petroleum LLC with respect to these products.

7. The defendants’ “potpourri” and “incense” products are sold in foil packages bearing names such as “Alice in Wonderland,” “Fairly Legal,” “Dopey,” “Scooby Snax,” “Magic Buzz” and “The Incredible Hulk Kush.”

8. The packages for these products often feature illustrated designs, such as a tornado funnel with smiling face, a dagger with a fist on it, a modified “Superman” logo, or a stylized lightning bolt. Photographs of some of the package types used the defendants are attached to this *Complaint* as Exhibits 1 and 2.

9. Rather than containing actual incense or potpourri for freshening a living space, these mislabeled “incense” and “potpourri” products are actually mundane plant material sprayed with synthetic cannabinoids.

10. Synthetic cannabinoids originally were developed to facilitate the study of cannabinoid receptor pharmacology, but in recent years they have emerged as recreational drugs. The products are ingested, usually by smoking, in order to

obtain an effect similar to that produced by tetrahydrocannabinol (THC), the primary active psychotropic ingredient in marijuana.

11. Although the products sold by the defendants often are labeled “not for human consumption,” it is known and understood by the defendants that these products are being ingested by the customers who purchase them.

12. On June 25, 2015, officers of the Madison Police Department seized over 1,000 packages from the defendants’ CP Mart store at 3505 East Washington Avenue and Capitol Petro store at 2701 East Washington Avenue, following undercover purchases of suspected synthetic cannabinoids at those locations.

13. Testing was subsequently conducted on the material inside 35 packages selected from the seized products. These 35 packages were labeled with the names Kush, Hydro, Joker Fairly Legal, California Dreams, White Tiger Kush, Sexy Monkey, Alice in Wonderland, Scooby Snax, and a variety of other names. The packages generally contained four to ten grams of material.

14. Testing on the material inside those packages identified the presence of 5F-AB-PINACA, XLR-11, AB-CHMINACA, AB-FUBINACA, AB-PINACA, FDU-PB-22, FUB-PB-22, and FUB-144, all of which are synthetic cannabinoids.

15. Synthetic cannabinoids are “drugs” within the meaning of Wis. Stat. § 450.01(10)(c), because they are “substance[s] . . . intended to affect the structure or any function of the body of persons or other animals.”

16. None of these synthetic cannabinoids has been approved for marketing for human consumption by the federal Food and Drug Administration (“FDA”) under 21 U.S.C. §§ 301-392.

17. The defendants have continued to sell their “incense” and “potpourri” products containing synthetic cannabinoids. Undercover purchases of two packages of suspected synthetic cannabinoids were made on May 17 and May 19, 2016, which subsequently tested positive for the presence of AMB-FUBINACA, another synthetic cannabinoid substance.

18. Synthetic cannabinoids can be dangerous. Synthetic cannabinoid “use has repeatedly been reported to produce serious adverse health effects, including but not limited to excited delirium, acute kidney injury, seizures, psychosis, hallucinations, cardiotoxic effects, coma, and death – with some users dying before they could reach an emergency department.” See Jordan Trecki, Roy Gerona, and Michael Schwartz, “Synthetic Cannabinoid-Related Illnesses and Deaths,” *New England Journal of Medicine*, July 9, 2015, at 106 (reporting 20 deaths associated with synthetic cannabinoid intoxication in the United States between August 2011 and April 2015, with the rate of incidents increasing over time).

19. In April 2016, a Wisconsin man ingested synthetic cannabinoids purchased from one of the defendants’ gas stations in Madison. In the delirium that followed – which he later professed not to remember – he hit two schoolchildren crossing the street in the City of Middleton with his car, causing significant injuries, before crashing his vehicle. See <http://host.madison.com/wsj/news/local/crime-and->

[courts/bail-set-at-for-man-arrested-for-hitting-two-girls/article\\_0ed74954-12f4-56bc-8ff6-3d437585463d.html](https://www.courts/bail-set-at-for-man-arrested-for-hitting-two-girls/article_0ed74954-12f4-56bc-8ff6-3d437585463d.html).

20. The labels that are affixed to the “incense” and “potpourri” products sold by the defendants do not alert consumers to the actual contents of the packages, and are misleading.

21. The labels on the packages of synthetic cannabinoids sold by the defendants represent to potential purchasers that the products will cause physical or psychological effects if consumed. Such representations include, but are not limited to, the artwork on the labels, which are often suggestive of intoxication; the warning on labels to keep the materials out of the reach of children; and labels that state, “must be 18 or older to purchase.” These representations are inconsistent with the notion that the packages contain mere “incense” or “potpourri,” and imply instead that the contents are drugs.

22. Photographs of some of the defendants’ “incense” and “potpourri” packages are provided in the attached **Exhibit 1 and 2**. These particular package label types were among those tested by the state and found to contain synthetic cannabinoids.

23. The defendants also impliedly represent that the products contained in these packages are actually drugs by the price placed on them. Upon information and belief, defendants sell these “incense” and “potpourri” products for roughly \$30 for a 4 gram package. Ordinary incense and potpourri do not cost that much. The

higher price of these products in comparison with actual potpourri and incense impliedly represents that the products are falsely labeled and are, in fact, drugs.

#### **RELEVANT LAW**

24. Wis. Stat. § 100.182(2) prohibits a person from advertising the availability of any “drug” (as defined in Wis. Stat. § 450.01(10)) with the intent of selling, increasing the consumption of or generating interest in the drug, if the advertisement contains any untrue, deceptive or misleading representations material to the effects of the drug.

25. Wis. Stat. § 100.182(3) prohibits a person from expressly or impliedly representing that a substance may be used to obtain physical or psychological effects associated with the drug to promote the sale of the substance unless it is lawfully marketed for human consumption under 21 U.S.C. §§ 301-392.

#### **COUNT ONE: FRAUDULENT DRUG ADVERTISING CONTRARY TO WIS. STAT. § 100.182**

26. The plaintiff incorporates the allegations in paragraphs 1 through 25 above as if fully set forth herein.

27. The “incense” and “potpourri” products sold by the defendants contain “drugs” as defined by Wis. Stat. § 450.01(10), and are therefore subject to the prohibitions set forth in Wis. Stat. § 100.182.

28. The defendants advertise the availability of drugs with the intent to sell them by, by among other things, presenting packages of “incense” and “potpourri” labeled in various ways.

29. The defendants’ advertisements (labels) of the “incense” and “potpourri” products contain untrue, deceptive or misleading representations material to the effects of the drug because, without limitation, the labels do not indicate the presence of synthetic cannabinoids, nor indicate that the products are intended for human consumption.

30. The defendants have violated Wis. Stat. § 100.182(2) by making advertisements for their “incense” and “potpourri” products that contain untrue, deceptive or misleading representations,

31. The defendants also have violated Wis. Stat. § 100.182(3) by expressly or impliedly representing to customers that their “potpourri” and “incense” products, which contain substances not approved for marketing for human consumption under 21 U.S.C. §§ 301-392, may be used to obtain the physical or psychological effects associated with a drug.

### **RELIEF REQUESTED**

On the basis of the facts and legal claims asserted above, the Wisconsin Department of Agriculture, Trade and Consumer Protection prays for the following relief:



(A) A declaration that the defendants have violated Wis. Stat. § 100.182 by the sale of mislabeled and fraudulently-labeled “incense” and “potpourri” products containing synthetic cannabinoids.

(B) Temporary and permanent injunctive relief restricting the defendants’ business activities to prevent future violations of Wis. Stat. § 100.182.

(C) Civil forfeitures pursuant to Wis. Stat. § 100.26(4) consisting of not less than \$50 and not more than \$200 per violation of Wis. Stat. § 100.182.

(D) Any further relief that the Court concludes is appropriate.

At Madison, this 15<sup>th</sup> day of June, 2016.

BRAD D. SCHIMEL  
Wisconsin Attorney General

  
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LEWIS W. BEILIN  
Assistant Attorney General  
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**EXHIBITS 1 - 2**

**Photographs of Some of Defendants'  
Packages of Synthetic Cannabinoids**

