

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

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

Plaintiff,

vs.

DARIEN E. SMITH, et al.,

Defendants.

CASE NO. 14 cv 3183

JUDGE COLLEEN O'DONNELL

**INTERIM ORDER**

Pursuant to Civ.R. 53(D)(4)(e)(ii), this Court adopts the Magistrate's Decision as its own. Plaintiff's request for a preliminary injunction is hereby **GRANTED**. Upon review, this Court concludes that immediate relief is justified. Any objections to the Magistrate's Decision as adopted by this Court shall comply with Civ.R. 53.

Pursuant to Civ. R. 58(B), the clerk of courts is directed to serve upon the parties a notice of the filing of this judgment entry and the date of the entry upon the journal.

**IT IS SO ORDERED.**

Copies to all parties.

Franklin County Court of Common Pleas

**Date:** 04-22-2014  
**Case Title:** OHIO STATE ATTORNEY GENERAL -VS- DARIEN E SMITH ET  
AL  
**Case Number:** 14CV003183  
**Type:** ORDER

It Is So Ordered.

The image shows a handwritten signature in cursive that reads "Colleen O'Donnell". The signature is written over a circular official seal. The seal contains the text "THE COURT OF COMMON PLEAS" at the top and "FRANKLIN COUNTY OHIO" at the bottom. The signature is written in black ink.

/s/ Judge Colleen O'Donnell

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

STATE OF OHIO, <i>ex rel</i> ,	:	CASE NO. 14-CV-3183
MIKE DEWINE, OHIO ATTORNEY	:	JUDGE COLLEEN O'DONNELL
GENERAL	:	
	:	
Plaintiff,	:	MAGISTRATE CHRISTINE LIPPE
	:	
v.	:	
	:	
DARIEN E. SMITH	:	
8418 Bancroft Avenue	:	
Cleveland, Ohio 44105	:	
	:	
TEEN USA	:	
8418 Bancroft Avenue	:	
Cleveland, Ohio 44105	:	
	:	
Defendants.	:	

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MAGISTRATE DECISION

**LIPPE, M.**

Pursuant to Civil Rule 53 and Local Rule 99.02, this case was referred to Magistrate Lippe for a preliminary injunction hearing pursuant to a Temporary Restraining Order that was granted on March 26, 2014. The Temporary Restraining Order was extended on April 7, 2014. Plaintiff was represented by Assistant Attorneys General Andrew Howard and Diane Oates. They presented witness testimony of two employees from the Charitable Law Section of the Ohio Attorney General's Office: John Amburgey, Major Case Investigator, and Sarah Perez, an Auditor. Plaintiff also presented the witness testimony of Jill Christianakis. Plaintiff's Exhibits 1 through 5 were admitted without objection.

Defendants Darien Smith and Teen USA were served and did not appear. Neither contacted the Court to explain why they could not appear or request a continuance. The hearing proceeded in their absence on April 21, 2014.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. An organization such as Teen USA must comply with certain registration and reporting requirements set forth in R.C. Chapter 1716 if it intends to solicit contributions in Ohio. Pursuant to R.C. Chapter 1716 et seq. (Ohio Charitable Organizations Act), a representative for Teen USA must complete a registration statement in the state of Ohio.
2. John Amburgey testified that he conducted an investigation on Plaintiff's behalf prompted by several complaints about Teen USA to the Attorney General's Office. State's Exhibit 3. Darien Smith registered Teen USA with the Ohio Secretary of State's office on October 18, 2010. Teen USA is registered as a non-profit organization for the express purpose of "fundraising for low income individuals, sports teams, and schools." Plaintiff's Exhibit 2. Darien Smith recruited inner city teens to sell candy door to door in affluent neighborhoods. He would give the teens a small percentage of the money collected from the sales and keep the rest. No money was ever donated to any charity. The witness testified that rather than going to Court, the Attorney General's Office entered into an agreement with Teen USA and Darien Smith in November 2013. The agreement, titled "Assurance of Discontinuance," sets forth that in lieu of prosecution, Darien Smith and Teen USA agree to cease and desist the door to door sales as of November 11, 2013. State's Exhibit 1. Darien Smith also agreed to pay civil penalties of ten thousand dollars (\$10,000) in \$500.00 per month increments, every month until July 2015.

3. Sarah Perez, auditor for the Charitable Law section of the Attorney General's Office, testified that Defendant Darien made one \$500.00 payment on December 18, 2013 and is now delinquent on his payments. State's Exhibit 5.
4. Mr. Amburgey testified that the Attorney General's Office received complaints about Teen USA soliciting after the Assurance of Discontinuance was executed in November 2013. State's Exhibit 3. Jill Christianakis testified to a solicitation that occurred on March 30, 2014 and identified the placard that was left at her house by the Teen USA representative. State's Exhibit 4.
5. The activities of Teen USA and Darien Smith are described in and regulated by the Ohio Charitable Organizations Act, R.C. 1716 et seq., the Charitable Trust Act, R.C. 109.23 et seq., and the Attorney General's common law authority to enforce charitable trusts.
6. The Attorney General is the party charged with enforcing the Ohio Charitable Organizations Act and the Ohio Charitable Trust Act. The Charitable Law section conducted an investigation into the activities of Darien Smith and Teen USA following several complaints.
7. As a result of the investigation, the witness testimony and the evidence, this Court concludes as a matter of law that Darien Smith and Teen USA violated R.C. 1716.14(A)(1), 1716.14(A)(2), 1716.17, and 109.23(A). Additionally, this Court concludes as a matter of law that Teen USA and Darien Smith have converted the proceeds collected for charitable purposes and used that money for Darien Smith's personal use and other unlawful purposes. Moreover, Darien Smith was unjustly enriched when he retained the charitable proceeds at the expense of the charitable beneficiaries.

### Standard for Issuing a Preliminary Injunction

In determining whether to grant a preliminary injunction, the court must consider the following factors:

- (1) whether there is a likelihood that the plaintiff will prevail on the merits of its claims;
- (2) whether the plaintiff will suffer irreparable harm if the injunction is not granted;
- (3) whether third parties will be unjustifiably harmed if the injunction is granted; and
- (4) whether the public interest will be served if the injunction is granted.

*Vanguard Transp. Systems, Inc. v. Edwards Transfer & Storage Co.* 109 Ohio App.3d 786, 790 (1996); *Alexander vs. Shiloh Baptist Church*, 62 Ohio Misc. 2d 79 (1991).

The evidence establishes that Plaintiff met its burden of proof. The Plaintiff demonstrated to the Court that it will likely prevail on the merits of its claims. Moreover, Plaintiff demonstrated that there is a likelihood that the citizens of Ohio are being scammed by the Defendants and thus, have established irreparable harm, and that third parties will be unjustifiably harmed if an injunction is not granted. Finally, Plaintiff has established that it is in the public interest for this Court to stop the egregious conduct of the Defendants.

### DECISION

Based on the foregoing, it is hereby ORDERED that Defendants Darien E. Smith and Teen USA and its owners, officers, managers, directors, agents, representatives:

1. Immediately cease all acts of "solicitation" as defined in Revised Code § 1716.01(K) in the State of Ohio for any "charitable organization" or "charitable purpose" as defined in R.C. §§ 1716.01(A) and 1716.01(B), respectively; and
2. All bank accounts under the name of Defendants Darien E. Smith (SSN: xxx-xx-9071) and/or TEEN USA are to be frozen with no activity permitted.

No bond is required from the State of Ohio in this Matter. The terms and conditions of this Order shall remain in effect until further order of this Court.

IT IS SO ORDERED.

Counsel for Plaintiff shall prepare and submit an appropriate entry.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THIS DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3).

Franklin County Court of Common Pleas

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So Ordered

The image shows a handwritten signature in cursive that reads "Christine Lippe". The signature is written over a circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "ALL THINGS ARE" at the bottom. The signature is written in black ink.

/s/ Magistrate Christine Lippe