

IN THE CIRCUIT COURT OF
STONE COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)
Attorney General Eric S. Schmitt,)
)
Plaintiff,)
)
vs.)
JIM BAKKER)
)
and)
)
MORNINGSIDE CHURCH)
PRODUCTIONS, INC. d/b/a)
Jim Bakker Show Ministry,)
)
Defendants.)

Case No. 20SN-CC00084
Division:

**FIRST AMENDED PETITION FOR TEMPORARY RESTRAINING
ORDER, PRELIMINARY AND PERMANENT INJUNCTION,
RESTITUTION, CIVIL PENALTIES, AND OTHER RELIEF**

Plaintiff the State of Missouri, ex rel. Eric S. Schmitt Attorney General (“Plaintiff”) brings this First Amended Petition for Temporary Restraining Order, Preliminary Injunction, Civil Penalties, and Other Relief against Jim Bakker, (“Bakker”), and Morningside Church Productions, Inc., d/b/a Jim Bakker Show Ministry, (“Morningside”), (collectively “Defendants”). This Amended Petition is filed before an answer to the original Petition was served on Plaintiff. Upon information and belief, Plaintiff states as follows:

PARTIES

1. Eric S. Schmitt is the Attorney General of the State of Missouri and brings this action in his official capacity pursuant to Chapter 407, RSMo.

2. Jim Bakker is an individual located at 180 Grace Chapel Road, Blue Eye, Missouri, 65611. Defendant Bakker advertised, solicited, sold, and offered to sell merchandise in Missouri.

3. Morningside Church Productions, Inc. is a Missouri for-profit corporation which was incorporated on December 30, 2014. Morningside does business as Jim Bakker Show Ministry at 180 Grace Chapel Road as indicated by the Registration of Fictitious Name on file with the Missouri Secretary of State's Office. Defendant Morningside transacted business in Missouri and, specifically, within Stone County as Jim Bakker Show Ministry.

4. At all times relevant to the facts alleged in this petition, Defendants Jim Bakker and Morningside, doing business as Jim Bakker Show Ministry, engaged or directed their agents to engage in the unlawful practices alleged in this petition.

5. Any acts, practices, methods, uses, solicitations or conduct of the Defendants alleged in this Petition include the acts, practices, methods, uses, solicitations or conduct of the Defendants' employees, agents, or other representatives acting under Defendants' direction, control, or authority.

JURISDICTION

6. This Court has subject matter jurisdiction pursuant to Article V, § 14 of the Missouri Constitution.

7. This Court has personal jurisdiction over Defendants because: (1) Defendants conduct or conducted business in and from the State of Missouri, (2) Defendants reside in the State of Missouri, and (3) Defendants principal places of business was in Stone County, Missouri.

8. This court has authority over this action pursuant to § 407.100, which allows the Attorney General to seek injunctive relief, restitution, penalties, and other relief in circuit court against persons who violate § 407.020, RSMo.

VENUE

9. Venue is proper in this Court pursuant to § 407.100.7, RSMo, which provides that “any action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.”

10. Defendants have engaged in the acts, practices, methods, uses, solicitation and conduct described below that violate § 407.020, RSMo, in and from Stone County, Missouri. Thus venue is proper in this Court.

MERCHANDISING PRACTICES ACT

11. Section 407.020, RSMo provides in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

12. Section 407.100.1, RSMo states:

Whenever it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, the attorney general may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

13. “Person” is defined as “any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.”

§ 407.010(5), RSMo.

14. “Merchandise” is defined as “any objects, wares, goods,

commodities, intangibles, real estate, or services.” § 407.010(4), RSMo.

15. “Trade” or “commerce” is defined as “the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms “trade” and “commerce” include any trade or commerce directly or indirectly affecting the people of this state.” § 407.010(7), RSMo.

16. Defendants have advertised, marketed, and sold merchandise in trade or commerce within the meaning of § 407.010, RSMo.

17. Pursuant to § 407.145, RSMo, the Attorney General has promulgated rules explaining and defining terms in §§ 407.010-407.145 of the Merchandising Practices Act. The rules relevant to the Merchandising Practices Act allegations herein include the provisions of 15 CSR 60-8.010 to 15 CSR 60-9.110.

18. From those regulations, and pertinent to this petition, a false promise is defined as “any statement or representation which is false or misleading as to the maker’s intention or ability to perform a promise, or likelihood the promise will be performed.” 15 CSR 60-9.060. A misrepresentation is an assertion that is not in accord with the facts. 15 CSR 60-9.070. Deception is defined as “any method, act, use, practice, advertisement or solicitation that has the tendency or capacity to mislead,

deceive or cheat, or that tends to create a false impression.” 15 CSR 60-9.020. An omission of material fact is defined as “any failure by a person to disclose material facts known to him/her, or upon reasonable inquiry would be known to him/her.” 15 CSR 60-9.110(3). “Concealment of a material facts is any method, act, use or practice which operates to hide or keep material facts from consumers.” 15 CSR 60-9.110(1). “Suppression of a material fact is any method, act, use or practice which is likely to curtail or reduce the ability of consumers to take notice of material facts which are stated.” 15 CSR 60-9.110(20). “An unfair practice is defined as any practice which “[I]s unethical, oppressive or unscrupulous or offends any public policy ... and [p]resents a risk of, or causes, substantial injury to consumers.” 15 CSR 60-8.020.

19. “Seller”, as used in Chapter 407 and the rules found at 15 CSR 60-7.010 et seq., “means any person who offers, advertises or sells any product for sale...in this state” and it includes “any officer, agent, employee, salesperson or representative of a seller.”

ALLEGATIONS OF FACT

20. Plaintiff incorporates all allegations as stated above.

21. Since at least February 12, 2020, Defendants advertised, offered to sell, and sold “Silver Solution”, also referred to as “Silver Sol” and “Optivida Silver Solution” created by American Biotech Labs.

22. On the Jim Bakker Show, aired on multiple networks across the

country, and on the Jim Bakker Show website Defendants solicited the business of Missouri and non-Missouri consumers to purchase Silver Solution as a product to “support your immune system”, “speed up natural processes that have positive effects on the body”, and “resonating at just the right frequency”... to ... “disrupt foreign elements without disturbing the body’s natural environment.”

23. In a February 12, 2020, Jim Bakker Show #3861, Bakker has the following exchange with Sherill Sellman, referred to as a “naturopathic doctor” and “natural health expert”:

Bakker: This influenza that is now circling the globe, you’re saying that silver solution would be effective.

Sellman: Well, let’s say it hasn’t been tested on this strain of the coronavirus, but it has been tested on other strains of the coronavirus and has been able to eliminate it within 12 hours.

Bakker: Yeah.

Sellman: Totally eliminate it, kills it. Deactivates it.

Bakker: Yeah.

Sellman: And it boosts your immune system so then you can support the recovery, ‘cause when you kill the virus then the immune system comes into action to clear it out, so you want a vibrant immune system as well as an ability to deactivate these

viruses.

Sellman: Silver Sol has been proven by the government that it has the ability to kill every pathogen it has ever been tested on including SARS and HIV.

Bakker then offers Silver Sol products for viewers should they offer donations to the show at levels such as \$80 or \$125.

24. The Jim Bakker Show website includes prominent stories about the coronavirus and the course it is running across the globe. One update on the site is titled, “Covid-19 Coronavirus, building immunity, staying healthy, and the benefits of Silver Solution.” When the link is clicked, a lengthy discussion of the corona virus outbreak is described with references to Covid-19’s close relationship to the SARS virus. There, the update refers to the Sellman interview of February 12 and “the use of Silver Solution and ... many coronaviruses and other deadly diseases we face.” Dr. Sellman is described as “a worldwide known Board-Certified Integrative Naturopathic Doctor and mind-body psychotherapist.”

25. The website goes on to say that “what you really want to do is build a strong immune system” and refers to the “most vulnerable people that die from flu and things” as the elderly.

26. On March 6, 2020, the Food and Drug Administration and the Federal Trade Commission issued warning letters to Defendant Jim Bakker

and other companies for selling unapproved coronavirus drugs. The letter states:

This is to advise you that the United States Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) reviewed your website at the Internet address www.jimbakkershow.com on February 21, 2020 and February 13, 2020, respectively. We have also reviewed your social media page at <https://www.facebook.com/jimbakkershow/>, where you provide a link to your website www.store.jimbakkershow.com to purchase your products. The FDA has determined that your website offers products labeled to contain silver, such as “Silver Sol Liquid,” for sale in the United States and that these products are intended to mitigate, prevent, treat, diagnose, or cure COVID-19 in people. FDA has determined that these products are unapproved new drugs sold in violation of the Federal Food, Drug, and Cosmetic Act (FD&C Act), 21 U.S.C. § 355(a). Furthermore, these products are misbranded drugs under section 502 of the FD&C Act, 21 U.S.C. § 352. The introduction or delivery for introduction of these products into interstate commerce is prohibited under section 301(a) and (d) of the FD&C Act, 21 U.S.C. § 331(a) and (d).

27. The FDA letter also advises that “there are currently no vaccines, potions, lotions, lozenges or other prescription or over-the-counter products available to treat or cure coronavirus disease 2019 (Covid-19).”

28. The Director of the Missouri Department of Health and Senior Service, Dr. Randall W. Williams, M.D., stated in an interview with an investigator for the Missouri Attorney General’s Office that “there is nothing available that can be ingested to eliminate the coronavirus.”

29. In summary, Defendants, acting individually and in concert with

others, sold Silver Solution, and other products, on the pretense that they serve as an effective treatment of coronavirus.

VIOLATIONS OF LAW

COUNT I – FALSE PROMISES

30. Plaintiff incorporates all allegations stated above.

31. Defendants violated § 407.020, RSMo, by falsely promising:

- a. that Silver Solution will cure, eliminate, kill or deactivate the coronavirus;
- b. that Silver Solution will boost your immune system and protect your health from the coronavirus.

32. Such promises were false and misleading as to Defendants intentions or ability to perform the promises or the likelihood that the promises would be performed.

COUNT II – MISREPRESENTATIONS OF MATERIAL FACT

33. Plaintiff incorporates all allegations stated above.

34. Defendants violated § 407.020, RSMo, by:

- a. claiming Silver Solution can cure, eliminate, kill or deactivate coronavirus;
- b. claiming Silver Solution has been proven by the government that it has the ability to kill every pathogen it has ever been

tested on including SARS and HIV.

COUNT III – UNFAIR PRACTICE

35. Plaintiff incorporates all allegations stated above.

36. Defendants violated § 407.020, RSMo. and 15 CSR 60-8.020 by engaging in a practice which either:

- a. offends public policy as established by the law or the Federal Trade Commission in that Defendants advertised that Silver Solution can prevent, treat or cure coronavirus when there is no competent or reliable scientific evidence to substantiate the claim. *See* 15 USC § 45; or
- b. is unethical, oppressive or unscrupulous in that in connection with the sale and advertisement of Silver Solution, Defendants engaged in discussions directed to the general public that were designed to arouse public fear and alarm regarding the spread and lethality of coronavirus and then presented Silver Solution as a treatment for coronavirus.

37. The practice presents a risk of, or causes, substantial injury to consumers in that that sale and promotion of fraudulent coronavirus and Covid-19 products is a threat to public health as people may delay or stop appropriate treatment in favor of ineffective or unproven remedies.

COUNT IV – UNFAIR PRACTICE

38. Plaintiff incorporates all allegations stated above.

39. Defendants violated § 407.020, RSMo. and 15 CSR 60-8.090 in that Defendants, in connection with advertisement or sale of Silver Solution, engaged in a practice that employed a method, act or practice that violates state or federal law intended to protect the public.

40. Silver Solution is a product not approved by the Federal Food and Drug Administration and is sold in violation of 21 USC sections 355(a), 21 USC 352, and 21 USC 331(a) and (d).

41. The practice of selling unapproved drugs for the treatment of coronavirus presents a risk of, or causes, substantial injury to consumers in that that sale and promotion of fraudulent Covid-19 products is a threat to public health as people may delay or stop appropriate treatment in favor of ineffective or unproven remedies.

COUNT V – DECEPTION

42. Plaintiff incorporates all allegations stated above.

43. Defendants engaged in deception by advertising and selling Silver Solution by means of a method, act, use, practice, advertisement or solicitation that has the tendency or capacity to mislead, deceive or cheat, or that tends to create a false impression in that:

- a. Viewers of the Jim Bakker show were led to believe that Sherill Sellman is a medical doctor or has training or experience in flu prevention or treatment;
- b. Defendants' efforts to sell Silver Solution as an effective treatment for coronavirus misled consumers and created the false impression that Silver Solution is effective in treating coronavirus.

COUNT VI – CONCEALMENT, SUPPRESSION OR OMISSION OF MATERIAL FACT

44. Plaintiff incorporates all allegations stated above.
45. Defendants concealed, suppressed and omitted material facts in connection with the advertisement and sale of Silver Solution in that:
 - a. Defendants failed to disclose the material facts that Sherill Sellman is not a licensed medical doctor and has no training or experience in flu prevention or treatment;
 - b. Defendants omitted the material fact that Silver Solution is not approved by the FDA for treatment of coronavirus; and
 - c. Defendants failed to disclose the material fact that there is no competent or reliable scientific evidence substantiating their claims that Silver Solution can treat coronavirus or boost a

person's immune system.

RELIEF

WHEREFORE, Plaintiff prays this Court enter judgment:

1. Finding that Defendants violated the provisions of § 407.020.
2. Issuing permanent and preliminary injunctions pursuant to §§ 407.100.1 and 407.100.4 prohibiting and enjoining Defendants from marketing, advertising, offering to sell or selling Silver Solution as a treatment for coronavirus.
3. Requiring Defendants to provide full restitution to all consumers from whom Defendants received money or donations for Silver Solution.
4. Award a civil penalty to the state of one thousand dollars for each violation of § 407.020.
5. Requiring Defendants to pay the State an amount of money equal to ten percent (10%) of the total restitution ordered against Defendants.
6. Requiring Defendants to pay all court, investigative, and prosecution costs of this case per § 407.130.
7. Granting any further relief that this Court deems proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 23rd day of April, 2020, the foregoing document was filed with the Court's electronic filing system, which sent notice of the filing to:

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