

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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PEOPLE OF THE STATE OF NEW YORK, by
ELIOT SPITZER, Attorney General of the State
of New York,

Petitioners,

VERIFIED PETITION

Index No.

-against-

NATIONAL COLLECTOR'S MINT, INC.,

Respondent.

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The People of the State of New York, by Eliot Spitzer, Attorney General of the State
of New York, allege upon information and belief that:

INTRODUCTION

1. Petitioners bring this special proceeding pursuant to Executive Law §63(12) and General Business Law (“GBL”) Article 22-A to enjoin respondent from engaging in false advertising and deceptive, fraudulent, and illegal practices in the advertising and sale of a product known as the “2004 Freedom Tower Silver Dollar.” Petitioners also seek to enjoin respondent, a Delaware corporation, from continuing to do business in New York State without having received authorization pursuant to Business Corporation Law (“BCL”) Article 13. Petitioners also seek a) restitution and damages for individuals victimized by these unlawful practices pursuant to Executive Law §63(12) and GBL Article 22-A; b) civil penalties pursuant to GBL Article 22-A, and c) costs, as authorized by CPLR §8303(a)(6), to be paid to the State of New York.

PARTIES AND JURISDICTION

2. Petitioners are the People of the State of New York by their attorney, Eliot Spitzer, Attorney General of the State of New York.

3. Respondent National Collector's Mint, Inc. ("NCMI") is a Delaware corporation unauthorized to do business in the State of New York. Respondent conducts business in the State of New York and maintains its headquarters at 8 Slater Street, Port Chester, New York.

4. This court has jurisdiction pursuant to a) Executive Law §63(12), which authorizes the Attorney General to commence a special proceeding under CPLR Article 4 for injunctive relief, restitution and damages against any person or business entity which has engaged in repeated fraudulent or illegal acts or persistent fraud or illegality in the carrying on, conducting or transacting of business; b) GBL Article 22-A, §349, which authorizes the Attorney General to seek injunctive relief and restitution when any person or entity engages in deceptive acts or practices in the conduct of any business, and c) GBL Article 22-A, §350-d, which authorizes the Attorney General to seek civil penalties of up to \$500 for each deceptive act or false advertisement in violation of GBL Article 22-A.

5. The Attorney General has determined that providing respondent with pre-litigation notice pursuant to GBL §§349(c) and 350-c is not in the public interest.

FACTS

6. Respondent NCMI is engaged in the business of numismatics, selling collectible medallions, coins and currency by mail order to collectors in New York State and

elsewhere. NCMI markets its products through advertisements in magazines, on television, via e-mail, and on its interactive website at www.nationalcollectorsmint.com.

7. During the early part of September 2004, respondent began an extensive advertising campaign for the sale of the “2004 Freedom Tower Silver Dollar” to recognize the tragic events of September 11, 2001. One side of the medallion depicts the proposed new “Freedom Tower” to be built at the site of Ground Zero, and the reverse side contains a view of the Manhattan skyline featuring the Twin Towers. Respondent promoted the medallion on television, in magazines and on the website as a “legally authorized government issue silver dollar” and as a “U.S. territorial minting” from the U.S. Commonwealth of the Northern Mariana Islands. Additional statements on respondent’s website, in respondent’s television advertisements, and on “certificates of authenticity” issued with the medallion further enhance the impression that the product is Federal Government-authorized legal tender.

“This could be the most important government issued commemorative coin ...”

“Each coin comes with a certificate of authenticity confirming it is government issued 100 mil .999 pure ground zero recovery silver content.”

“This certifies and guarantees that the enclosed “Freedom Tower” Silver Dollar is an officially authorized CNMI government issue coin.”

“These silver dollars may well be among the most historically meaningful coins you will ever own.”

8. To further reinforce the perception that the Freedom Tower medallion is, in fact, real money, the medallion bears indicia associated with genuine U.S. coins. The Freedom Tower side bears the inscription, “IN GOD WE TRUST,” while the Twin Towers side contains the words, “ONE DOLLAR.”

9. Respondent markets the “Freedom Tower” medallion to the public separately and as part of a collection referred to as the “Freedom Dollar Mint Set.” The set comprises one silver and one gold edition of the “Freedom Tower Dollar,” coupled with a genuine United States Mint 2004 American Eagle silver proof coin. The coupling of the “Freedom Tower” medallions with a genuine U.S. Government coin further fosters the impression that the former are legal tender.

10. Respondent’s advertisements and certificates also create the impression that the composition of the featured medallion is solid silver rather than clad or plated in silver.

“The ‘Freedom Tower’ Silver Dollar has been struck with 100 Mil .999 **Pure Silver** recovered from the ruins of Ground Zero.” (Emphasis added.)

“... each coin has been created using .999 **Pure Silver**...” (Emphasis added.)

“The **pure silver that covers every gleaming surface** of this magnificent 9/11 memorial coin was miraculously recovered...” (Emphasis added.)

“Each coin comes with a certificate of authenticity confirming it is government issued 100 mil .999 **pure ground zero recovery silver content**.” (Emphasis added.)

“... a bank vault full of .999 **Pure Silver bars** was buried under hundreds of tons of debris ... Now, **the same silver that was reclaimed** from the destruction has been used to create the magnificent 2004 “Freedom Tower” Silver Dollar.” (Emphasis added.)

“The **silver used in each gleaming dollar coin** is from Ground Zero!”

11. Respondent also advertises on its website that it is “registered to do business in New York direct to consumers throughout the world.”

12. Respondent’s advertisements are misleading, false and deceptive in several respects. Contrary to respondent’s representations, the “Freedom Tower” product is not

government-authorized legal tender and is not a government-issued coin. The Commonwealth of the Northern Mariana Islands is not authorized to coin money and, in fact, must use United States coins and currency as legal tender. Second, the “Freedom Tower” medallion is not made of solid silver, as respondent represents. In fact, the quantity of silver in the medallion is infinitesimal in comparison to the silver content of a solid silver coin. Furthermore, respondent is not, in fact, authorized or registered to conduct business in this State, as required by Article 13 of the Business Corporation Law (“BCL”).

13. Respondent’s marketing campaign of deception and misrepresentation has caused harm to the buying public. Within just a few short weeks following the commencement of respondent’s media campaign, the Attorney General’s office and the United States Mint were deluged with complaints from consumers, many of whom were led to believe from respondent’s advertisements that the “Freedom Tower” product is an actual government legal tender coin made of solid silver. Some consumers expressed outrage after purchasing what they believed to be genuine U.S. coins and demanded their money back.

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

14. As set forth above, respondent repeatedly and persistently engages in fraud in the advertising and marketing of the “2004 Freedom Tower Silver Dollar.”

15. Respondent’s conduct constitutes repeated and persistent fraud in violation of Executive Law §63(12).

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

16. GBL Article 22-A, §349 declares it unlawful to engage in deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.

17. As set forth above, respondent has engaged in repeated and persistent deceptive acts or practices in violation of GBL §349.

18. Respondent's violations of GBL §349 constitute 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**

19. GBL Article 22-A, §350 declares it unlawful to engage in false advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state.

20. GBL § 350-a, in pertinent part, defines "false advertising" as advertising which is "misleading in a material respect..."

21. As set forth above, respondent persistently and repeatedly engages in false advertising in violation of GBL §350.

22. Respondent's violations of GBL §350 constitute repeated and persistent illegality in violation of Executive Law §63(12).

**FOURTH CAUSE OF ACTION
PURSUANT TO
EXECUTIVE LAW §63(12)--
VIOLATIONS OF BUSINESS CORPORATION LAW §1301**

23. BCL Article 13, §1301(a) provides that a foreign corporation may not do business in this state until it has filed an application for authority with the New York State Department of State pursuant to BCL §§1304 and 1305.

24. As set forth above, respondent repeatedly and persistently engages in business in this state without having filed for authorization with the New York State Department of State, in violation of BCL §1301(a).

25. Respondent's violations of BCL §1301(a) constitute repeated and persistent illegality in violation of Executive Law §63(12).

WHEREFORE, petitioners request that this court grant relief pursuant to Executive Law § 63(12), GBL Article 22-A, and BCL Article 13 against respondent by issuing an order and judgment:

(a) permanently enjoining respondent from engaging in the fraudulent, deceptive and illegal acts and practices alleged in the verified petition;

(b) directing respondent to render a full accounting to petitioners of the name, address, telephone number and amount of payment made to respondent for each consumer who purchased a "2004 Freedom Tower Silver Dollar" from January 1, 2004 to the present;

(c) granting full restitution to all victimized consumers;

(d) requiring respondent to disclose in all advertisements for the "2004 Freedom Tower Silver Dollar," whether in written, video, audio, electronic, or any other format,

including on the home page of the nationalcollectorsmint.com web site, in a clear and conspicuous manner, the following information:

- (i) that the “2004 Freedom Tower Silver Dollar” is not a genuine United States Government coin;
- (ii) that the “2004 Freedom Tower Silver Dollar” is not legal tender;
- (iii) that the “2004 Freedom Tower Silver Dollar” is not issued, authorized, sponsored or endorsed by the United States Government;
- (iv) that the Commonwealth of the Northern Mariana Islands is not authorized to coin money or issue legal tender;
- (v) that the “2004 Freedom Tower Silver Dollar” is not a silver dollar;
- (vi) that the “2004 Freedom Tower Silver Dollar” is not composed of solid silver, but is rather a bronze or other base metal medallion clad or plated in approximately one ten-thousandth of an inch or 0.001929 troy ounces of silver;
- (vii) that respondent is not connected in any way with the United States Government; and
- (viii) that the United States Government neither sponsors nor endorses respondent’s medallions, replicas, and alterations of genuine U.S. coinage.

(e) permanently enjoining respondent from doing business in the State of New York until such time as it files an Application for Authority with the New York State Department of State pursuant to Article 13 of the Business Corporation Law;

(f) pursuant to GBL §350-d, imposing civil penalties for each deceptive act committed by respondent and for each act of false advertising engaged in by respondent;

(g) granting costs to the State of New York, including additional costs of two thousand dollars pursuant to CPLR §8303(a)(6), and

(h) such other and further relief as to this Court may seem just and proper.

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