



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISIONS OF ECONOMIC & SOCIAL JUSTICE

September 11, 2019

VIA OVERNIGHT MAIL

The Preserve Group, LLC
900 SE Central Avenue, Suite 223
Seaside Park, NJ 08752

Re: CEASE AND DESIST NOTIFICATION

Dear Preserve Group, LLC:

The New York State Office of the Attorney General (“OAG”) is extremely concerned by Preserve Group, LLC (“Preserve”)’s advertising representations and marketing for sale of an at-home sexual assault evidence kit (the “Preserve kit”).

Pursuant to New York Executive Law § 63(12) and General Business Law § 349, the OAG has the authority to commence legal action to enjoin deceptive, fraudulent or illegal business practices, as well as to obtain restitution, disgorgement, damages, penalties and costs. The OAG is also authorized to issue subpoenas and take testimony prior to any legal proceeding.

Sexual assault is a serious problem. One in five women and one in fourteen men experience sexual violence during their lifetime. By law, New York State provides sexual offense evidence collection kits and examinations at no charge to the victim. *See* Exec. Law § 631(13). The examinations and evidence collection takes place at a number of locations, including hospitals and SAFE (“Sexual Assault Forensic Exam”) Centers, where survivors will be offered a range of services as appropriate, including testing for sexually transmitted infections, post-exposure HIV prophylaxis, pregnancy prevention medication, and treatment of injuries. New York law further provides that all sexual offense evidence shall be kept in a locked, separate, and secure refrigerated area for 20 years from the date of collection unless the patient directs the hospital to surrender it to the police, the patient directs the hospital to dispose of the evidence, or, for certain kinds of evidence, if the police request its surrender. *See* Public Health Law § 2805-i.

Your website and Amazon advertising for the at-home evidence kit fail to clearly and conspicuously disclose that testing and other services are available for free in New York, only doing so in a general statement about federal law in a separate “welcome message” on the website and casting doubt on its availability in New York by adding that “[t]here can be some restrictions to this so it’s important to double-check this in advance.” Your Amazon advertisement does not disclose the availability of free testing at all. Further, by focusing solely on evidence collection, your Amazon advertisement does a grave disservice to survivors of sexual assault, as it may lead them to forgo necessary medical treatment and other services.

We also have serious concerns about a number of your advertising representations. The website advertisement prominently features the use of the kit “to collect evidence for use at a later date within the judicial system” and its ability to “address the evidentiary needs of survivors.” It states that “[t]he goal of the PRESERVEkit is to provide survivors with the information and tools needed to collect their own evidence.” Your website offers testimonials which refer to the Preserve kit as “an excellent alternative” and “an outstanding option” for sexual assault survivors who do not want a forensic exam near the time of assault and state that it “can help preserve choices.” In a “special statement,” it adds that “[c]rime victims give evidence to law enforcement that is admissible in court every day. The court system doesn’t rule out evidence for the sole reason that it has been provided by the victim.” This advertising gives the misleading impression that the evidence collected will be admissible in a court of law. However, the New York State Department of Health website specifically notes the following:

Accurately maintaining and accounting for the chain of custody of sexual offense evidence is essential for the evidence to be useful in a court of law. **A patient, family member, or support person should never be left alone with evidence or ever allowed to handle or transport evidence after it has been collected.**

<https://www.health.ny.gov/professionals/safe/> (emphasis added).

Additionally, the Department of Justice “National Protocol for Sexual Assault Medical Forensic Examinations” (“DOJ National Protocol”) states that “[o]nly a law enforcement official or duly authorized agent should transfer evidence from the exam site to the appropriate [storage site]... Examiners must maintain control of evidence during the exam, while evidence is being dried, and until it is in the kit container and sealed... Documentation should continue with each transfer of the evidence... Patients, advocates, family members, and other support persons should not handle the evidence. Documentation of the chain-of-custody information is vital to ensuring that there has been no loss or alteration of evidence prior to trial.”

With respect to the kit itself, the DOJ National Protocol is emphatic that “it is critical that every [sexual assault examination] kit meets or exceeds the following minimum guidelines for contents.” Among minimum guidelines, it lists “[m]aterials for collecting and preserving the following evidence: ... * Foreign materials on patients’ bodies, including blood, dried secretions, fibers, loose hairs, vegetation, soil/debris, fingernail scrapings and/or cuttings, matted hair cutting, material dislodged from mouth, and swabs of suspected semen, saliva, and/or areas highlighted by alternate light sources... * Hair if required in the jurisdiction... * Body swabs.” It also notes that “[i]t is critical to air-dry wet evidence at room temperature in a clean, sterile environment and quick manner that prevents contamination... Following proper drying and packaging procedures is vital to

prevent the growth of mold and bacteria that can destroy an evidentiary sample.” See <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>. It does not appear that the Preserve kit meets these guidelines, making its representations concerning its suitability for collecting evidence particularly questionable.

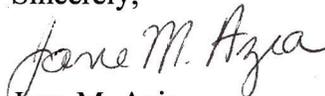
Finally, the Preserve website contains the FEMA “Prepared, Not Scared/National Preparedness Month 2019” logo, which includes the statement “FEMA Ready” with a check next to it, which implies endorsement or review by a federal agency that Preserve is highly unlikely to have obtained.

Meanwhile, the Amazon page describes the Preserve kit as a “[s]exual assault evidence collection kit containing all of the tools and...directions needed for the proper collection of evidence” and for “securing evidence.” However, as discussed, the kit does not allow for the “proper collection” of evidence, nor, most especially, for “securing” it. Based on the representation on Amazon, it appears that this “kit” (retailing for \$29.99) contains little more than two swabs, a paper bag marked “Evidence,” a hinge lifter, and a piece of red tape labeled “Evidence.” Characterizing these ordinary supplies as the “tools necessary to collect evidence of a sexual assault” and “[e]vidence packaging supplies to properly package evidence” is also misleading, as stamping a paper bag with “Evidence” or taping it shut with a red piece of tape has nothing to do with whether any physical evidence gathered might ultimately be admissible in court.

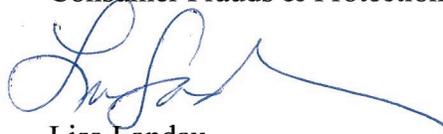
Accordingly, you are hereby advised to immediately cease and desist from advertising and selling your product to New York consumers. Further, we hereby request that you take all necessary steps to preserve all physical and electronic records and data pertaining to matters that are the subject of this letter. The information that should be preserved includes active data (readily accessible today), archived data (stored on backup media), and deleted data (still recoverable through the use of computer forensics). We also request that you take affirmative steps to prevent anyone with access to your data systems and archives from seeking to modify or destroy electronic evidence on network or local hard drives.

Please contact the undersigned within the next five days to confirm that you have ceased your advertising and selling to New York consumers. Your failure to comply with this directive may result in further action by this office.

Sincerely,



Jane M. Azia
Bureau Chief
Consumer Frauds & Protection Bureau



Lisa Landau
Bureau Chief
Health Care Bureau