

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,

AFFIRMATION

Index No.

-against-

NATIONAL COLLECTOR'S MINT, INC.,

Respondent.

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MATTHEW J. BARBARO, an attorney duly admitted to practice in the courts of the State of New York, affirms the following statements to be true under the penalties of perjury:

1. I am an Assistant Attorney General in the office of Eliot Spitzer, Attorney General of the State of New York, assigned to the Bureau of Consumer Frauds and Protection.

2. I am familiar with the facts and circumstances of this case and submit this affirmation in support of petitioners' application for a temporary restraining order and an order and judgment, inter alia, permanently enjoining respondent from engaging in deceptive, fraudulent and illegal business practices and awarding restitution to victimized consumers, and penalties and costs to the State of New York.

3. The facts set forth in this affirmation are based upon information contained in the files of the Bureau of Consumer Frauds and Protection and are believed to be true and

correct.

INTRODUCTION

4. Respondent National Collector's Mint, Inc. ("NCMI") is a Delaware corporation engaged in the business of numismatics, selling collectible medallions, coins and currency by mail order to collectors in New York State and elsewhere. Respondent maintains its headquarters in New York at 8 Slater Street, Port Chester, New York, and utilizes a New York telephone number of (914) 935-9800. NCMI markets its products in magazines, on television, by e-mail, and on its website at www.nationalcollectorsmint.com. Respondent represents on its website that it is "registered to do business in New York direct to consumers throughout the world," and charges New York sales tax on all online transactions. Respondent's website is interactive, allowing consumers in New York and elsewhere to purchase medallions and other collectibles on-line. The Port Chester address is the only address listed for respondent on its website. Respondent's website also lists a New York telefax number of (914) 935-3321 under the "Contact Us" link.

5. Commencing in early September 2004, respondent began a media blitz on television, by e-mail, and on its website, for the sale of the "2004 Freedom Tower Silver Dollar" in recognition of the tragic events of September 11, 2001. Respondent exploits the historical and emotional significance of the terrorist attacks to its economic advantage by touting that the "Freedom Tower" medallion is made from "pure silver" extracted from Ground Zero. A copy of respondent's website advertisement is attached as Exhibit "A". A copy of a video of respondent's television advertisement, aired on MSNBC on September 3,

2004, is attached as Exhibit “B”.

6. Respondent’s advertisements for the “2004 Freedom Tower Silver Dollar” create the impression that the medallion is Federal Government-authorized legal tender.

“For the first time ever, **a legally authorized government issue silver dollar** has been struck to commemorate the World Trade center and the new Freedom Tower.” (Emphasis added.) Exhibit “A”.

“It’s the **U.S. territorial minting** of the 2004 ‘Freedom Tower’ Silver Dollar from CNMI [the Commonwealth of the Northern Mariana Islands].” (Emphasis added.) Exhibit “A”.

“These **silver dollars** may well be among the most historically meaningful coins you will ever own.” (Emphasis added.) Exhibit “A”.

“This could be the most important **government issued commemorative coin ...**” (Emphasis added.) Exhibit “B”.

“Each coin comes with a certificate of authenticity **confirming it is government issued**” (Emphasis added.) Exhibit “B”.

“The first **legally authorized government coin** struck to commemorate the WTC ...” (Emphasis added.) Exhibit “B”.

See also, Affidavit of Diane M. McDevitt, Attorney-Advisor with the United States Mint (“McDevitt Affidavit”), attached as Exhibit “C”.

7. “Certificates of Authenticity” issued by respondent to consumers who purchase the “2004 Freedom Tower Silver Dollar” further reinforce the perception that the coin is genuine currency.

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

A copy of the Certificate of Authenticity is attached as Exhibit “D”.

8. The “2004 Freedom Tower Silver Dollar” bears a striking resemblance to

official United States currency. One side of the coin bears the inscription, “IN GOD WE TRUST,” and the obverse side contains the words, “ONE DOLLAR.” See, Exhibit “A” and McDevitt Affidavit, Exhibit “C”.

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 includes silver and gold versions of the medallion together with a genuine United States Mint 2004 American Eagle silver proof coin. The packaging of the “Freedom Tower” medallion with a genuine U.S. coin further fosters the impression that the medallions are legal tender. See, Exhibits “A” and “B” and McDevitt Affidavit, Exhibit “C”.

10. Respondent’s solicitations and “Certificate of Authenticity” also create the impression that the composition of the “Freedom Tower” 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.) Exhibit “D”.

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

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

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

“... 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.) Exhibit “A”.

“The silver used in each gleaming dollar coin is from Ground Zero!” Exhibit “A”.

See also, Affidavit of Robert Gallagher, attached as Exhibit “E”.

Deceptive Sales Practices and False Advertising

11. Contrary to respondent’s express representations, the “2004 Freedom Tower Silver Dollar” is not a silver dollar, is not government-authorized legal tender and is not a government-issued coin.

“Respondent’s advertisement for the “Freedom Tower Silver Dollar” coin is misleading in several respects. First, the advertisements strongly suggests that the featured coin product is a legal tender coin of the Commonwealth of the Northern Mariana Islands (“CNMI”) when, in fact, the CNMI is not authorized to coin its own money and uses United States currency . . . The United States Congress is vested by the Constitution with exclusive power to coin money. Congress has delegated its authority to mint and issue coins to the Secretary of Treasury, and requires the Secretary to carry out these duties at the United States Mint. As such, the United States Mint is the only government entity in the United States with the authority to coin money. Respondent’s ads, suggesting that the CNMI does have the power to coin its own money, are confusing and misleading to members of the public.” McDevitt Affidavit, Exhibit “C”.

12. Numerous consumers have been misled by respondent’s advertisements into believing that the “Freedom Tower” coin is an actual government legal tender coin issued by the United States Mint.

“Since approximately early September 15, 2004, the United States Mint has received numerous calls from consumers about the 2004 “Freedom Tower Silver Dollar” being offered by respondent through advertisements on its website and on television. In nearly every instance, consumers expressed their belief that respondent’s product was or appeared to be a genuine U.S. Government commemorative coin. What is most disturbing is that many of the consumers I have spoken with are experienced coin collectors and they

believed that the United States Government had issued a commemorative coin with proceeds going to the September 11 victims' fund.” McDevitt Affidavit, Exhibit “C”.

“Since my initial affidavit, I have received approximately forty-nine (49) calls from consumers who expressed their belief that respondent’s product is a genuine U.S. Government coin. In many instances, callers familiar with U.S. commemorative coins believed that the advertised product was a genuine United States commemorative coin.” Supplemental Affidavit of Diane M. McDevitt, Exhibit “F”.

“I assumed from the commercial that the advertised ‘Freedom Tower’ coin was a US Mint coin because of the commercial’s reference to ‘the government’.” Complaint of Charles Huff, Exhibit “G”.

“I saw a commercial on TV regarding ‘government-issued’ ‘Freedom Tower’ coins struck with pure silver recovered from a bank vault at ground zero. I saw ‘one dollar’ stamped on the coin and was led to believe that the coin was legal tender ... I received the coins by mail on 9/15/04 and returned them on 9/22/04.” Complaint of Reneé C. Guilott, Exhibit “H”.

“The commercial advertises a coin in which is supposed [sic] to be ‘authentic’ but is not ... The way I ... learned of the product is in a TV ad. One of the descriptions was ‘In God We Trust,’ in which the U.S. Government uses on ‘Authentic’ currency. The seniors I conversed with did believe it was ‘Authentic.’” Complaint of Leigh Ann Davies, Exhibit “I”.

“Advertised ‘Government’ coin - thought it was US Government.” Complaint of Kimberly Mason, Exhibit “J”.

“I learned of the offer through TV ... which led me to believe they were legal U.S. tender ... When ordering I thought it was U.S. Mint, i.e. U.S. Currency.” Complaint of Byrd L. Rawlings II, Exhibit “K”.

“This coin is not a USA coin as the advertisement on TV mentioned ... To me as it stands is false advertising and should be stopped.” Complaint of Walter J. Stoklosa, Exhibit “L”.

“First time I saw the T.V. ad it said government issue ... 2nd time I saw the T.V. ad it said CNMI government issue. Then I called the US Mint to see if they had minted the Freedom Tower Silver Dollar.” Complaint of Buell C. Conley, Exhibit “M”.

“It seemed to be a spendable U.S. dollar.” Complaint of Joyce Hyden, Exhibit “N.

“I saw from an ad on Weather Ch[annel] US GOVT. coins were made from silver recovered at Ground Zero ... called U.S. Mint to check on authenticity. I did not purchase the coins because I had an idea it wasn’t what they led people to believe from their ad!” Complaint of Loretta J. Adams, Exhibit “O”.

See, also, Complaint of Richard DePuma, Exhibit “P”.

13. Respondent’s sales representatives also mislead consumers into believing that the coin is genuine currency.

“I believed it was U.S. currency since a Nat. Coll. Mint rep., a female, said it was.” Rawlings Complaint, Exhibit “K”.

“I did talk to a representative. I asked ... “Isn’t there a thing called ‘Truth in Advertising?’ Response: ‘We don’t have to legally tell anything about the product to consumers.” Complaint of Leigh Ann Davies, Exhibit “I”.

14. Respondent’s misleading sales pitch was also made to John VanVoriss, a Consumer Frauds Representative in the Attorney General’s office.

“I spoke with a sales representative ... In response to several of my questions, [he] gave me the following information ... the “Freedom Tower” silver dollar is legal tender in the Northern Mariana Islands (near the Philippines) ... the coin was authorized by the government of the Northern Mariana Islands ... all 3 coins in the mint set are legal tender in the Northern Mariana Islands ...and all 3 coins in the mint set were authorized by the government of the Northern Mariana Islands.” Affidavit of John VanVoriss, Exhibit “Q”.

15. Respondent’s claims that the Freedom Tower coin is created or struck from “100 Mil .999 Pure Silver” or “one troy ounce .999 pure solid silver” are also misleading.

“Recently, various callers questioned me concerning Respondent’s use of the term “pure,” noting that they believed that the advertised “coins” were solid silver. Consequently, I recently began asking callers whether they recalled any reference to “pure silver” in the advertisements and what this language meant

to them. In approximately eight of twelve inquiries, the callers advised me that they had recalled a reference to “pure silver” and believed that the advertisement was featuring a solid silver coin.” McDevitt Supplemental Affidavit, Exhibit “F”.

“In addition to the fact that this coin is not a real dollar, National Collector’s ads create the false impression that the composition of the coin is pure silver when, in fact, it is most likely composed out of a cheap base metal covered by an extremely thin coat of silver-plating. The term “mil,” as commonly understood in the metal plating industry, refers to a metal plating having a thickness of one millionth of an inch. Using this definition, a thickness of “100 Mil” of silver (the same thickness as the silver on the “Freedom Tower” coin) equals one ten-thousandth of an inch, which is equivalent to 2.5 microns of silver. To get a sense of how thin 2.5 microns of silver is, human hair diameters range from 40 microns to 120 microns. Thus, 100 Mil of silver is equivalent to approximately 3% of the thickness of a typical human hair. Assuming that the “Freedom Tower” coins are 1/10 of an inch thick and 39 millimeters in diameter (about the size of a real silver dollar), there would be about 60 milligrams of silver on each coin, which is equivalent to 0.001929 troy ounces of silver per coin. By way of contrast, true, pure silver coins are made from 1 troy ounce of .999 pure silver per coin. Clearly, the silver content of the “Freedom Tower” coin is infinitesimal compared to the silver content of a pure silver coin. National Collector’s is using misleading terminology to deceive unknowing consumers into buying what they perceive to be a coin that is 1/10 of an inch thick and made from approximately one ounce of pure silver recovered from the ruins of the World Trade Center, when that is not, in fact, what the company is selling.” Gallagher Affidavit, Exhibit “E”.

“The advertisement did not specify clad base on TV.” Complaint of Walter J. Stoklosa, Exhibit “L”.

16. Respondent’s statement on its website, that it is “registered to do business in New York direct to consumers throughout the world,” is completely false. In fact, respondent has failed to apply to the New York State Department of State for authorization to transact business in this state pursuant to BCL Article 13. Copies of certificates issued by the Department, certifying the absence of any record of respondent’s authorization in New York, are attached as Exhibit “R”.

Violations of Business Corporation Law § 1301

17. 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.

18. Respondent is a Delaware corporation engaged in the business of numismatics in this state. Respondent maintains a physical office in the state at 8 Slater Street, Port Chester, New York, and maintains New York telephone and telefax numbers. Respondent advertises extensively in New York, maintains an interactive website from which New York consumers are able to purchase respondent's products, and charges New York State sales tax on all online transactions. The website lists only the Port Chester address and the New York telephone and telefax numbers as points of contact for respondent.

19. Respondent has failed to obtain authorization from the Department of State to conduct business in this state, in repeated and persistent violation of BCL §1301(a). See, certificates of Department of State, Exhibit "R".

Restitution

20. Executive Law §63(12) and General Business Law §349 authorize the Court to award restitution to consumers when a person or business entity has engaged in deceptive, fraudulent or illegal business practices.

21. Respondent should be ordered to pay restitution to consumers who purchased respondent's "2004 Freedom Tower Silver Dollar," including consumers who are identified

by the accounting requested herein, or who file complaints with the Attorney General within one hundred eighty (180) days of entry of the final order and judgment in this proceeding.

Civil Penalties for Violations of General Business Law, Article 22-A

22. General Business Law, Article 22-A, §350-d authorizes the Court to impose civil penalties of \$500.00 for each deceptive act or practice and each false advertisement, in violation of Article 22-A.

23. As discussed above in paragraphs 11 through 16, respondent has engaged in deceptive acts or practices, and false advertising, by misrepresenting that the “2004 Freedom Tower Silver Dollar” is government-authorized legal tender, by misrepresenting the silver content of the coin, and by misrepresenting that it is authorized to conduct business in New York State.

24. As a result, the Court should impose a civil penalty of \$500.00 for each violation of GBL Article 22-A, pursuant to GBL §350-d.

NEED FOR A TEMPORARY RESTRAINING ORDER

25. Petitioners have asked for a temporary restraining order enjoining respondent, its officers, employees and agents, during the pendency of this proceeding, from: (1) advertising, marketing, or offering or soliciting for sale the “2004 Freedom Tower Silver Dollar” in any form or medium, including, without limitation, video, audio, e-mail, direct mail, electronic, in person or otherwise; and (2) selling, processing existing sales orders for, or accepting or processing payment, whether cash, check, credit or debit card, or otherwise,

for the “2004 Freedom Tower Silver Dollar.” Petitioners also have asked for temporary relief requiring the respondent to post, in a clear and conspicuous format, on each page of its web site(s) the following message:

“WE ARE TEMPORARILY PROHIBITED BY A COURT ORDER FROM ACCEPTING ANY ORDERS FOR THE ‘2004 FREEDOM TOWER’ SILVER DOLLAR.”

26. Petitioner further asks for an order (a) that requires that respondent provide to petitioners, within twenty-four hours after service of this Order, a written listing of the names and addresses of all agents including brokers, banks, savings and loan associations, and other financial depositories and financial institutions at which respondent has monies on account(s) or maintains any accounts or has the right to have funds credited to it in any account(s), together with the account number and titles, and (b) temporarily restraining any such agents from paying out, transferring, setting off, assigning to themselves or to any other person or firm, or otherwise alienating, any such monies or funds.

27. Petitioners make this request for provisional relief for several reasons. It is readily apparent from the consumer complaints received by this office as well as the United States Mint that respondent’s marketing and advertising campaign has caused widespread confusion in the minds of the consuming public concerning the authenticity of respondent’s product and the legitimacy of its advertised claims. Such confusion is likely to continue as long as respondent continues to disseminate, publish and broadcast its misleading and deceptive advertisements for this product, causing continuing injury and harm to the public. Second, respondent has reaped, and is likely to continue to reap, significant financial gain

from its continued campaign of false advertising and deception, at the expense of the public. A temporary restraining order preserving respondent's assets pending the return date of this proceeding is necessary to minimize the potential financial loss to consumers during the pendency of this proceeding and to ensure the availability of a restitution fund to victimized consumers. The granting of such interim relief is well within the Court's powers in this government enforcement proceeding. (See Petitioners' Memorandum of Law, submitted herewith, Point III.)

28. No previous application for the relief requested herein has been made.

CONCLUSION

29. Respondent induces consumers to purchase its products by means of false and misleading advertisements and misrepresentations and, unless enjoined, will continue to cause injury to the public.

WHEREFORE, it is respectfully requested that the order to show cause be signed and the petition granted in all respects.

Dated: Albany, New York
October 12, 2004

MATTHEW J. BARBARO

