

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO, *ex rel.*
MIKE DEWINE, OHIO ATTORNEY
GENERAL

CASE NO.:

JUDGE

Plaintiff,

vs.

DARIEN E. SMITH
8418 Bancroft Avenue
Cleveland, Ohio 44105

MOTION FOR:

- **TEMPORARY
RESTRAINING ORDER**
- **PRELIMINARY
INJUNCTION**

(Includes Memorandum In Support)

TEEN USA
8418 Bancroft Avenue
Cleveland, Ohio 44105

Defendants.

Plaintiff, State of Ohio *ex rel.* Mike DeWine, Ohio Attorney General, pursuant to Ohio Revised Code Section 1716.16(B), moves this Court for the issuance of a Temporary Restraining Order and a Preliminary Injunction enjoining Defendants Darien E. Smith and TEEN USA (including owners, officers, managers, directors, agents, representatives and assigns) from soliciting for any charitable organization or charitable purpose in the State of Ohio and freezing all associated bank accounts (both personal and business) from any further activity. The reasons are more fully set forth in the attached Memorandum in Support.

Respectfully submitted,
MIKE DEWINE
Attorney General of Ohio

/s/ Andrew Howard
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Ohio Revised Code Chapter 1716 enumerates registration, reporting, and disclosure requirements with which solicitors must comply if they intend to solicit charitable contributions in Ohio. This chapter also prohibits certain acts and practices when soliciting for such contributions. Darien E. Smith of Cleveland, Ohio, is the incorporator, registered agent, and operator of the non-profit corporation TEEN USA, a group that generates revenue by asking the public for contributions through door-to-door solicitations. The Ohio Attorney General received several complaints regarding TEEN USA and their solicitation activities. Over the course of the Ohio Attorney General's investigation, several violations of law were discovered under R.C. Chapter 109 and the R.C. Chapter 1716 by Defendants Darien E. Smith and TEEN USA.

R.C. 1716.16(C) permits the Attorney General to accept an Assurance of Discontinuance in any case in which there is authority to institute an action under Chapter 1716. An Assurance of Discontinuance is a legal agreement between the Ohio Attorney General and another party that can provide for stopping specific activities, payments to the attorney general, or both. Assurances are filed with the Franklin County Court of Commons Pleas after their execution. Under R.C. 1716.16(C), Defendants Darien E. Smith and TEEN USA entered into an Assurance of

Discontinuance (“Assurance”) with the Ohio Attorney General on November 11, 2013, as a result of the violations. (See Exhibit 1.)

The Assurance was filed in the Franklin County Court of Common Pleas on November 18, 2013, with case number 13-MS-000935. The Assurance provides:

- Darien E. Smith must pay \$500 per month to the Charitable Law section due on the 15th of each month until July 15, 2015.
- TEEN USA is to legally and practically cease all operations and existence, and provide documentary proof of legal dissolution to the Attorney General by November 15, 2013.
- Darien E. Smith will not participate in solicitations in the State of Ohio for any charitable purpose or on behalf of any charitable organization.
- Darien E. Smith will not hold any position as a volunteer, officer, trustee, employee, representative, or agent of any charitable organization in the State of Ohio.
- If Darien Smith fails to comply with any requirement contained in this Agreement, he shall pay liquidated damages for each failure to comply in the amount of \$40,000.

As verified by the Ohio Attorney General’s Charitable Funds Auditor Sarah Perez (See Exhibit 2), Darien E. Smith has not made the payment due January 15, 2014, or any subsequently required payments. As verified by Ohio Attorney General’s Major Case Investigator John Amburgey (See Exhibit 3), as of February 6, 2014, TEEN USA has not legally dissolved according to the records of the Ohio Secretary of State.

Additionally, The Ohio Attorney General has received complaints from the public that TEEN USA is still actively soliciting in the Cleveland area. As verified by Ohio Attorney General’s Major Case Investigator John Amburgey (See Exhibit 3), it appears TEEN USA continues to solicit in Ohio despite the prohibition in the Assurance of Discontinuance.

II. LAW AND ARGUMENT

Defendants Darien E. Smith and TEEN USA violated Chapter 1716 numerous times by failing to comply with the previously signed Assurance of Discontinuance. Darien E. Smith still actively solicits, has not dissolved with the Secretary of State, and has not made appropriate payment to the Ohio Attorney General's office. Each violation warrants enjoining further activities of the Defendant.

Ohio Revised Code § 1716.16(B) authorizes the Attorney General to obtain injunctive relief for violations of Revised Code Chapter 1716. Ohio Revised Code § 1716.16(B) states (in pertinent part): "In seeking injunctive relief, the attorney general shall not be required to establish irreparable harm but only shall establish a violation of a provision of this chapter or a rule adopted under this chapter or that the requested order promotes the public interest."

When a statute grants a specific injunctive remedy, as R.C. 1716.16(B) does, the moving party does not need to establish there will be irreparable injury absent an injunction.¹ *Ackerman v. Tri-City Geriatric & Health Care, Inc.*, 55 Ohio St.2d 51, 56 (1978). In *Ackerman*, the Ohio Supreme Court found that when a statute grants specific injunctive relief, the state need not show irreparable injury. *Id.* In the case of a statutory injunction, the moving party need only satisfy the statutory conditions. *Id.* at 57. Additionally, unlike equitable injunctions, statutory injunctions do not require clear and convincing evidence. *State v. R&J Partnership, Ltd.*, 2nd Dist. No. 22162, 2007 Ohio App. LEXIS 6268, *P22 (Dec. 28, 2007) (specifically applying a preponderance of

¹ The general rule for issuance of a preliminary injunction requires the plaintiff to establish that there will be irreparable injury if the Court does not enjoin the defendant's conduct. Ohio Civil Rule 65(A). Ohio Courts require a party to demonstrate four factors by clear and convincing evidence to obtain a preliminary injunction. *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267-68 (2000).

the evidence standard to preliminary injunctions under Ohio Revised Code § 1716.16(B)); *see Stoneham*, 140 Ohio App.3d at 267-68.

In *R&J Partnership*, the Second District Court of Appeals considered a motion for a preliminary injunction brought by the Attorney General pursuant to R.C. § 1716.16(B) to enjoin charitable activities. The Second District found that R.C. § 1716.16(B) only requires the Attorney General to establish a violation of Revised Code Chapter 1716 by a preponderance of the evidence in order to obtain a preliminary injunction. *R&J Partnership* at *P25. Therefore, in obtaining a temporary restraining order and preliminary injunction in this matter, the Attorney General need only establish a violation of Revised Code Chapter 1716 or show the requested order promotes the public interest by a preponderance of the evidence.²

1. Defendants Darien E. Smith and TEEN USA violated numerous provisions of Chapter 1716.

Defendants Darien E. Smith and TEEN USA entered into an Assurance of Discontinuance with the Ohio Attorney General in lieu of the Ohio Attorney General filing a civil complaint – yet Darien still actively solicits, has not dissolved with the Secretary of State, and has not made appropriate payment to the Ohio Attorney General’s office. Under 1716.16(C), “any evidence of a violation of the assurance of discontinuance shall be prima-facie evidence of a violation of this chapter...in any subsequent action or proceeding brought by the attorney

² Even if the requirements Civ. R. 65(A) applied here (and they do not), the Ohio Attorney General can show by clear and convincing evidence (1) a substantial likelihood of success on the merits, (2) the existence of irreparable harm if an injunction is not issued, (3) that third-parties will not be unjustifiably harmed if an injunction is issued, and (4) that granting an injunction will serve the public interest. *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267-68 (2000). There is a substantial likelihood that the Ohio Attorney General will prevail on the merits given the evidence presented above. The public interest will suffer irreparable harm if injunctive relief is not granted, as Defendants Darien E. Smith and TEEN USA will continue to mislead Ohio residents when soliciting for charitable donations. No third parties would be unjustifiably harmed by the temporary cessation of solicitation and the freezing of accounts to prevent waste of charitable assets. Finally, an injunction will serve the public interest by preventing Ohio residents from being misled when making the decision to donate to a charitable organization. Thus, an injunction is proper and necessary under Rule 65 of the Ohio Rules of Civil Procedure in order to protect the public interest.

general.” Affidavits from Ohio Attorney General staff (See Exhibits 2 and 3) detail several violations of the Assurance made by TEEN USA and Darien E. Smith, including that Darien Smith has not dissolved TEEN USA, that TEEN USA continues to solicit, and that Darien Smith has not made the payments required under the Assurance of Discontinuance.

2. The requested relief promotes the public interest

To protect the public interest the Ohio Attorney General has the responsibility to regulate charitable solicitations in Ohio. To this end, an agreement was signed with Defendants Darien E. Smith and TEEN USA in order to protect Ohioans from charitable solicitation fraud. If injunctive relief is not granted, Defendants will continue to violate the Assurance of Discontinuance made with the Ohio Attorney General, continue to mislead Ohio residents, continue to violate Ohio law, and will prevent the Ohio Attorney General from carrying out his statutory responsibility of protecting Ohioans.

Thus the Ohio Attorney General has established by a preponderance of the evidence that the requested relief promotes the public interest and is entitled to the necessary protection of injunctive relief under R.C. § 1716.16(B).

III. CONCLUSION

For the reasons set forth above, we request that the Court grant a temporary restraining order requiring that Darien E. Smith cease all acts of solicitation and freezing all assets in the name of Darien E. Smith and/or TEEN USA.

Respectfully submitted,
MIKE DEWINE
Attorney General of Ohio

/s/ Andrew Howard

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion was served by regular U.S. Mail, postage prepaid, this 24th day of March, 2014 to the following:

DARIEN E. SMITH
8418 Bancroft Avenue
Cleveland, Ohio 44105

TEEN USA
8418 Bancroft Avenue
Cleveland, Ohio 44105

JOHN T. PARIS (previously retained counsel for the Defendants)
12910 Taft Road
Cleveland, OH 44108

/s/ Andrew Howard
Andrew M. Howard (0090055)
Assistant Attorney General