

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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:
PEOPLE OF THE STATE OF NEW YORK, by :
ERIC T. SCHNEIDERMAN, Attorney General of the : Index No. 12-8678
State of New York, :
:
Petitioner, :
:
-against- :
:
DAZE, INC.; KIM FULCHER (a/k/a KIM TASIK), :
individually and as principal of DAZE, INC.; and :
RYAN FULCHER, individually and as principal of :
DAZE, INC., :
:
Respondents. :
----- X

**PETITIONER'S MEMORANDUM OF LAW
IN SUPPORT OF THE VERIFIED PETITION FOR
INJUNCTIVE RELIEF, PENALTIES AND COSTS**

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PRELIMINARY STATEMENT

Petitioner brings this special proceeding pursuant to New York Executive Law § 63(12) and New York General Business Law (“GBL”) § 349 to enjoin Respondents Daze, Inc. (“Daze”); Kim Fulcher (a/k/a Kim Tasik), individually and as principal of Daze; and Ryan Fulcher, individually and as principal of Daze, from engaging in deceptive, fraudulent and illegal practices in connection with the sale of so-called “designer drugs.” Designer drugs are intended to stimulate, sedate or cause hallucinations or euphoria when ingested or inhaled (Dr. Maja Lundborg-Gray Aff. (“Lundborg-Gray Aff.”) ¶ 2). Designer drugs include synthetic versions of illegal drugs and other alternatives to illegal drugs that claim to mimic, or are intended to mimic, the effect of controlled substances (*Id.* ¶¶ 2, 8). Petitioner also seeks civil penalties and costs, as authorized by statute, to be paid to the State of New York.

The sale of designer drugs has contributed to a public health crisis in New York State and across the nation (*Id.* ¶¶ 3, 6, 7, 17, 18). These products are sold for their psychoactive effects akin to those obtained from illegal drugs (*Id.* ¶¶ 4, 8). Designer drugs often target people who wish to engage in recreational legal drug use (*Id.* ¶ 4). Many designer drugs are insufficiently labeled, mislabeled and/or misbranded, lacking identification of ingredients, adequate directions for use, adequate warning labels, and/or manufacturer, packer or distributor information.

Misrepresenting products as safe for human consumption and selling products that are mislabeled or misbranded is misleading and dangerous. Without knowing the contents of such products or how they are intended to be used, consumers cannot make informed decisions about what they are purchasing and whether those products are safe to ingest. Some designer drugs may cause serious health effects such as agitation, tachycardia (rapid heartbeat), hallucinations, seizures, extreme paranoia, panic, vomiting, mood swings, suicidal or homicidal thoughts, or

even death (*Id.* ¶¶ 4, 5, 10, 12). Additionally, consumers who experience such health consequences may not receive appropriate medical treatment because they are only able to provide emergency personnel and health care providers with little or inaccurate information about the substances they ingested (*Id.* ¶¶ 16-19).

STATEMENT OF FACTS

A. Background

The Attorney General commenced this proceeding in response to the proliferation of “designer drugs” that are being marketed and offered for sale to New York consumers. Designer drugs, referred to as “street drug alternatives” by the federal Food and Drug Administration (“FDA”), generally have one or more of the following characteristics: (1) they are “manufactured, marketed, or distributed as alternatives to illicit street drugs”; (2) they are “intended to be used for recreational purposes to effect psychological states (e.g., to get high, to promote euphoria, or to induce hallucinations),” and/or (3) they are marketed with claims that they “mimic the effects of controlled substances” (Affirmation of Marsha W. Yee (“Yee Affirmation”) ¶ 4 & Ex. 1). The FDA “considers any product that is promoted as a street drug alternative to be an unapproved new drug and a misbranded drug in violation of sections 505 and 502 of the Federal Food, Drug, and Cosmetic Act” (*Id.*).

Legislatures and regulatory authorities, at both the state and federal levels, have been adding designer drugs to lists of controlled substances (*Id.* ¶¶ 7-11 & Exs. 2-6). Despite these actions, the problem of designer drugs persists because manufacturers have been misbranding products to disguise their intended use and/or rapidly changing the formulation of prohibited compounds, oftentimes without disclosing content, in order to circumvent lists of controlled substances (*Id.* ¶ 12).

In response to this growing problem, the OAG commenced a statewide investigation that focused upon deceptive and illegal labeling of designer drugs (the “Investigation”). As part of this Investigation, undercover investigators visited head shops in twelve counties to purchase such products, and found widespread selling of designer drugs, which are oftentimes deceptively marketed as innocuous products such as “incense,” “glass cleaner,” “bath salts,” “potpourri,” “sachets,” “dietary supplements,” or other common household products (*Id.* ¶ 13). Moreover, nitrous oxide, a deadly “party” gas, was being offered for sale at nearly every location that was investigated even though New York State prohibits the retail sale of nitrous oxide to the public (*Id.*). The Investigation also revealed that the labels of these designer drugs often omit, among other things, product content and/or falsely describe their intended uses (*Id.* ¶ 14).

B. Products Purchased From Daze, Located in Baldwin, New York

On June 15, 2012, Ryan Fannon, an Investigator Trainee employed by the Office of the New York State Attorney General (“Investigator Fannon”), visited Daze located at 574 Sunrise Highway, Baldwin, New York (Ryan Fannon Aff. (“Fannon Aff.”) ¶¶ 1-2).

Investigator Fannon purchased from Daze three boxes of Salvia Zone salvia: a green box (first level), a yellow box (second level) and a red (third level) box (*Id.* ¶¶ 7, 9, 10, 15). Salvia Zone’s labels refer to “NAP & Associates, LLC” but do not provide that entity’s address (*Id.* Exs. A, B, F). According to the Salvia Zone packaging, the green box contains 16 mg/g Salvinorin A (*id.* Ex. A), the yellow box contains 28 mg/g Salvinorin A (*id.* Ex. B), and the red box contains 40 mg/g Salvinorin A (*id.* Ex. F). Salvia Zone’s labels also state: “It is extremely important that the product be used in accordance with its color-coded potency system. This allows users to become comfortable with the effects associated with each specific level before proceeding on to the next” (Fannon Aff. Exs. A, B, F). These labels do not, however, disclose

the effects associated with each level (*See id.*). Each box also states that this product “was developed for responsible adults engaging in personal and spiritual exploration,” “[u]sed properly, Salvia Zone products are wonderfully helpful tools for anyone searching for a deeper understanding of one’s self,” and “[i]f this is not your intention [*i.e.*, to search for a deeper understanding of one’s self], then this product is not for you” (*Id.*).

According to the United States Drug Enforcement Administration (“DEA”), salvia divinorum is an herb in the mint family “abused for [its] ability to evoke hallucinogenic effects.” Salvinorin A is believed to be the ingredient responsible for the psychoactive effects of salvia divinorum. Salvia divinorum and Salvinorin A do not have any approved medical uses in the United States. In addition to hallucinations, adverse side effects include losing coordination, dizziness and slurred speech. (Lundborg-Gray Aff. ¶ 9 & Ex. B.)

In response to Investigator Fannon’s request for kratom, Daze offered to sell and sold “Serenity” and “Nightlights” (Fannon Aff. ¶ 13). According to the DEA, kratom is a tropical tree and the consumption of its leaves “produces both stimulant effects (in low doses) and sedative effects (in high doses) and can lead to addiction.” “Several cases of psychosis resulting from use of kratom have been reported, where individuals addicted to kratom exhibited psychotic symptoms, including hallucinations, delusion, and confusion.” “Withdrawal effects include symptoms of hostility, aggression, mood swings, runny nose, achy muscles and bones, and jerky movement of the limbs.” Kratom does not have any legitimate medical use in the United States. (Lundborg-Gray Aff. ¶ 10 & Ex. C.)

The “Serenity” label refers to “NutraGenomics MFG, LLC . . . Newport Beach, CA 92660” but does not provide that entity’s street address (Fannon Aff. Ex. D). It also states, “Mood Enhancement” and “Dietary Supplement” (*Id.*). The “Serenity” label does not list any

potential health effects (*See id.*). In addition, it states, “[t]his product has not been evaluated by the Food and Drug Administration” and “[t]his product is not intended to diagnose, treat, cure or prevent any disease” (*Id.*). Its ingredients include “1,3 Dimethylamylamine” (*id.*), which “is known to narrow the blood vessels and arteries, which [in turn] can elevate blood pressure and may lead to cardiovascular events ranging from shortness of breath and tightening in the chest to heart attack” (Lundborg-Gray Aff. ¶ 12 & Ex. E).

The “Nightlights” label does not provide the name or contact information for a manufacturer, packer or distributor, or provide any statement of its quantity (*See Fannon Aff. Ex. E*). Nor does it identify its contents (*e.g.*, by common or usual name), aside from “Metaphysical Crystal Capsules” (*Id.*). The “Nightlights” label also states, “[n]ot for human consumption,” and “[p]lace cap[sule] in window sill or on top of door frame to keep away negative energies and bad dreams” (*Id.*). Although “Nightlights” is labeled as not being for human consumption, Daze offered it for sale and sold it as kratom, which is commonly ingested or smoked (Lundborg-Gray Aff. Ex. C), and thus as a designer drug.

ARGUMENT

POINT I

RESPONDENTS’ ACTIVITIES CONSTITUTE REPEATED AND PERSISTENT FRAUD AND ILLEGALITY IN VIOLATION OF EXECUTIVE LAW § 63(12)

Executive Law § 63(12) authorizes the Attorney General to seek permanent injunctive relief whenever any person or business engages in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in conducting business. N.Y. EXEC. LAW § 63(12).

“Fraud” or “fraudulent” are defined to include “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or

unconscionable contractual provisions.” *Id.* “Repeated” is defined to include “conduct which affects more than one person.” *Id.* “Persistent fraud or illegality” is defined to include “continuance or carrying on of any fraudulent or illegal act or conduct.” *Id.* Respondents have repeatedly and persistently offered to sell and/or sold products that were mislabeled and/or misbranded drugs.

A. Respondents’ Violations of Agriculture and Markets Law § 194 (Mislabeled Drugs) Constitute Violation of Executive Law § 63(12)

New York Agriculture and Markets Law § 194 prohibits selling, offering or exposing for sale any commodity that is labeled with any false description or false indication of, among other things, its number, quantity, weight or measure. N.Y. AGRIC. & MKTS. LAW § 194. The term “commodities” is defined to include non-prescription drugs. *Id.* § 191(1)(b)(4). New York State law defines “drugs” to include “[a]rticles (other than food¹) intended to affect the structure or any function of the body of man.” N.Y. EDUC. LAW § 6802(7)(c).

A “label” is defined as “any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon or adjacent to a consumer commodity or a package containing any consumer commodity, for purposes of branding, identifying, or giving any information with respect to the commodity or to the contents of the package.” N.Y. COMP. CODES R. & REGS. tit. 1, § 221.2(e). A label must identify the commodity in the package “by its common or usual name, description, generic term, or the like,” *id.* § 221.3(a), and provide the name and address of the manufacturer, packer or distributor, *id.* § 221.4(a), and the quantity, such as the weight, of the product, *id.* § 221.5.

¹ “Food” includes “all articles of food, drink, confectionery or condiment, whether simple, mixed or compound, used or intended for use by man or animals, and shall also include all substances or ingredients to be added to food for any purpose.” N.Y. AGRIC. & MKTS. LAW § 2(3).

The following products sold by Respondents are intended to affect the function of the human body and are therefore “drugs”: Salvia Zone salvia, “Serenity,” and “Nightlights. Accordingly, these products may be classified as non-prescription drugs and, as such, are “commodities” under Agriculture and Markets Law § 191(1)(b)(4).

The labels on these products fail to meet the requirements for commodities labeling under the Agriculture and Markets Law. The salvia packaging refers to “NAP & Associates, LLC” but fails to provide that entity’s address (Fannon Aff. Exs. A, B, F). The “Serenity” packaging refers to “NutraGenomics MFG, LLC . . . Newport Beach, CA 92660” but fails to identify that entity’s street address² (Fannon Aff. Ex. D). The “Nightlights” packaging fails to identify its contents by its common or usual name, and fails to provide the name and address of its manufacturer, packer or distributor, and the product’s quantity (Fannon Aff. Ex. E). In addition, Daze’s clerks sold “Nightlights” to Investigator Fannon in response to his request for kratom, and kratom is typically consumed or smoked (Lundborg-Gray Aff. Ex. C). Thus, the “Nightlights” package falsely and/or misleadingly (1) describes its contents as “[n]ot for human consumption,” and (2) instructs the user to “[p]lace cap[sule] in window sill or on top of door frame to keep away negative energies and bad dreams” (Fannon Aff. Ex. E).

By offering for sale and/or selling drugs that are falsely and/or inadequately labeled, Respondents have repeatedly and persistently violated Agriculture and Markets Law § 194. Respondents’ violations of the Agriculture and Markets Law also constitute violations of Executive Law § 63(12).

² The street address may be omitted if it is shown in a current city directory or telephone directory. N.Y. COMP. CODES R. & REGS. tit. 1, § 221.4(a). Although a street address (2549B Eastbluff Drive #195) can be found for “NutraGenomics MFG, LLC” in Newport Beach, CA, that street address appears to be a UPS store.

B. Respondents' Violations of Education Law § 6811 (Misbranded Drugs) Constitute Violation of Executive Law § 63(12)

The New York Education Law prohibits the sale or offering for sale any drug that is misbranded. N.Y. EDUC. LAW § 6811(9); *see also id.* § 6811(11), (12). "Drugs" are defined to include "[a]rticles (other than food) intended to affect the structure or any function of the body of man." *Id.* § 6802(7)(c). The following products sold by Respondents are "drugs" under New York Education Law § 6802 because they are articles (other than food) intended to affect the function of the human body: Salvia Zone salvia, "Serenity," and "Nightlights."

Under New York Education Law § 6815, a drug is deemed to be misbranded if, among other things:

- "its labeling is false or misleading in any particular," N.Y. EDUC. LAW § 6815(2)(a);
- in package form, it fails to bear a label containing "the name and place of business of the manufacturer, packer or distributor," and "an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count," *id.* § 6815(2)(b);
- required information is not prominently placed on the label with conspicuousness and "in such terms to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use," *id.* § 6815(2)(c);
- its label fails to bear "adequate directions for use," and it lacks "adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users," *id.* § 6815(2)(f);
- it is "an imitation of another drug," "offered for sale under the name of another drug," or "bears a copy, counterfeit, or colorable imitation of the trademark, label, container or identifying name or design of another drug," *id.* § 6815(2)(h); or
- "it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended or suggested in the labeling," *id.* § 6815(2)(i).

In determining whether a drug's labeling is misleading and the drug is thereby misbranded, a court must consider (1) the representations made or suggested on the label, and (2) the extent to which the labeling fails to reveal facts that are material either (a) in light of such representations, or (b) with respect to potential consequences of using that drug under the conditions of use that were prescribed in the labeling or that are customary or usual. N.Y. EDUC. LAW § 6802(13).

The Salvia Zone products are misbranded for the following reasons:

- a. their labels fail to provide the place of business for their manufacturer, packer or distributor;
- b. their labels fail to fully disclose the products' potential health effects;
- c. their labels fail to disclose the effects associated with each specific level, despite their labels' claim that "[i]t is extremely important that the product be used in accordance with its color-coded potency system" "to allow[] users to become comfortable with the effects associated with each specific level before proceeding on to the next"; and
- d. their labels appear to disclaim the customary or usual use of these products, which is to obtain salvia's hallucinogenic effects, by claiming that Salvia Zone is intended as a tool for self-exploration.³

The "Serenity" product is misbranded for the following reasons:

- a. its label fails to provide the street address of the place of business for its manufacturer, packer or distributor⁴;
- b. its label fails to identify the product's potential health effects; and
- c. its label falsely and/or misleadingly identifies its contents as "Dietary Supplement," given that Daze sold "Serenity" to Investigator Fannon in response to his request for kratom.

³ For example, Salvia Zone "was developed for responsible adults engaging in personal and spiritual exploration," and "[i]f this is not your intention [*i.e.*, to search for a deeper understanding of one's self], then this product is not for you."

⁴ See also *supra* note 2.

The “Nightlights” product is misbranded for the following reasons:

- a. its label fails to provide the name and place of business for its manufacturer, packer or distributor;
- b. its label fails to provide any statement, let alone an accurate one, of the package’s quantity;
- c. its label fails to identify potential health effects from the product’s customary or usual usage; and
- d. its label falsely and/or misleadingly (1) describes its contents as “[n]ot for human consumption,” and (2) instructs the user to “[p]lace cap[sule] in window sill or on top of door frame to keep away negative energies and bad dreams,” given that Daze sold “Nightlights” to Investigator Fannon in response to his request for kratom, which is typically consumed or smoked.

By offering for sale and/or selling misbranded drugs, Respondents have repeatedly and persistently violated the Education Law. Respondents’ violations of the Education Law also constitute violations of Executive Law § 63(12).

C. Respondents Have Engaged in Repeated and Persistent Fraud in Violation of Executive Law § 63(12) and Deceptive Practices in Violation of GBL § 349

Executive Law § 63(12) defines “fraud” or “fraudulent” to include “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions.” N.Y. EXEC. LAW § 63(12). Under Executive Law § 63(12), the test for fraud is whether the targeted act “has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud.” *People v. Applied Card Sys., Inc.*, 27 A.D.3d 104, 106 (3d Dep’t 2005); *State v. Gen. Elec. Co.*, 302 A.D.2d 314, 314 (1st Dep’t 2003). Intent to defraud is not required to establish liability. *People v. Apple Health & Sports Clubs, Ltd.*, 206 A.D.2d 266, 267 (1st Dep’t 1994).

Similarly, GBL § 349 “contemplates actionable conduct that does not necessarily rise to the level of [common law] fraud.” *Gaidon v. Guardian Life Ins. Co. of Am.*, 94 N.Y.2d 330, 343 (1999). 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 New York. N.Y. GEN. BUS. LAW § 349(a). Intent to defraud or mislead is not required under GBL § 349. *Gen. Elec. Co.*, 302 A.D.2d at 315. Moreover, the Attorney General may bring an action under GBL § 349 before any consumer has been injured. *See* N.Y. GEN. BUS. LAW § 349(b) (authorizing the Attorney General to seek injunctive relief when he believes any person or business “has engaged in or is about to engage in” deceptive acts or practices); *Goshen v. Mut. Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 324 (2002) (“Unlike private plaintiffs, the Attorney General may . . . seek injunctive relief [under GBL § 349] without a showing of injury.”).

Respondents have repeatedly and persistently engaged in deceptive acts and practices in conducting their business in violation of Executive Law § 63(12) and GBL § 349. As set forth *supra* in Point I, Respondents offered for sale and sold products for consumer use that are mislabeled and/or misbranded drugs. In addition, Respondents offered for sale and sold products as designer drugs that were labeled, in sum or substance, “not for human consumption.” For example, in response to Investigator Fannon’s request for kratom, which is typically consumed or smoked, the “Nightlights” package falsely and misleadingly describes its contents as “[n]ot for human consumption” and instructs the user to “[p]lace cap[sule] in window sill or on top of door frame to keep away negative energies and bad dreams.” Accordingly, Respondents have engaged in repeated and persistent fraud and illegality in violation of Executive Law § 63(12) and deceptive business practices in violation of GBL § 349.

POINT II

PETITIONERS ARE ENTITLED TO INJUNCTIVE RELIEF, PENALTIES AND COSTS

Under Executive Law § 63(12), courts have the discretion to grant wide-ranging equitable relief to redress the kind of illegal, deceptive and fraudulent conduct engaged in by Respondents. *See, e.g., State v. Princess Prestige Co.*, 42 N.Y.2d 104, 108 (1977) (“An application by the Attorney General for remedial orders under [Executive Law § 63(12)] is addressed to the sound discretion of the court.”).

A. Respondents Should Be Enjoined From Engaging in Illegal, Deceptive and Fraudulent Business Practices

As set forth in Point I, Respondents have repeatedly and persistently engaged in illegal, deceptive and fraudulent business practices. Courts routinely grant injunctions under similar circumstances to prevent the continuation of such business practices. *See, e.g., Princess Prestige Co.*, 42 N.Y.2d at 107 (noting that trial court had enjoined future violations); *People v. Applied Card Sys., Inc.*, 27 A.D.3d 104, 106 (3d Dep’t 2005) (affirming in a case where respondents were permanently enjoined from engaging in the challenged activities). Thus, the Court should enjoin Respondents from engaging in the illegal, deceptive and fraudulent business practices of selling mislabeled and/or misbranded drugs, and selling products as designer drugs that are not for human consumption.

B. Respondents Should Be Required to Post a \$100,000 Bond

Respondents should be required to post a \$100,000 bond. The court’s power to grant equitable relief includes the requirement of a performance bond and New York courts routinely require businesses that have engaged in illegal, deceptive or fraudulent business practices to file a bond. *See, e.g., People v. Allied Mktg. Group*, 220 A.D. 2d 370, 370 (1st Dep’t 1995)

(\$500,000 bond ordered); *People v. Empyre Inground Pools Inc.*, 227 A.D.2d 731, 732 (3d Dep't 1996) (\$100,000 bond required).

Here, Respondents illegally and deceptively sold designer drugs that were mislabeled and/misbranded. According Dr. Lundborg-Gray, “[r]ecently the medical profession has been combating the public health challenge resulting from the use of these unlabeled, misbranded and misleadingly labeled designer drugs sold by headshops and other vendors. They pose an unreasonable risk of physical harm to the consuming public, and create an extremely dangerous situation both to the consumer, as well as to first responders. Poison Control numbers in New York State show a dramatic increase in calls related to all classes of these drugs over just the last three years” (Lundborg-Gray Aff. ¶ 3). Under these circumstances, Respondents should be required to post a \$100,000 bond that would be forfeited if they offer to sell or sell (1) mislabeled and/or misbranded drugs, and (2) products as designer drugs that are not for human consumption.

C. Respondents Should Be Ordered to Pay Penalties and Costs

GBL § 350-d provides for the assessment of a civil penalty of up to \$5,000 for each violation of GBL Article 22-A. N.Y. GEN. BUS. LAW § 350-d. The Court should impose an appropriate civil penalty that takes into consideration the volume of designer drugs sold by the Respondents. To aid in its determination, and pursuant to its broad equitable powers in a proceeding under Executive Law § 63(12), the court should require Respondents to provide an accounting of the mislabeled and/or misbranded drugs sold this year. Courts regularly order such accountings as an aid in determining the amount of restitution and/or penalties to be awarded in a proceeding pursuant to Executive Law § 63(12). *See, e.g., People v. Telehublink*

Corp., 301 A.D.2d 1006, 1007 (3d Dep't 2003) (noting that trial court had deferred motion for civil penalties until final accounting of the number of consumers entitled to restitution).

C.P.L.R. 8303(a)(6) provides that the court may award the Attorney General "a sum not exceeding two thousand dollars against each defendant" in an Executive Law § 63(12) special proceeding. Courts have routinely granted these costs. *See e.g., State of New York v. Daro Chartours, Inc.*, 72 A.D.2d 872, 873 (3rd Dep't 1979) (finding no reason to disturb award of \$2,000 in costs made by the trial court in the exercise of its discretion). Accordingly, this Court should impose \$2,000 in costs against each Respondent.

D. The Court Should Grant the Temporary Restraining Order

Pursuant to Executive Law § 63(12), courts are empowered to grant wide-ranging equitable relief, including temporary restraining orders or preliminary injunctions, to redress the kind of illegal, fraudulent and deceptive conduct engaged in by Respondents. The power of the court to grant broad remedial relief is grounded in statutory authority under Executive Law § 63(12), as well as general equitable principles. Once the court's equitable jurisdiction is invoked, the court has the discretion to provide the full range of equitable remedies. Furthermore, where the public interest is served, the court's powers are even broader than they are in private litigation. *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946).

Here, the granting of a temporary restraining order serves the interests of the public. An order restraining Respondents from selling mislabeled and/or misbranded products is necessary to protect the public. In the absence of a temporary restraining order, there is great likelihood that numerous consumers, unknown by the OAG at this time, will suffer irreparable harm if Respondents are permitted to continue selling mislabeled and/or misbranded drugs and products as designer drugs that are not approved for human consumption. According to Dr. Lundborg-

Gray, “[misbranded and misleadingly labeled designer drugs] pose an unreasonable risk of physical harm to the consuming public, and create an extremely dangerous situation both to the consumer, as well as first responders.” Lundborg-Gray Aff. ¶ 3 (emphasis added). Dr. Lundborg-Gray also notes that “some [patients who had ingested designer drugs] experience severe outcomes, including organ failure and death (*Id.* ¶ 19). If the Court does not issue the requested temporary restraining order, there is an unreasonable risk that consumers will suffer physical harm.

CONCLUSION

For the reasons set forth above, the Court should grant the relief requested in the petition.

Dated: July 10, 2012
Mineola, New York

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Supreme Court of the State of New York
County of Nassau
Index # 12-8672

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ERIC T. SCHNEIDERMAN, Attorney General of
the State of New York,

Petitioner,

- against -

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individually and as principal of DAZE, INC.; and
RYAN FULCHER, individually and as principal of
DAZE, INC.,

Respondents.

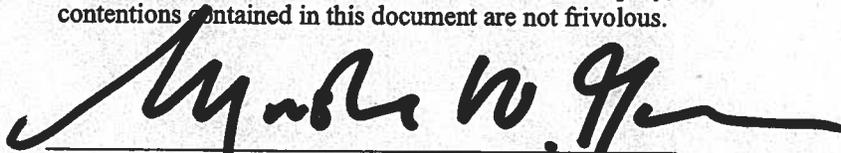
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ATTORNEY CERTIFICATION

Pursuant to 22 NYCRR § 130-1.1-a(b), the undersigned, an attorney
duly admitted to practice law in the State of New York, certifies
that upon information and belief and after reasonable inquiry, the
contentions contained in this document are not frivolous.


Marsha W. Yee, Assistant Attorney General
July 10, 2012

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