

# REQUEST FOR JUDICIAL INTERVENTION

UCS-840 (3/2011)

Supreme COURT, COUNTY OF Suffolk

Index No: 1220556 Date Index Issued: 7-10-12

### For Court Clerk Use Only:

IAS Entry Date

Judge Assigned

RJI Date

**CAPTION:** Enter the complete case caption. Do not use et al or et ano. If more space is required, attach a caption rider sheet.

Fee Exempt

PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN,  
Attorney General of the State of New York,

*TR*  
Plaintiff(s)/Petitioner(s)

RJI. FEE EXEMPT  
Judith A. Pascale  
County Clerk KS

-against-

GEORGE MOSS, doing business as East Coast Psychedelics, and  
EAST COAST PSYCHEDELICS, INC.,

*cm*  
*OSPNT/SP*

### NATURE OF ACTION OR PROCEEDING:

Check ONE box only and specify where indicated.

Defendant(s)/Respondent(s)

#### MATRIMONIAL

- Contested  
 Uncontested

NOTE: For all Matrimonial actions where the parties have children under the age of 18, complete and attach the **MATRIMONIAL RJI Addendum**.

#### TORTS

- Asbestos  
 Breast Implant  
 Environmental: \_\_\_\_\_ (specify)  
 Medical, Dental, or Podiatric Malpractice  
 Motor Vehicle  
 Products Liability: \_\_\_\_\_ (specify)  
 Other Negligence: \_\_\_\_\_ (specify)  
 Other Professional Malpractice: \_\_\_\_\_ (specify)  
 Other Tort: \_\_\_\_\_ (specify)

#### COMMERCIAL

- Business Entity (including corporations, partnerships, LLCs, etc.)  
 Contract  
 Insurance (where insurer is a party, except arbitration)  
 UCC (including sales, negotiable instruments)  
 Other Commercial: \_\_\_\_\_ (specify)

NOTE: For Commercial Division assignment requests [22 NYCRR § 202.70(d)], complete and attach the **COMMERCIAL DIV RJI Addendum**.

#### REAL PROPERTY: How many properties does the application include?

- Condemnation  
 Foreclosure  
Property Address: \_\_\_\_\_ Alabama \_\_\_\_\_  
Street Address City State Zip

NOTE: For Foreclosure actions involving a one- to four-family, owner-occupied, residential property, or an owner-occupied condominium, complete and attach the **FORECLOSURE RJI Addendum**.

- Tax Certiorari - Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_  
 Other Real Property: \_\_\_\_\_ (specify)

#### OTHER MATTERS

- Certificate of Incorporation/Dissolution [see NOTE under Commercial]  
 Emergency Medical Treatment  
 Habeas Corpus  
 Local Court Appeal  
 Mechanic's Lien  
 Name Change  
 Pistol Permit Revocation Hearing  
 Sale or Finance of Religious/Not-for-Profit Property  
 Other: \_\_\_\_\_ (specify)

#### SPECIAL PROCEEDINGS

- CPLR Article 75 (Arbitration) [see NOTE under Commercial]  
 CPLR Article 78 (Body or Officer)  
 Election Law  
 MHL Article 9.60 (Kendra's Law)  
 MHL Article 10 (Sex Offender Confinement-Initial)  
 MHL Article 10 (Sex Offender Confinement-Review)  
 MHL Article 81 (Guardianship)  
 Other Mental Hygiene: \_\_\_\_\_ (specify)

- Other Special Proceeding: Executive Law sec. 63(12) and GBL Article 22-A (specify)

### STATUS OF ACTION OR PROCEEDING:

Answer YES or NO for EVERY question AND enter additional information where indicated.

as a summons and complaint or summons w/notice been filed?  
this action/proceeding being filed post-judgment?

YES NO

- If yes, date filed: \_\_\_\_\_  
  If yes, judgment date: \_\_\_\_\_

**NATURE OF JUDICIAL INTERVENTION:**

Check ONE box only AND enter additional information where indicated.

- Infant's Compromise
- Note of Issue and/or Certificate of Readiness
- Notice of Medical, Dental, or Podiatric Malpractice
- Notice of Motion
- Notice of Petition
- Order to Show Cause
- Other Ex Parte Application
- Poor Person Application
- Request for Preliminary Conference
- Residential Mortgage Foreclosure Settlement Conference
- Writ of Habeas Corpus
- Other (specify):

Date Issue Joined: \_\_\_\_\_  
 Relief Sought: Alternate Service \_\_\_\_\_ Return Date: \_\_\_\_\_  
 Relief Sought: Alternate Service \_\_\_\_\_ Return Date: \_\_\_\_\_  
 Relief Sought: Injunction/Restraining Order \_\_\_\_\_ Return Date: \_\_\_\_\_  
 Relief Sought: Alternate Service \_\_\_\_\_ Return Date: \_\_\_\_\_

**RELATED CASES:**

List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases. If additional space is required, complete and attach the RJI Addendum. If none, leave blank.

Case Title	Index/Case No.	Court	Judge (if assigned)	Relationship to Instant Case

**PARTIES:**

If additional space is required, complete and attach the RJI Addendum. For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in "Attorneys" space.

Un-Rep	Parties:	Attorneys:	Issue Joined (Y/N):	Insurance Carrier(s):
<input type="checkbox"/>	People of the State of New York Last Name Eric T. Schnelderman, NYS Atty. General First Name Primary Role: Petitioner Secondary Role (if any): Petitioner	Provide name, firm name, business address, phone number and e-mail address of all attorneys that have appeared in the case. Last Name First Name Firm Name Street Address City State Zip Phone Fax e-mail	<input type="radio"/> YES <input checked="" type="radio"/> NO	
<input type="checkbox"/>	East Coast Psychedelics, Inc. Last Name First Name Primary Role: Respondent Secondary Role (if any): Respondent	Last Name First Name Firm Name Street Address City State Zip Phone Fax e-mail	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	George Moss Last Name First Name Primary Role: Respondent Secondary Role (if any): Respondent	Last Name First Name Firm Name Street Address City State Zip Phone Fax e-mail	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Plaintiff Last Name First Name Primary Role: Plaintiff Secondary Role (if any): Plaintiff	Last Name First Name Firm Name Street Address City State Zip Phone Fax e-mail	<input type="radio"/> YES <input type="radio"/> NO	

**AFFIRM UNDER THE PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.**

Dated: July 9, 2012

*Rachael C. Anello*

SIGNATURE

RACHAEL C. ANELLO

PRINT OR TYPE NAME

4192381  
 ATTORNEY REGISTRATION NUMBER

Print Form

HON. CAROL MACKENZIE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

Special  
At a Trial Term, Part II of MOTION/CROSS/OSC  
the Supreme Court, of the State

THE PEOPLE OF THE STATE OF NEW YORK  
by ERIC T. SCHNEIDERMAN, Attorney General  
of the State of New York,

of New York, held in and for the  
County of Suffolk, at Central  
Islip, New York on the 10<sup>th</sup> of  
FREE FILED  
W. A. Pascale  
Suffolk County Clerk (K3)

July, 2012

Petitioner,

**ORDER TO SHOW CAUSE  
WITH A TEMPORARY  
RESTRAINING ORDER**

-against-

GEORGE MOSS, doing business as  
East Coast Psychedelics, and  
EAST COAST PSYCHEDELICS, INC.,

Index No. 12-20554

Respondents.

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Upon reading and filing the annexed Verified Petition, verified on July 9, 2012; and the Affirmation of Rachael C. Anello, Assistant Attorney General, affirmed to on July 9, 2012, together with the Affidavit (with exhibits) of Senior Investigator Chad Shelmidine, sworn to on June 26, 2012, Affidavit (with exhibits) of Investigator Trainee Ryan Fannon, sworn to on June 27, 2012, and Affidavit (with exhibits) of Maja Lundborg-Gray, MD, FAAEM, FACEP, sworn to on July 5, 2012, annexed as exhibits thereto; and

Upon the motion of ERIC T. SCHNEIDERMAN, Attorney General of the State of New York, attorney for the Petitioner, it is

ORDERED that the Respondents in the above-entitled action show cause at a Term of this Court, to be held at the Suffolk County Courthouse, located at <sup>one Court Street, Riverhead</sup> 400 Carleton Avenue, Central Islip, NY, on the <sup>10<sup>th</sup></sup> day of July, 2012 at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, why an order should not be made, pursuant to Executive Law § 63(12) and

*oral argument required*

General Business Law, Article 22-A:

*7/24  
MJC  
SC answering papers to be served  
on a before 7/16/12*

- a. permanently enjoining Respondents, and their agents, trustees, servants, employees, successors, heirs and assigns, or any other person under their direction and control, whether acting individually or in concert with others, or through any corporate or other entity or device through which they may now or hereafter act or conduct business ("Respondents"), from offering for sale and/or selling mislabeled drugs in violation of Ag. and Mkts. Law § 194;
- b. permanently enjoining Respondents from offering for sale and/or selling misbranded drugs in violation of Educ. Law §§ 6802 and 6815;
- c. permanently enjoining Respondents from misleadingly offering for sale and/or selling products as designer drugs or other street drug alternatives, including encouraging ingestion of products that are labeled or specifically designated "not for human consumption;"
- d. permanently enjoining Respondents from offering for sale and selling nitrous oxide to the public in violation of Public Health Law § 3380;
- e. permanently enjoining Respondents from engaging in the fraudulent, deceptive and illegal practices alleged in the petition in violation of GBL § 349;
- f. requiring that Respondents comply with any and all state, local or federal labeling requirements;
- g. requiring Respondents to prepare an accounting of all commodities they sold, or offered for sale, from January 1, 2012 to July 10, 2012 including the (i) name of the product, (ii) the manufacturer and/or distributor of the product, (iii) a description of the product, (iv) the retail price of the product, and (iv) the number units of the product sold;
- h. pursuant to GBL § 350-d, imposing a civil penalty of \$5,000 for each deceptive act committed by Respondents;
- i. pursuant to CPLR § 8303(a)(6), granting costs to the State of New York of \$2,000; and
- j. for such other and further relief as the court deems just and proper.

IT APPEARING that a cause of action for temporary injunctive relief exists under Executive Law § 63(12), General Business Law § 349, and CPLR Sections 6301 and 6313, and that Respondents have engaged in repeated and persistent illegal, fraudulent and deceptive acts and practices which have caused and will continue to cause immediate and irreparable injury to members

of the public unless Respondents are restrained before a hearing can be held, it is

ORDERED that pending the hearing and determination of this proceeding, and to protect the public health, Respondents, their agents, employees, successors, and assigns, and any other person under their direction and control, whether acting individually or in concert with others, or through any corporate or other entity or device, are hereby temporarily restrained, pursuant to CPLR Sections 6301 and 6313 from offering for sale or selling mislabeled and/or misbranded drugs, from offering for sale and/or selling products as designer drugs or other street drug alternatives that are not approved for human consumption, and from selling nitrous oxide to the public;

SUFFICIENT CAUSE appearing to me therefore,

LET service of one copy of this order and supporting papers on Respondents on or before the day of July, 2012 be deemed due and sufficient service hereof.

Pursuant to C.P.L.R. § 403(b), answering papers, if any, are required to be served at least two days before the return date of this special proceeding. If, however, this Order to Show Cause is served at least twelve days before the return date, answering papers, if any, are required to be served at least seven days before the return date.

Dated: Central Islip, New York  
July 10, 2012

**GRANTED**

JUL 10 2012

Judith A. Pascale  
CLERK OF SUFFOLK COUNTY

ENTER

J.S.C.  
HON. CAROL MACKENZIE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
PEOPLE OF THE STATE OF NEW YORK, by  
ERIC T. SCHNEIDERMAN, Attorney General of the  
State of New York,

Petitioner,

**VERIFIED  
PETITION**

-against-

Index No. 12-20556

GEORGE MOSS, doing business as  
East Coast Psychedelics, and  
EAST COAST PSYCHEDELICS, INC.,

Respondents.

-----X

The People of the State of New York, by their attorney, Eric T. Schneiderman, Attorney  
General of the State of New York, allege as follows:

**PRELIMINARY STATEMENT**

1. Petitioner brings this special proceeding pursuant to New York Executive  
Law § 63(12), and New York General Business Law ("GBL") § 349 to enjoin Respondents  
George Moss, doing business as East Coast Psychedelics, and East Coast Psychedelics, Inc.,  
from engaging in deceptive, fraudulent and illegal practices in connection with his business  
(commonly known as a "head shop"). Respondents sell so-called designer drugs, which are  
synthetic versions of illegal drugs, as well as other street drug alternatives, which are products  
that are marketed with claims that the effect of their use mimic controlled substances. Designer  
drugs and other street drug alternatives [hereinafter "designer drugs"] are marketed to avoid the  
provisions of existing drug laws; they are intended to stimulate, sedate or cause hallucinations or  
euphoria when ingested or inhaled. Petitioner also seeks civil penalties and costs, as authorized  
by statute, to be paid to the State of New York.

2012 JUL 10 AM 5:41  
FILED

2. The sale of designer drugs has contributed to a public health crisis in New York State and across the nation. These products are sold by head shops for their psychoactive effects akin to those obtained from illegal drug use. Many of the products are packaged with innocuous names and bright graphics to give the misleading impression that their use is harmless. Others are packaged and named to mimic illegal drugs or legal prescription drugs. The products target people who wish to engage in recreational legal drug use and/or who do not want to risk a positive drug test. Many products are insufficiently labeled, mislabeled and/or misbranded, lacking identification of ingredients, adequate directions for use, adequate warning labels, and/or manufacturer information. In addition, some products that bear labels stating “not fit for human consumption,” are deceptively misrepresented by head shops to consumers as drugs with psychoactive properties.

3. Misrepresenting products as safe for human consumption and selling products that are insufficiently labeled or mislabeled is inherently misleading and dangerous. Consumers cannot make informed decisions about the safety of the products they are purchasing without knowing the contents of the products and how they are intended to be used. Some of these products may cause serious health effects such as agitation, tachycardia (rapid heartbeat), hallucinations, seizures, extreme paranoia, panic, vomiting, mood swings, intense cravings to redose, suicidal or homicidal thoughts, or even death. Consumers who experience dire health consequences as a result of ingesting these products are at further risk. Without being able to disclose to emergency personnel and health care providers the chemicals they have ingested, the users of these products may not receive appropriate medical treatment.

4. New York State has enacted a comprehensive statutory scheme with respect to the labeling of commodities and drugs. For example, the New York State Agriculture

and Markets Law (hereinafter "Ag. & Mkts. Law") § 194 regulates labeling of commodities, including non-prescription drugs. The New York State Education Law (hereinafter "Educ. Law") § 6802 proscribes misbranding of all drugs. Crucial to protecting the health of all New Yorkers is enforcement of the state's laws prohibiting mislabeling of commodities and misbranding of drugs.

5. In addition, the New York State Public Health Law (hereinafter "Pub. Health Law") § 3380 proscribes the retail sale of nitrous oxide to the public. Respondents offer for sale and sell nitrous oxide canisters to the public.

#### **PARTIES AND JURISDICTION**

6. Petitioner is the People of the State of New York, by their attorney, Eric T. Schneiderman, Attorney General of the State of New York.

7. Upon information and belief, Respondent George Moss is a resident of Suffolk County and does business as East Coast Psychedelics. Respondent East Coast Psychedelics, Inc. is a Domestic Business Corporation registered with the New York State Department of State. Respondents operate two retail locations for East Coast Psychedelics, at 486 Merrick Road, Oceanside, New York, and at 6124 Jericho Turnpike, Commack, New York. George Moss and East Coast Psychedelics, Inc. shall hereinafter be collectively referred to as "Respondents" or "East Coast Psychedelics."

8. Petitioner brings this proceeding pursuant to New York Executive Law § 63(12) which authorizes the Attorney General to seek injunctive relief, restitution, damages and costs when any person or entity has engaged in repeated fraudulent or illegal acts or has otherwise engaged in persistent fraud or illegality in the conduct of its business, and pursuant to

GBL Article 22-A, which authorizes the Attorney General to seek injunctive relief, restitution and civil penalties against any person or business entity that has engaged in deceptive business practices.

9. Petitioner has timely served Respondents with pre-litigation notice pursuant to GBL § 349(c).

### FACTS

10. Respondents own and operate "head shops" that specialize in the retail sale of drug paraphernalia for the consumption of cannabis and other illegal substances, as well as the sale of designer drugs. Designer drugs are marketed as innocuous products but are designed to stimulate, sedate or cause hallucinations or euphoria when ingested or inhaled. Many of these produces are harmful to consumers.

11. The Office of the New York State Attorney General Eric T. Schneiderman ("OAG") conducted an undercover investigation that revealed extensive evidence that East Coast Psychedelics offers for sale and sells mislabeled and misbranded designer drugs and nitrous oxide to the public. The Food and Drug Administration (FDA) also considers any product that is promoted as a street drug alternative to be an unapproved new drug and misbranded drug in violation of sections 505 and 502 of the Federal Food, Drug, and Cosmetic Act. 21 U.S.C. §§ 321(p)(1), 352(f)(1).

12. East Coast Psychedelics offers for sale and sells these products in such a manner as to either explicitly or implicitly misrepresent the products as designer drugs.

13. As detailed below, East Coast Psychedelics offers for sale and sells the following designer drugs: Mr. Nice Guy - Panic; Mr. Nice Guy - LMAO; Mary Jane's Potpourri; Maeng Da Kratom T; and Euphoric Bomb. East Coast Psychedelics also offers for sale and sells

canisters of nitrous oxide, despite its lack of an exemption by the Commissioner of the State Health Department to sell such products. Indeed, New York State Law does not allow exemptions for retail sale of nitrous oxide to the public.

#### Oceanside Location

14. On May 30, 2012, at approximately 1:00 p.m., Chad Shelmidine, Senior Investigator employed by the OAG ("Investigator Shelmidine"), went to East Coast Psychedelics, located at 486 Merrick Road, Oceanside, New York.

15. East Coast Psychedelics offers for sale and sells "Mr. Nice Guy" brand "Panic" and "LMAO," two types of designer drug commonly known as "spice" or "herbal incense." In fact, East Coast Psychedelics offers Panic and LMAO to be smoked by users. East Coast Psychedelics staff recommend a "wet piece" or "dry piece" (pipe) for smoking the product.

16. According to the product packaging, Panic contains one gram of "incense" containing an "herbal smoke blend." There are no ingredients identified on the label. The label claims that the product is "not for human consumption."

17. According to the product packaging, LMAO contains one gram of "herbal burnables." There are no ingredients identified on the label. The label claims that the product is "not for consumption."

18. Although Panic and LMAO are labeled not for consumption, Respondents' staff recommended and sold Investigator Shelmidine a pipe for use with these products. East Coast Psychedelics clearly offers for sale and sells Panic and LMAO as designer drugs.

19. East Coast Psychedelics also offers for sale chargers containing nitrous oxide. Nitrous oxide is known by the slang term "laughing gas," and when it is inhaled nitrous

oxide has analgesic and euphoric effects on the user. Nitrous oxide chargers can be used to make whip cream, but are frequently misused by people to get 'high.'

#### Commack Location

20. On June 15, 2012, at approximately 11:15 a.m., Ryan Fannon, an Investigator Trainee employed by the OAG ("Investigator Fannon"), went to East Coast Psychedelics, located at 6124 Jericho Turnpike, Commack, New York.

21. East Coast Psychedelics offers for sale and sells "Mary Jane's Potpourri," a type of designer drug commonly known as "spice" or "herbal incense." Respondents offer Mary Jane's Potpourri to be smoked by users.

22. According to the packaging, Mary Jane's Potpourri is "Not For Human Consumption" and "Not For Sale To Minors." There are no ingredients on the label.

23. East Coast Psychedelics also offers for sale "kratom," another type of designer drug or street drug alternative, in both a tea and capsule form.

24. According to the package of kratom tea, the product is called "Maeng Da Kratom T." The label states that it is "100% Legal, 100% Effective, 100% Organic/All Natural," and "100% Guaranteed Not to Show Up on a Drug Test." The ingredients are identified as "Maeng Da Kratom Crushed Leaf." A printed warning states "Use with caution. Do not use while operating a motor vehicle or machinery, if you are pregnant or nursing, or if you are taking any prescription or non-prescription medication or drugs." There is a disclaimer that the product has not been evaluated by the FDA, is not intended to cure, diagnose, treat or prevent any disease, and is not for human consumption.

25. The directions printed on the label instruct users to "Mix 4 to 5 heaping teaspoons in two cups of boiling water. Cover and reduce heat, simmer for 15 to 20 mins, or

bring to boil and turn off, and let steep throughout the day. Add sweetener and lemon if desired. Enjoy aroma either hot or as Ice Tea.”

26. According to the package of kratom capsules, the product is called "Maeng Da Kratom T." The label states "Must be 18 years of age to use this product." Notably, one line of the product's label was crossed out in black, making that line of the label unable to read. The ingredients are identified as "100% Pure Extracted Mitragyna Speciosa Leaf Enhanced with a Mitragyna Speciosa 40 Alkaloid signature blend.”

27. According to the United States Department of Justice Department of Drug Enforcement, kratom is a tropical tree native to Southeast Asia. Like psychostimulant drugs, consumption of kratom leaves (or extract) 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. There is no legitimate medical use for kratom in the United States.

28. East Coast Psychedelics also offers for sale and sells "whip-its" brand chargers containing nitrous oxide. Nitrous oxide is also known by the slang term "laughing gas," and when it is inhaled nitrous oxide has analgesic and euphoric effects on the user. Nitrous oxide chargers can be used to make whip cream, but are frequently misused by people to get 'high.'

29. Respondents also offer for sale and sell a product called a "cracker," a device used to 'crack' the seal on the nitrous oxide chargers to inhale the gas. After piercing the seal, the cracker allows the gas to escape in a controlled fashion. A balloon is attached to the

cracker to capture the gas and allow it to absorb enough heat to be inhaled safely. It is then inhaled by the user to get high.

30. According to the packaging, the box contained twenty-four cream chargers, each charger containing nitrous oxide (N<sub>2</sub>O). The label included instructions that the chargers are to be used for food consumption only, and cautioned “Do not inhale! Danger to health.” The label misleadingly states that that nitrous oxide canisters may not be sold to persons under the age of 18; in New York State such canisters may not be sold for any reason to persons under age 21 and can not be sold at retail. There was no address or contact information for the manufacturer or distributor.

31. East Coast Psychedelics offers for sale and sells whipped cream chargers that state on their packaging that they are not to be inhaled. East Coast Psychedelics sells these nitrous oxide chargers with accoutrements (crackers) that can only be used for one purpose - the inhalation of the nitrous gas.

**FIRST CAUSE OF ACTION  
VIOLATION OF EXECUTIVE LAW 63(12)  
REPEATED ILLEGALITY  
VIOLATION OF AG. & MKTS. LAW § 194  
(FALSE LABELING)**

32. New York State Ag. & Mkts. Law § 194 proscribes false labels on commodities sold, offered or exposed for sale, or any false description respecting the number, quantity weight or measure of such commodity.

33. The definition of a commodity as set forth in Ag. & Mkts. Law § 191 includes, *inter alia*, non-prescription drugs. New York State law defines a drug as an “article[]

(other than food) intended to affect the structure or any function of the body of man or animals.”  
Educ. Law § 6802.

34. Title 1 of the New York State Codes, Rules and Regulations (NYCRR) defines a label 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, indentifying, or giving any information with respect to the commodity or to the contents of the package.” A label must identify the product’s identity (common or usual name, description, generic term), the name and address of the manufacturer, packer or distributor, and the weight or quantity of the product.

35. The following products sold by Respondents are intended to affect the function of the human body: Mr. Nice Guy - Panic; Mr. Nice Guy - LMAO; Mary Jane's Potpourri; Maeng Da Kratom T; Euphoric Bomb; and whip-its and other nitrous oxide chargers. They are thus, classifiable as non-prescription drugs and are commodities under Ag. & Mkts. Law § 191(4).

36. The above product labels do not satisfy the requirements for commodity labeling pursuant to the Ag. and Mkts. Law. The labels on each of these products fails to identify the name and address of the manufacturer, packer or distributor.

37. By selling, offering and exposing commodities for sale that do not satisfy New York State law regarding product labeling and by selling, offering and exposing falsely described commodities, Respondents have repeatedly and persistently violated the New York State Ag. & Mkts Law.

**SECOND CAUSE OF ACTION  
VIOLATION OF EXECUTIVE LAW § 63(12)  
REPEATED ILLEGALITY  
VIOLATION OF NYS EDUCATION LAW § 6815  
(MISBRANDING OF DRUGS)**

38. Misbranding of drugs is proscribed by the New York State Education Law.

39. Pursuant to Educ. Law § 6802, a drug is defined, in part, as “[a]rticles (other than food) intended to affect the structure or any function of the body of man or animals.”

40. The following products sold by Respondents are drugs pursuant to Educ. Law § 6802 since they constitute articles (other than food) intended to affect the structure or any function of the body of man or animals: Mr. Nice Guy - Panic; Mr. Nice Guy - LMAO; Mary Jane's Potpourri; Maeng Da Kratom T; Euphoric Bomb; and whip-its and other nitrous oxide chargers.

41. A drug is deemed to be misbranded pursuant to Educ. Law § 6815(2)(a)-(i) if:

- a. its labeling is false or misleading in any particular or, if in package form, it fails to bear a label containing the name of and place of business of the manufacturer, packer or distributor and an accurate statement of the quantity of the of the contents in terms of weight, measure or numerical count;
- b. required information is not prominently and conspicuously placed on the label in such terms to render it to be likely read and understood by ordinary individuals under customary conditions and purchase of use;
- c. its label fails to bear adequate directions for use;
- d. 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;

- e. it as an imitation of another drug, or 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; or
- f. it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended or suggested in the labeling thereof.

42. In considering whether a drug is misbranded because it is misleading, the court must consider (i) the representations made or suggested by the manufacturer, but also (ii) in view of those representations, the failure of the manufacturer to disclose material facts with respect to the consequences which may result from the customary or usual use of the drug.

Educ. Law § 6802(13).

43. Mr. Nice Guy - Panic is misbranded for the following reasons:

- a. It fails to bear a label containing the name of and place of business of the manufacturer, packer or distributor.
- b. The label is misleading because it bears the warning “not for human consumption” when the product is customarily and usually promoted as one to be smoked for an intoxicating effect.
- c. The label fails to identify potential health effects that may result from customary and usual use of this drug.

44. Mr. Nice Guy - LMAO is misbranded for the following reasons:

- a. It fails to bear a label containing the name of and place of business of the manufacturer, packer or distributor.
- b. The label is misleading because it bears the warning “not for consumption” when the product is customarily and usually promoted as one to be smoked for an intoxicating effect.
- c. The label fails to identify potential health effects that may result from customary and usual use of this drug.

45. Mary Jane's Potpourri is misbranded for the following reasons:

- a. It fails to bear a label containing the name of and place of business of the manufacturer, packer or distributor.

- b. It fails to bear a label containing the name of and place of business of the manufacturer, packer or distributor.
  - c. The label is misleading because it bears the warning “not for consumption” when the product is customarily and usually promoted as one to be smoked for an intoxicating effect.
  - d. It fails to bear a label identifying potential health effects that may result from customary and usual use of this drug.
46. Maeng Da Kratom T is misbranded for the following reasons:
- a. The label does not identify potential health effects from customary and usual use of this drug, which may include anything from sedation or stimulant effects to psychosis, hallucinations, delusion and confusion.
47. Euphoric Bomb is misbranded for the following reasons:
- a. The label fails to disclose an address for the manufacturer, distributor or packer.
  - b. The label is misleading because it does not identify potential health effects from customary and usual use of this drug, which may include anything from sedation or stimulant effects to psychosis, hallucinations, delusion and confusion.
48. Nitrous oxide chargers are misbranded for the following reasons:
- a. The label fails to disclose an address for the manufacturer, distributor or packer.
  - b. Though the package contains the warning “Do not inhale! Danger to health,” the warning appears on the side of the box with other information regarding contents. Thus, the warning can be easily overlooked.
  - c. The warning is over-generalized and not sufficient given that nitrous oxide can cause not only health problems, but also accidents and death.
  - d. The label also states that nitrous oxide chargers may not be sold to persons under 18. This statement is false and misleading; in New York State, nitrous oxide chargers can not be sold at retail without an exemption, and under no circumstances may a nitrous oxide charger be sold to a person under age 21.

49. By offering for sale and/or selling misbranded drugs, Respondents have repeatedly and persistently violated the New York State Education Law.

**THIRD CAUSE OF ACTION  
VIOLATION OF EXECUTIVE LAW § 63(12)  
REPEATED ILLEGALITY  
VIOLATION OF NYS PUBLIC HEALTH LAW § 3380  
(ILLEGAL SALE OF NITROUS OXIDE)**

50. New York State Pub. Health Law § 3380 proscribes selling nitrous oxide to the public for the purpose of intoxication.

51. Pub. Health Law § 3380(5)(b) prohibits any person from selling any canister or other container of nitrous oxide unless granted an exemption by the Commissioner of the State Health Department.

52. Pursuant to the Pub. Health Law, there can be no exemptions for retail sale of nitrous oxide to the public.

53. Notwithstanding, to the extent that Pub. Health Law § 3380(5)(f) allows a seller to apply for an exemption to sell nitrous oxide to the public at retail, Respondents are not eligible for such an exemption since they sell drug-related paraphernalia and other items used for the inhalation of nitrous oxide in their retail stores. Pub. Health Law § 3380(5)(f)(v).

54. Respondents sell boxes of nitrous oxide chargers at retail to the public for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or dulling of the brain or nervous system.

55. By offering for sale and selling nitrous oxide for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or dulling of the brain or nervous system, Respondents repeatedly and persistently violated the New York Public Health Law.

**FOURTH CAUSE OF ACTION  
PURSUANT TO EXECUTIVE LAW 63(12)  
FRAUD AND ILLEGALITY  
VIOLATIONS OF GBL § 349  
(DECEPTIVE ACTS AND PRACTICES)**

56. GBL § 349 declares unlawful any deceptive acts or practices in the conduct of any business, trade or commerce in this state.

57. Respondents have engaged in deceptive acts and practices including the following: (1) offering for sale and selling mislabeled and/or misbranded products for consumer use; (2) offering for sale and selling mislabeled and/or misbranded products making it impossible for customers to make an informed decision as to the intended use of the products, and the safety and health-related risks associated with the products; (3) deceptively marketing and promoting illegal products as legal, such as the nitrous oxide products; (4) repeatedly encouraging consumers to ingest or smoke products that he sells without disclosure of product ingredients, manufacturer information, dietary information, and/or other warnings; and (5) encouraging and promoting the use of products that are specifically labeled “not for human consumption” for ingestion and/or inhalation by consumers.

58. As set forth above, Respondents offered for sale mislabeled and misbranded drugs.

59. By offering for sale and/or selling mislabeled and misbranded drugs, Respondents have repeated and persistently violated GBL § 349.

**FIFTH CAUSE OF ACTION  
PURSUANT TO EXECUTIVE LAW § 63(12)  
FRAUD**

60. 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 or unconscionable contractual provisions.

61. By offering for sale, and/or selling mislabeled and misbranded drugs, Respondents have repeated and persistently engaged in fraud in violation of Executive Law § 63(12).

WHEREFORE, the People of the State of New York, pursuant to the powers vested by New York State Executive Law § 63(12) respectfully request judgment as follows:

- a. permanently enjoining Respondents, and their agents, trustees, servants, employees, successors, heirs and assigns, or any other person under their direction and control, whether acting individually or in concert with others, or through any corporate or other entity or device through which they may now or hereafter act or conduct business (“Respondents”), from offering for sale and/or selling mislabeled drugs in violation of Ag. and Mkts. Law § 194;
- b. permanently enjoining Respondents from offering for sale and/or selling misbranded drugs in violation of Educ. Law §§ 6802 and 6815;
- c. permanently enjoining Respondents from misleadingly offering for sale and/or selling products as designer drugs or other street drug alternatives, including encouraging ingestion of products that are labeled or specifically designated “not for human consumption;”
- d. permanently enjoining Respondents from offering for sale and selling nitrous oxide to the public in violation of Public Health Law § 3380;
- e. permanently enjoining Respondents from engaging in the fraudulent, deceptive and illegal practices alleged in the petition in violation of GBL § 349;
- f. requiring that Respondents comply with any and all state, local or federal labeling requirements;

- g. requiring Respondents to prepare an accounting of all commodities they sold, or offered for sale, from January 1, 2012 to July 10, 2012 including the (i) name of the product, (ii) the manufacturer and/or distributor of the product, (iii) a description of the product, (iv) the retail price of the product, and (iv) the number units of the product sold;
- h. pursuant to GBL § 350-d, imposing a civil penalty of \$5,000 for each deceptive act committed by Respondents;
- i. pursuant to CPLR § 8303(a)(6), granting costs to the State of New York of \$2,000; and
- j. for such other and further relief as the court deems just and proper.

Dated: Hauppauge, New York  
July 9, 2012

  
ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
Attorney for Petitioner  
By: RACHAEL C. ANELLO  
Assistant Attorney General,  
Of Counsel  
300 Motor Parkway, Suite 205  
Hauppauge, NY 11788  
(631) 231-2424

**VERIFICATION**

STATE OF NEW YORK     )  
COUNTY OF SUFFOLK    ) ss.:

RACHAEL C. ANELLO, being duly sworn, deposes and says: She is an Assistant Attorney General in the office of Eric T. Schneiderman, Attorney General of the State of New York, and is duly authorized to make this verification.

She has read the foregoing petition and knows the contents thereof, and the same is true to her own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

The reason this verification is not made by Petitioner is that Petitioner is a body politic. The Attorney General is its statutory representative.

  
RACHAEL C. ANELLO

Sworn to before me this  
9<sup>th</sup> day of July, 2012

  
\_\_\_\_\_  
Assistant Attorney General  
of the State of New York

RECEIVED SUPREME COURT  
SUFFOLK COUNTY

2012 JUL 10 A 10 10

Sir/Madam:

Take notice that the within is a

copy of the , duly filed and

entered in the office of the Clerk of

the on the day of

Yours, etc.,

**Eric T. Schneiderman**  
Attorney General,

Office and Post Office Address  
300 Motor Parkway Suite 205  
Hauppauge, NY 11788  
(631) 231-2424

TO:

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

PEOPLE OF THE STATE OF NEW  
YORK, by ERIC T. SCHNEIDERMAN,  
Attorney General of the State of New  
York,

Petitioner,

-against-

GEORGE MOSS, doing business as  
East Coast Psychedelics, and  
EAST COAST PSYCHEDELICS, INC.,

Respondents.

**ORDER TO SHOW CAUSE  
AND VERIFIED PETITION**  
Index No.:

Personal Service of a copy of the within

is admitted this  
10<sup>th</sup> day of July 2012



**Eric T. Schneiderman**  
Attorney General of the  
State of New York  
300 Motor Parkway, Suite 205  
Hauppauge, New York 11788  
(631) 231-2424