

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

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

Plaintiff,

vs.

CTS CHARISMA TROPICAL
SUN, INC. aka OHIO HELPS
1203 Sunset Drive
Englewood, OH 45322

JEFFREY KUNTZ
1203 Sunset Drive
Englewood, OH 45322

Defendants.

CASE NO.:

JUDGE:

ASSURANCE OF DISCONTINUANCE

Pursuant to the authority granted in the Ohio Charitable Organizations Act, R.C. § 1716.01 *et seq.*, specifically, R.C. § 1716.16(C), and the Ohio Charitable Trust Act, R.C. § 109.23 *et seq.*, specifically, R.C. § 109.24(E), Ohio Attorney General Mike DeWine (hereinafter the "Attorney General") accepts this Agreement from Jeffrey Kuntz and CTS Charisma Tropical Sun, Inc. aka Ohio Helps (hereinafter "CTS"). The Attorney General, Jeffrey Kuntz, and CTS, as parties to this Agreement, acknowledge and agree that it is in their best interest and consistent with the best interests of the people of the State of Ohio to resolve the issues between them in the manner set forth herein. As part of this Agreement, the Attorney General, Jeffrey Kuntz, and CTS stipulate as follows:

I. JURISDICTION AND VENUE

- A. This Court has jurisdiction over the subject matter of this action pursuant to R.C. Chapter 1716, R.C. § 109.23 *et seq.*, the rules adopted thereunder, and the Attorney General's common law authority to enforce charitable trusts. This Court has jurisdiction over the parties. Venue is proper in this Court.

II. FACTS

- B. CTS's principal place of business is at 1203 Sunset Drive Englewood, OH 45322.
- C. Jeffrey Kuntz resides at 1203 Sunset Drive Englewood, OH 45322.
- D. CTS is a "charitable organization" as that term is defined in R.C. § 1716.01(A) and a "charitable trust" as that term is defined in R.C. § 109.23.
- E. Jeffrey Kuntz, along with Susan Kuntz, is the founder of CTS.
- F. Jeffrey Kuntz and CTS operated approximately six hundred vending boxes which were used to sell lollipops at retail locations throughout Ohio. These boxes stated that the money raised would be used to support a particular charity or charitable purpose, namely Pollution Solution and American Forests. The charities named on these vending boxes were not aware that their names were being used and received little or none of the money raised.
- G. The funds raised and held by Jeffrey Kuntz and CTS on behalf of charitable purposes are subject to a valid "charitable trust" under R.C. § 109.23.
- H. Jeffrey Kuntz has fiduciary duties under R.C. § 109.23 *et seq.*, R.C. § 1716.17, and the common law.

- I. The Ohio Charitable Trust Act enumerates certain registration and reporting requirements with which charitable trusts established or active in Ohio must comply and it prohibits certain acts and practices in the administration of any charitable trusts.
- J. Jeffrey Kuntz failed to register with the Ohio Attorney General on behalf of CTS.
- K. The Ohio Charitable Organizations Act enumerates certain registration and reporting requirements with which a charitable organization must comply if it intends to solicit contributions in Ohio and it prohibits certain acts and practices when soliciting for such contributions.
- L. Jeffrey Kuntz failed to file a Registration Statement on behalf of CTS with the Ohio Attorney General before engaging in solicitation.
- M. Jeffrey Kuntz failed to file a copy of the current charter, articles of incorporation, agreement of association, instrument of trust, constitution, or other organizational instrument, and a copy of the bylaws of CTS with the Ohio Attorney General before engaging in solicitation.
- N. Jeffrey Kuntz failed to file a statement setting forth the place where and the date when CTS was legally established, the form of its organization, and its tax exempt status, with a copy of its federal tax exemption determination letter, with the Ohio Attorney General before engaging in solicitation.
- O. Jeffrey Kuntz failed to file registration fees on behalf of CTS with the Ohio Attorney General before engaging in solicitation.
- P. Jeffrey Kuntz failed to file a financial report on behalf of CTS with the Ohio Attorney General.

III. FINDINGS OF THE ATTORNEY GENERAL

- Q. The charitable trust and solicitation activities in Ohio of Jeffrey Kuntz and CTS are the subject of this Agreement. Such activities are described in and regulated by the Ohio Charitable Organizations Act, R.C. § 1716.01 *et seq.*, the Ohio Charitable Trust Act, R.C. § 109.23 *et seq.*, and the Attorney General's common law authority to enforce charitable trusts.
- R. The Attorney General is the party charged with enforcing the Ohio Charitable Organizations Act and the Ohio Charitable Trust Act and has caused an investigation to be conducted by the Charitable Law Section of the charitable trust and solicitation activities of Jeffrey Kuntz and CTS.
- S. As a result of its investigation, the Attorney General has reason to believe that Jeffrey Kuntz and CTS are in violation of the Ohio Charitable Organizations Act, the Ohio Charitable Trust Act, and the common law by violating the following:
1. R.C. § 109.26: Jeffrey Kuntz has violated R.C. § 109.26 by failing to register with the Ohio Attorney General CTS as an established and/or active charitable trust in Ohio;
 2. R.C. § 1716.02(A): Jeffrey Kuntz has violated R.C. § 1716.02(A) by failing to file a Registration Statement on behalf of CTS with the Ohio Attorney General before engaging in any charitable solicitation in Ohio;
 3. R.C. § 1716.02(C)(1): Jeffrey Kuntz has violated R.C. § 1716.02(C)(1) by failing to file a copy of the current charter, articles of incorporation, agreement of association, instrument of trust, constitution, or other

organizational instrument, and a copy of the bylaws of CTS with the Ohio Attorney General before engaging in any charitable solicitation in Ohio;

4. R.C. § 1716.02(C)(2): Jeffrey Kuntz violated R.C. § 1716.02(C)(2) by failing to file a statement setting forth the place where and the date when CTS was legally established, the form of its organization, and its tax exempt status, with a copy of its federal tax exemption letter, with the Ohio Attorney General before engaging in any charitable solicitation in Ohio;
5. R.C. § 1716.02(D)(1): Jeffrey Kuntz has violated R.C. § 1716.02(D)(1) by failing to pay registration fees on behalf of CTS with the Ohio Attorney General before engaging in any charitable solicitation in Ohio;
6. R.C. § 1716.04: Jeffrey Kuntz has violated R.C. § 1716.04 by failing to file a financial report on behalf of CTS with the Ohio Attorney General;
7. R.C. § 1716.14(A)(12): Jeffrey Kuntz has violated R.C. § 1716.14(A)(12) by operating in violation of Chapter 1716 or failing to comply with Chapter 1716;
8. R.C. § 1716.17 and R.C. § 109.23(A): Jeffrey Kuntz breached his fiduciary duties of care, to properly manage accounts, to comply with the law, and to act in the best interest of the charities, resulting in loss and other damages to the charitable beneficiaries of CTS;
9. R.C. § 1716.14(B): Jeffrey Kuntz's actions of soliciting contributions for Pollution Solution and American Forests without complying with the requirements of Chapter 1716 or any rule adopted thereunder is a nuisance;

10. The Attorney General's findings, as outlined above, are the basis upon which this Agreement has been negotiated.

IV. ASSURANCE

- T. Jeffrey Kuntz agrees that he will cease all charitable trust and solicitation activities in Ohio in violation of the Ohio Charitable Organizations Act, R.C. § 1716.01 *et seq.* or the Ohio Charitable Trust Act, R.C. § 109.23 *et seq.*
- U. Jeffrey Kuntz agrees that he will provide proof that he has distributed the proceeds raised for a charitable purpose to legitimate charitable organizations benefitting similar charitable purposes to the Ohio Attorney General on or before the date this Agreement is signed.
- V. If no proof of distribution of charitable funds to a legitimate charitable organization is provided, Jeffrey Kuntz shall pay the sum of seven thousand dollars (\$7,000) to the Office of the Ohio Attorney General immediately upon the execution of this Agreement by delivering to the Office of the Attorney General, Charitable Law Section, at 150 East Gay Street, 23rd Floor, Columbus, Ohio, 43215, Attn: Abigail Kline, a certified check or money order in this amount, made payable to "Treasurer, State of Ohio." The total sum shall be distributed by the Attorney General for similar charitable purposes as those purported by CTS.
- W. Jeffrey Kuntz and CTS agree that this Agreement is made in lieu of prosecution of a civil action based upon the findings set forth herein.
- X. Jeffrey Kuntz and CTS agree that any evidence of a violation of this Agreement shall be *prima facie* evidence of a violation of Chapter 1716 of the Ohio Revised Code and

any rule adopted thereunder in any subsequent action or proceeding brought by the Attorney General, as provided in R.C. §1716.16(C).

Y. In the event that Jeffrey Kuntz fails to comply with any requirement or deadline contained in this Agreement, Jeffrey Kuntz is liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

1. For each day of each failure to comply with any requirement or deadline from one (1) to thirty (30) days past due, Jeffrey Kuntz is liable for and shall pay twenty-five dollars (\$25.00) per day for each requirement or deadline not met;
2. For each day of each failure to comply with any requirement or deadline from thirty-one (31) to sixty (60) days past due, Jeffrey Kuntz is liable for and shall pay fifty dollars (\$50.00) per day for each requirement or deadline not met;
and
3. For each day of each failure to comply with any requirement or deadline over sixty (60) days past due, Jeffrey Kuntz is liable for and shall pay one-hundred dollars (\$100.00) per day for each requirement or deadline not met.

Z. Any payment required to be made under paragraph Y of this Agreement shall be made by delivering to the Office of the Attorney General, Charitable Law Section, at 150 East Gay Street, 23rd Floor, Columbus, Ohio 43215, Attn: Chief of the Charitable Law Section, a certified check or money order, made payable to "Treasurer, State of Ohio" for the appropriate amount within thirty (30) days from the date of the failure to comply. This payment shall be distributed by the Attorney General for charitable purposes.

- AA. The payment of stipulated penalties by Jeffrey Kuntz and the acceptance of such stipulated penalties by the Attorney General shall not be construed to limit the Attorney General's authority to seek additional relief pursuant to the Ohio Charitable Organizations Act, R.C. § 1716.01 *et seq.*, the Ohio Charitable Trust Act, R.C. § 109.23 *et seq.*, and the common law, or to otherwise seek judicial enforcement of this Agreement, for the same violation for which a stipulated penalty was paid or for other violations.
- BB. Jeffrey Kuntz and CTS agree that any matter closed by the acceptance of this Agreement may be reopened at any time by the Attorney General for further proceedings in the public interest based upon any violation of the terms of this Agreement or upon the discovery of evidence not known or anticipated by the parties hereto at the time of signing.

V. RETENTION OF JURISDICTION

- CC. This Court shall retain jurisdiction of this action for the purpose of enforcing this Agreement.

VI. ACKNOWLEDGEMENTS

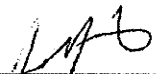
- DD. Jeffrey Kuntz and CTS acknowledge that they have been given ample opportunity to be advised by legal counsel as to the meaning and effect of each provision of this Agreement and that they have elected of their own free will and accord to enter into this Agreement.
- EE. The Attorney General, Jeffrey Kuntz, and CTS hereby agree that this Agreement is binding upon the successors and assignees of all parties hereto and that this Agreement constitutes the entire agreement and understanding of the parties.

CERTIFICATION

Each individual signing below represents that he or she is authorized and directed to sign this Agreement on behalf of the party represented and further represents that he or she has the requisite authority to bind the party on behalf of whom they are signing.


WHEREFORE, the undersigned have executed this Agreement this 13th day of March, 2013.

JEFFREY KUNTZ



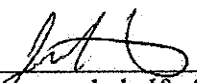
Signature

MIKE DEWINE
OHIO ATTORNEY GENERAL



Abigail A. Kline
Assistant Attorney General
Charitable Law Section
150 E. Gay Street, 23rd Floor
Columbus, Ohio 43215

CTS CHARISMA TROPICAL SUN,
INC. aka OHIO HELPS



Signature on behalf of CTS