

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

-----X
THE PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of
the State of New York,

Petitioner,

-against-

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

Respondents.
-----X

**VERIFIED
PETITION**

Index No.
IAS Part.

The People of the State of New York, by their attorney Letitia James, Attorney General
of the State of New York, allege the following:

INTRODUCTION

1. Respondent Tandria Faulkner operates an online sales business under the names
“Prestigious Marketing Concepts, Inc.” (hereinafter, “Prestigious Marketing”) and Sonjia Posh
Boutique L.L.C. (hereinafter “Sonjia Posh Boutique” and, together with Ms. Faulkner and
Prestigious Marketing, the “Respondents”). 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 2020, in time for the holiday
season. The demand for these items was high, and it was difficult for consumers to order or buy
them. Through salespeople and ads on social media, Respondents told consumers in New York
and elsewhere that they had the ability to procure these scarce items before the holiday season
and accepted over \$500,000 worth of orders from numerous consumers for these items, with the
promise that they would be delivered in time for the holidays. Many consumers paid

Respondents directly through online sales apps like Venmo, or made payments to salespeople, who then made payments on the consumers' behalf to Respondents. However, Respondents did not ship the game consoles by the holidays, leaving consumers without these in-demand holiday gifts for their families. Many consumers never received a product at all. When consumers asked for refunds for the non-received game consoles, Respondents failed to provide either the game console or a refund to many of them.

PARTIES AND JURISDICTION

2. Petitioner is the People of the State of New York, by their attorney Letitia James, Attorney General of the State of New York.

3. Petitioner brings this proceeding pursuant to: (a) Executive Law § 63(12), which authorizes the Attorney General to bring a special proceeding for injunctive relief, restitution, damages, disgorgement and costs against any person or business that has engaged in repeated or persistent fraud or illegality in the conduct of its business and (b) General Business Law (“GBL”) Article 22-A, which prohibits deceptive acts or practices and false advertising in the conduct of any business and authorizes the Attorney General to seek injunctive relief, restitution, penalties and costs.

4. During all relevant times, Respondents have engaged in an online business.

5. Respondent Prestigious Marketing Concepts, Inc. was established as a New York Business Corporation on October 29, 2007, and was dissolved by proclamation on July 27, 2011. Pursuant to Tax Law § 203-a, the Secretary of State is required to dissolve by proclamation any domestic corporation that has failed to file reports required under Article 9 of the Tax Law for two years or is delinquent in the payment of taxes for two years. Despite the dissolution, Respondents have continued to conduct business and to identify themselves to

consumers under the name Prestigious Marketing Concepts, including issuing invoices giving the address for the company as 22 Elm Street, Huntington NY, 11743.

6. Respondent Sonjia Posh Boutique L.L.C. was registered as an L.L.C. in New Jersey on February 16, 2021. Tandria Faulkner uses the Venmo username @sonjiaposhboutique and accepted orders for Prestigious Marketing through this Venmo account.

7. Respondent Tandria Faulkner is the owner and operator of Prestigious Marketing and Sonjia Posh Boutique. She controls the operations of the businesses, and has knowledge of and participates in the fraudulent and illegal practices alleged herein. Her last known address is 12 Marshall St. Apt. 7R, Irvington, NJ 07111.

FACTS

8. On September 9, 2020, Microsoft announced that it would be releasing the latest version of the Xbox video game console, the Xbox Series X and Series S, on November 10, 2020 at \$499 and \$299 respectively.¹

9. Shortly thereafter, on September 16, 2020, Sony announced that it would be releasing the latest version of its popular PlayStation video game console, the PlayStation 5, on November 12, 2021, with prices between \$399.99 and \$499.99, depending on the version.²

10. During this time, media reports stated that demand for the game consoles would be high and that, due to supply chain constraints caused by the pandemic, supplies would be low.³

¹ Todd Haselton, "Microsoft announces pricing and release date for new Xbox consoles, and you'll be able to finance them starting at \$24.99 per month," CNBC, Sept. 9, 2020, <https://www.cnbc.com/2020/09/09/microsoft-xbox-series-x-price-release-date.html>.

² Todd Haselton, "Sony announces PS5 price and release date: Starts at \$399 and launches Nov. 12," CNBC, Sept. 16, 2020, <https://www.cnbc.com/2020/09/16/sony-ps5-price-and-release-date-announced-starts-at-399-launches-nov-12.html>.

³ Kellen Browning, "Coming This Fall: Return of the Video Game Console Wars," N.Y. Times, Sept. 15, 2020, <https://www.nytimes.com/2020/09/15/technology/xbox-series-x-playstation-5.html>.

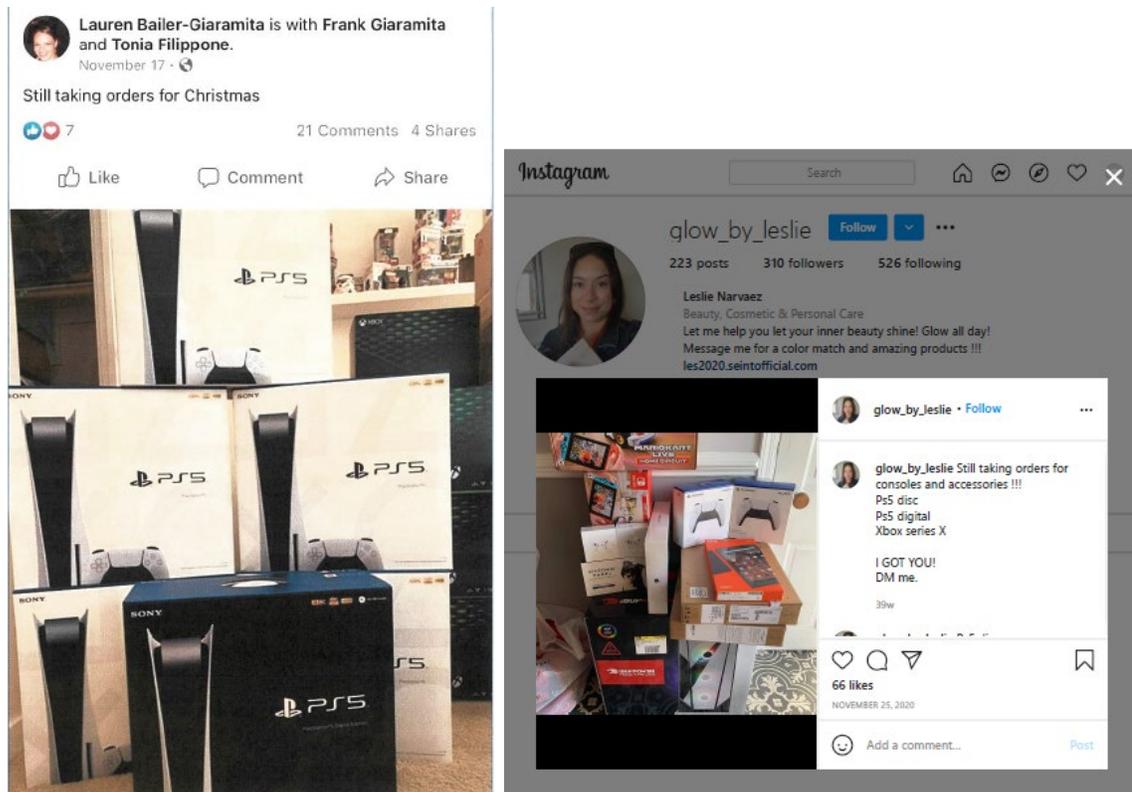
11. These reports proved to be accurate. When the game consoles were released in November, they sold out quickly, with high demand even crashing merchant websites.⁴

12. After the initial September announcement of the release date for the game consoles Respondents and salespeople for Prestigious Marketing, told individuals, including through advertisements on social media, that they would be able to get hold of these hard-to-find items and started taking orders for the game consoles, along with other items such as video games. Consumers were promised that they would receive their orders before the holidays. Numerous advertisements showed stacks of game consoles which gave the misleading impression they were in-stock and available.



Image from the Facebook account of Ms. Faulkner

⁴ Amber Picchi, “Will there be another PlayStation 5 and Xbox restock at retailers this year?,” CBS News, Dec. 4, 2020, <https://www.cbsnews.com/news/ps5-xbox-restock-coming-when-2020-12-04/>.



Images from social media accounts of Prestigious Marketing salespeople

13. Some of these consumers were friends and family of the Prestigious Marketing salespeople and passed along the information to their friends, who also placed orders.

14. Ms. Faulkner paid the Prestigious Marketing salespeople almost \$20,000 in bonus and commission payments from September to December of 2020, and one salesperson was even given a “First to \$1000 bonus.”

15. Payments to Ms. Faulkner and Prestigious Marketing were made through a number of different methods, including in cash and through payment apps like Apple Pay and Venmo, where Ms. Faulkner used the account name @sonjiaposhboutique. Over \$500,000 in orders for game consoles were placed through Venmo alone. Some consumers paid Ms. Faulkner directly via Venmo, while others paid the Prestigious Marketing salespeople. However, the Prestigious Marketing salespeople sent Ms. Faulkner over \$100,000 in payments

via Venmo during fall of 2020 with notations stating that the payments were for PlayStation and Xbox orders.

16. Ms. Faulkner also received notes accompanying Venmo payments from consumers that clearly show that delivery was expected by Christmas. These notes from consumers include:

- “PS5 for kids Christmas”
- “(2) Ps5 Lori 🎅🎄:festive_holly: :candy_cane:”
- “Xmas 🎮”
- “PlayStation 5 bundle (guaranteed before XMas)”

17. Amounts varied, but many consumers placed orders that ranged from hundreds to tens of thousands of dollars. Some consumers were also charged an extra \$20 that Respondents told them was a donation Toys for Tots.

18. Respondents continued taking orders even after the initial release of the game consoles and the subsequent news that the consoles were almost impossible to buy. In December 2020, Ms. Faulkner received over \$55,000 in payments for game consoles via Venmo.

19. Christmas came and went and consumers were left empty-handed. When consumers contacted Respondents after the delivery date passed, they were given various and shifting reasons for the lack of delivery, including that the items were still in transit.

20. Consumers began demanding refunds from Respondents, often in vain. Many describe similar stories:

“The units were originally promised by Thanksgiving . . . Then they were promised by Christmas and they never arrived. To date I have not received any money back or products.”

“On 11/28/2020, [w]e paid cash for the above mentioned products to a [salesperson]. . . She worked for Tandria Faulkner, who is the CEO of Prestigious Marketing Concepts. Was told we would have the product before Christmas, never came. Then was told week

after Christmas and never came again. Requested a refund and was told 14 days from the date of the request which was 12/29/2020. I am still waiting for my refund.”

“I paid Prestigious Marketing Concepts Inc. (Tandria Faulkner) through Venmo a total of \$2,829 for five (5) PS5 units, however I have not received the refund yet. I asked for the full refund amount on 02/01/21 since the PS5’s were not produced as promised before Christmas. [Salesperson], who is the company representative has given me the run around and has not been helpful as she does not respond to my text messages or phone calls.”

“[The salesperson] for Prestigious Marketing Concepts sent a receipt of payment for \$690 for a PS5 gaming console, additional remote, and 2 games which were scheduled to arrive before Christmas 12/25/2020. We were given a run around all of December regarding delays and ultimately there was never a delivery nor product and the money was simply stolen, collected in full, and never refunded.”

21. Of the subset of consumers that eventually received their requested item or refund it was often months after their initial orders were placed, and only after they complained to the New York State Office of the Attorney General (“NYAG”).

22. At least one salesperson began directly refunding consumers with her own money when consumers could not get refunds from Respondents.

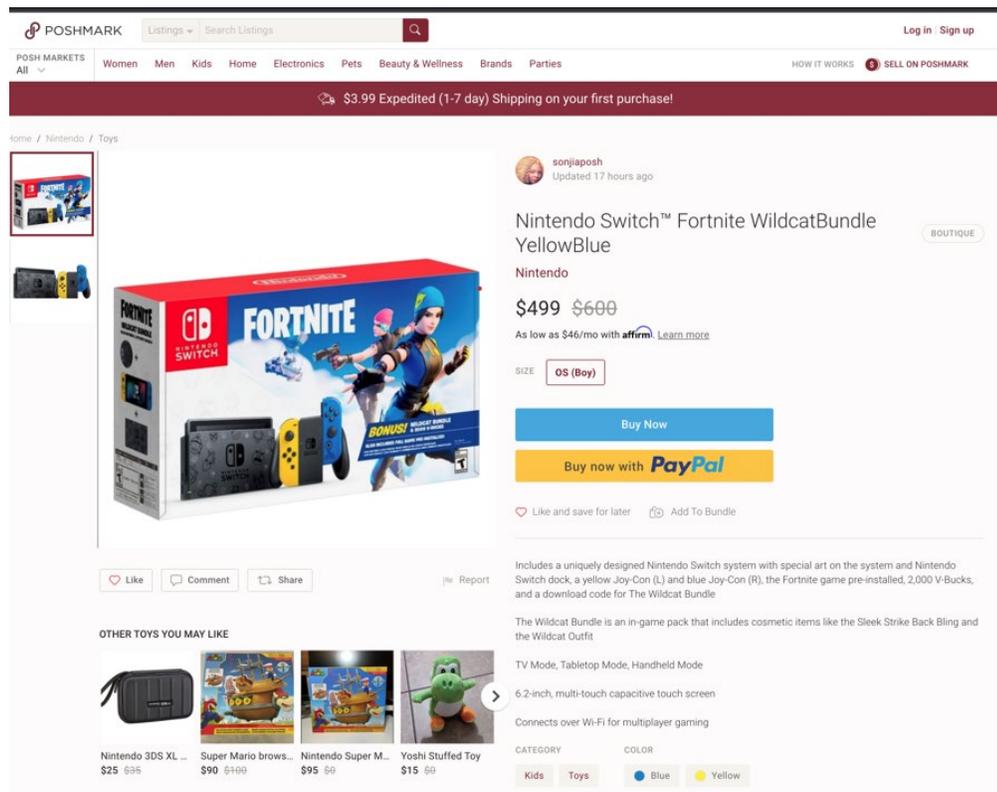
23. Many other consumers, especially those who paid via Venmo, are still waiting on refunds, almost a year after placing their initial order.

24. When these consumers requested refunds, Respondents told some consumers and the NYAG that the consumers’ money was frozen by Venmo and Respondents were unable to release it.

25. However, this was inaccurate. Ms. Faulkner transferred hundreds of thousands of dollars from her @sonjiaposhboutique Venmo account to her linked financial accounts between October 2020 and April 2021. Of that amount, over \$177,000 in payments were transferred in 2021, after the failure to deliver the game consoles by Christmas, to a bank account at Aspire Federal Credit Union. This includes almost \$40,000 that was transferred in March and April 2021, when Ms. Faulkner claimed her account was frozen. Currently, Ms. Faulkner has only a

few hundred dollars in her Venmo account.

26. Respondents continue to advertise items, including game consoles and high-end consumer electronics, for sale online.



Nintendo Switch for sale in December 2021 on the "Tandria F" @sonjiaposh Poshmark account



Recent images from an account of Tandria Faulkner

27. Given Respondents' failure to make refunds, transfer of funds from Venmo to other linked accounts, and Respondents' apparent misrepresentations to the NYAG regarding these funds, the NYAG did not provide Respondents with notice of its intent to seek a temporary restraining order due to its concern that Respondents will transfer, convert, or otherwise dissipate their assets and leases if given notice of this proceeding, which would be detrimental to the public and cause significant prejudice. *See* N.Y. Ct. R. 202.7(f).

Respondent Tandria Faulkner has Personally Participated in, and has Knowledge of, the Fraudulent and Illegal Activity Herein Alleged

28. Tandria Faulkner is the sole owner and operator of Prestigious Marketing Concepts, Inc. and Sonjia Posh Boutique L.L.C. Tandria Faulkner has knowledge of and has personally profited from the illegal and fraudulent acts alleged herein.

29. Tandria Faulkner is personally involved in and has actual knowledge of this

fraudulent and illegal activity, paying salespeople commissions and bonus, accepting payments directly into her accounts both from consumers and from her salespeople, failing to fulfill numerous orders and failing to provide the requested refunds in a timely fashion or at all. Ms. Faulkner was aware that consumers were ordering the game consoles in time for the holidays. Further, Ms. Faulkner controls the @sonjiaposhboutique Venmo account that received hundreds of payments and she paid almost \$20,000 commission payments to the Prestigious Marketing salespeople. She also transferred money to a bank account linked to her Venmo account.

FIRST CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12)—FRAUD

30. The NYAG realleges and incorporates by reference paragraphs 1–29.

31. Executive Law § 63(12) authorizes the Attorney General to seek injunctive and other relief when any person or entity engages in repeated fraudulent acts in the operation of a business.

32. Fraud under Executive Law § 63(12) is broadly defined to include “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions.”

33. Respondents’ repeated fraudulent business conduct includes but is not limited to:

- (a) falsely advertising the time frame within which Respondents would ship consumers’ orders;
- (b) falsely representing to consumers that their products were in stock and would be delivered within specified time frames;
- (c) failing to deliver goods within represented time frames; and
- (d) failing to provide refunds for merchandise not delivered.

34. By reason of the conduct alleged herein, Respondents have repeatedly and

persistently engaged in fraud in violation of Executive Law § 63(12).

**SECOND CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12)
VIOLATIONS OF GENERAL BUSINESS LAW § 349**

35. The NYAG realleges and incorporates by reference paragraphs 1 to 29.

36. Executive Law § 63(12) authorizes the NYAG to seek injunctive and other equitable relief when any individual or business engages in repeated and persistent illegal conduct in the carrying on, conducting, or transaction of business.

37. N.Y. GBL Article 22-A, § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in the State of New York.

38. As set forth in paragraphs 1 to 29 above, Respondents have engaged in deceptive acts and practices, in violation of N.Y. GBL Article 22-A, § 349, including but not limited to:

- (a) falsely advertising the time frame within which Respondents would deliver consumers' orders;
- (b) falsely promising consumers that their products would be delivered within specified time frames;
- (c) failing to deliver goods within promised time frames; and
- (d) failing to provide refunds for merchandise not delivered.

39. By their actions in violation of N.Y. GBL § 349, Respondents have engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

**THIRD CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12)
VIOLATIONS OF GENERAL BUSINESS LAW § 350**

40. The NYAG realleges and incorporates by reference paragraphs 1–29.

41. Executive Law § 63(12) authorizes the NYAG to seek injunctive and other equitable relief when any individual or business engages in repeated and persistent illegal conduct in the carrying on, conducting, or transaction of business.

42. GBL § 350 prohibits false advertising in the conduct of any business, trade, or commerce or in the furnishing of any service in the State of New York.

43. As set forth in paragraphs 1 through 29 above, Respondents have engaged in repeated and persistent false advertising in violation of § 350 including but not limited to falsely advertising the time frame within which Respondents would ship consumers' orders and that the goods were in stock and available.

44. As set forth in paragraphs 1 through 29 above, Respondents have engaged in repeated and persistent false advertising in violation of § 350 by falsely advertising goods that are not available for delivery and the time frame within which Respondents would ship consumers' orders.

45. By their actions in violation of GBL § 350, Respondents have engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that the Court grant relief against Respondents pursuant to Executive Law § 63(12) and GBL Article 22-A by issuing an order and judgment:

1. permanently enjoining Respondents 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;

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); and
9. granting Petitioner such other and further relief as the Court deems just, equitable, and proper.

Dated: New York, New York
December 15, 2021

LETITIA JAMES
Attorney General of the State
of New York
Attorney for Petitioner
28 Liberty Street, 20th Floor
New York, New York 10005



by Hailey DeKraker
Assistant Attorney General

