
**BEFORE THE DIVISION OF CONSUMER PROTECTION
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

In the matter of:

SINLESS VAPOR LLC, a Utah limited liability company, doing business as sinlessvapor.com; and

19TH HOLE CONSULTING COMPANY, a Utah Corporation; and

GERALD TODD WESTRA, individually and as an officer, director, manager, agent and/or owner of the above-named entity; and

SHAROLYN STODDARD WESTRA, as an officer, director, manager, agent and/or owner of the above-named entity;

Respondents.

DCP Legal Case No. 82760
DCP Case 81267

ADMINISTRATIVE CITATION

PURSUANT TO THE AUTHORITY granted by UTAH CODE §13-2-6(3), which empowers the Division of Consumer Protection to issue a citation upon any person reasonably believed to be engaged in the violation of any statute listed in UTAH CODE §13-2-1, it appears, upon information and belief, that you are in violation of the *Consumer Sales Practices Act*, UTAH CODE § 13-11-1 *et seq.* In particular, the Division of Consumer Protection alleges:

- 1- Sinless Vapor LLC is an Utah limited liability company established in November of 2013 and lists its corporate address as 450 W 910 S Suite 201 in Heber City, Utah 84032. Sinless Vapor is owned by 19th Hole Consulting Company, Gerald Todd Westra ("Todd") and Sharolyn Stoddard Westra are listed as owners, members and managers of the business. Todd Westra is listed as the domain registrant for the website sinlessvapor.com which lists its address as 3214 N

University Ave #455, Provo Utah 84604. The above named entities and individuals will be referred to hereinafter as "Respondents."

- 2- Respondents sell electronic cigarettes consisting of a battery powered device that utilizes "E-juice" and "Clearomizers" to create an inhalable nicotine vapor. These electronic cigarettes, also known as "e-cigs", are marketed as a smokeless tobacco alternative to traditional cigarettes that Respondents sell solely online through its promotional offerings and auto-shipment plan.
- 3- Respondents' website sinlessvapor.com advertised that its product can be, "smoked anywhere" and listed examples of: "Airplanes & Airports, Restaurants & Clubs, Hotels & Cruise Ships, and Work & Offices." Under the *Utah indoor Clean Air Act*, UTAH CODE §26-38-1, E-cigarettes are subject to the same smoking area restrictions as traditional cigarettes and may not be smoked in the places Respondents have advertised. Respondents' website sinlessvapor.com also stated its product is a "healthy alternative" to traditional cigarette smoking, but does not include any supporting documentation, nor cite references from medical providers or the Food and Drug Administration substantiating this claim.
- 4- Respondents' website also advertised it was offering a promotional, "New Starter Kit! You Just Pay \$4.95 Shipping & Handling," and "Risk Free Starter Kit... Claim your trial... hurry this offer won't last," and offered a "100% Satisfaction Guarantee". Nowhere on Respondents' initial landing page or ordering page, is the full retail price of the product disclosed, nor are the additional terms and conditions of the *Risk Free Trial* or *Satisfaction Guarantee* stated within close proximity to these advertisements. When a consumer selects, "Rush My Order" or "Claim Your Trial" to try the Respondents' product, the consumer is directed to enter their billing and shipping information on a payment page in which the shipping price is listed as \$4.95 and includes a statement that reads, "Retail: ~~\$89.95~~".
- 5- Respondents' "Terms and Conditions" found through an additional link on the webpage are unclear and ambiguous. The terms and conditions are written as follows:

[2.1] By placing your order you will be receiving a 12 day evaluation of

Sinless Vapor for the price of \$4.95 shipping and handling! Your order will be shipped via USPS Ground and you will receive 1 battery, 1 wall charger, 4 Clearomizers... and 1 bottles of e-juice... You will also be enrolling in our convenient auto ship program once your evaluation expired. After the initial 12 day evaluation period you will be charged the full amount of \$99.95. 12 days from the day you order your product you will be charged the full \$99.95 amount If you wish to cancel, you must return your product before the 12 day evaluation period is over, otherwise you may be charged. 18 days after the 12 day evaluation period is over, you will receive another shipment of 5 Clearomizers (1 box) and 4 bottles of e-juice. You will be charged another \$99.95, and every 30 days after that for the automatic shipment unless you cancel...

[2.2] If you cancel during your evaluation period, prior to your first billing cycle, you will be charged \$99.95 if you wish to keep the Starter Kit, if you do not return it. Your first month is discounted \$49.95 for the battery and charger, and \$50 for the e-juice and Clearomizers, for a total price of \$99.95, which you will be charged once your 12 day evaluation period ends. Your evaluation period begins the day you order your starter kit. If Every 30 days thereafter you will be billed the regular price of \$99.95 per month for the auto shipment.

[2.3] You authorize us to initiate a one-time charge to your credit card, as indicated, upon your purchase, a charge once your evaluation periods ends of \$99.95 (\$49.95 if you choose to cancel and keep the starter kit), and a charge every 30 days thereafter for the auto shipment, unless canceled...

[3.1] REFUND POLICY. You must call Customer Services at 866-507-4122 before arrangements will be made to issue a refund. Shipping and handling fees are non-refundable... I can cancel at any time without further obligation by calling 866-507-4122 Monday through Friday between the hours of 9:00Am to 5:00 PM MST.

[3.2] RMA (Return Merchandise Authorization) numbers are required for all returns and are available upon request by calling customer service. RMA numbers will be issued within 2 business days. Products must be returned to Sinless Vapor, 3214 NORTH University Ave #455 Provo, Utah 84604, in their original unopened package within 30 days of shipment.

- [REDACTED] COMPLAINT -

6- On or about December 12, 2013 the consumer, Michelle [REDACTED] of [REDACTED] [REDACTED] Mississippi entered into a consumer transaction online at sinlessvapor.com to receive a "Starter Kit" for the \$4.95 cost of shipping and handling. Shortly after placing the order [REDACTED] received a confirmation e-mail

from Respondents stating that a charge of "\$9.95 shipping and handling" was due and that the product would be sent in 1 business day. Noting the price discrepancy [REDACTED] called the customer service number at 866-507-4122 to cancel the order. The customer service representative stated that no record was found for [REDACTED] and although the consumer's card was charged \$4.95 the consumer could not cancel until she received the product.

- [REDACTED] COMPLAINT -

7- On or about December 17, 2013 the consumer Ray [REDACTED] of [REDACTED] Louisiana received an e-mail advertisement from the Respondents promoting a free electronic cigarette for the price of "\$4.95 shipping and handling". Shortly thereafter [REDACTED] called the company at 866-507-4122 and placed an order for the free trial. On or about January 6, 2014 the consumer was billed \$99.95 from a company listed as "W.O.W.". [REDACTED] contacted the company inquiring about the charge and was advised it was the Sinless Vapor auto-ship program in which refill packs would be sent every 30 days costing \$99.95 until the consumer cancelled. [REDACTED] reports he was not informed of this when he placed the initial order over the phone and did not agree to participate in the auto ship program and never received any refill packs he was charged for. A representative of the Respondents indicated that the refill pack had been shipped, but could not provide a tracking number nor verify when or where the refill pack was sent. Because [REDACTED] did not receive the product, a RMA (Return Merchandise Authorization) number could not be issued to proceed with a return and refund under the Respondents policy.

- [REDACTED] COMPLAINT -

8- On or about November 29, 2013 the consumer Andrew [REDACTED] of [REDACTED] Mississippi entered into a transaction with Respondents to purchase a Starter Kit for the \$4.95 cost of shipping and handling through the website www.sinlessvapor.com. Sixteen (16) days later, on or about December 15, 2013 the consumer received another package from Respondents and was billed \$99.95. [REDACTED] contacted the company at 866-507-4122 to inquire about the product and charge; he was advised that he was enrolled in an auto ship refill program. [REDACTED] claims he was not informed of this program and did not agree to

participate in the program. On that date [REDACTED] requested to cancel.

- 9- Twenty-eight (28) days later on or about January 12, 2014 [REDACTED] received a confirmation e-mail from Respondents that his order had shipped. Shortly thereafter the consumer received another refill pack and was charged \$99.95 by the Respondents. [REDACTED] again contacted the company at 866-507-4122 and requested to cancel. [REDACTED] was advised his cancellation and return would be processed, but that he was only entitled to a 50% refund of the original cost due to a restocking fee. At no time prior was a restocking fee disclosed to the consumer or written in Respondents' *Terms and Conditions*, nor were these terms and conditions disclosed in the e-mail correspondence with the consumer.
- 10- Despite [REDACTED] cancellation and return of the product, he received additional shipment confirmation e-mails on January 26, 2014, January 27, 2014, January 28, 2014 and January 29, 2014. On or about February 4, 2014 [REDACTED] received another refill pack and was charged \$99.95 on February 12, 2014 from the Respondents. [REDACTED] again requested to cancel.

[REDACTED] COMPLAINT-

- 11- On or about November 29, 2013 the consumer Patricia [REDACTED] of [REDACTED] [REDACTED] Kentucky entered into a transaction with Respondents online at www.sinlessvapor.com after receiving an evaluation offer for electronic cigarettes via e-mail. Shortly after placing the order to receive the 12 day free trial offer for the \$4.95 price of shipping and handling, [REDACTED] received a confirmation e-mail from Respondents advising her that, "*By choosing Sinless Vapor you are taking a critical step toward improving your health!*" and that the order would be shipped within 1 business day. Thirteen (13) days later Respondents charged [REDACTED] \$99.95 and shipped the product the same day. [REDACTED] received the initial product ordered on December 16, 2013.
- 12- Ten (10) days after the initial charge, [REDACTED] was billed \$99.95 again on December 22, 2013 by the Respondents. Shortly thereafter on December 27, 2013 [REDACTED] received a refill pack. The following day on December 28, 2013 [REDACTED] contacted the company advising that she had never been given a trial period as advertised and did not agree to repeated charges of \$99.95 for refills.

After cancelling and returning the unwanted products ██████ received a refund of \$84.95 on January 2, 2014. Respondents made no mention of a restocking fee or other charge that would result in ██████ not receiving a full refund of \$199.90 (\$99.95 + \$99.95=\$199.90).

█████ COMPLAINT-

13- On or about January 13, 2014 the consumer Roy ██████ of ██████ Missouri entered into a transaction with Respondents online at www.sinlessvapor.com to pay \$4.95 shipping and handling for a free 12-day trial of the product, after receiving an evaluation offer via e-mail. Shortly after placing the order ██████ received a confirmation e-mail from the Respondents advising him that, "*By choosing Sinless Vapor you are taking a critical step toward improving your health!*" and "*Enjoy the Healthy Benefits!*"

14- The e-mail also advertised benefits of its product to include:

- *"Reduced Smokers Cough, and*
- *Phlegm that traditional cigarettes cause will no longer be a problem for you once you switch to eVaper e-cigs.*
- *Reduction in Snoring as the airways are no longer coated with harsh chemicals!*
- *Improved mood and sense of wellbeing as well as feelings of power and accomplishment! After all, you are taking responsibility for your health and wellness!"* The e-mail also states, "*If you ever wish to cancel the auto-ship program, or if you wish to speak to our support team for any reason including changing the flavor of the nicotine, helpful hints or to take advantage of other Sinless Vapor e-cigarette products, don't hesitate to contact our team of customer support specialists.*" No additional disclosure of the costs or terms and conditions of the auto-ship program are mentioned.

15- On January 21, 2014 eight (8) days into ██████ product trial he had not yet received the product. Thee contacted customer services at 866-507-4122 and was advised the trial would not begin until the consumer received the product (contrary to Respondents written policy). On January 22, 2014 ██████ received an e-mail from the Respondents that his shipment was been delayed. ██████ then

contacted customer service and requested to cancel; he was advised that a cancellation could not be processed until the consumer received the product. This term was not written in the Respondents cancellation policy nor was it disclosed to the consumer at the point of sale.

COMPLAINT-

16- On or about January 11, 2014 the consumer Thomas [REDACTED] of [REDACTED] Illinois entered into a consumer transaction with Respondents after receiving an evaluation offer via e-mail. The consumer paid \$4.95 for shipping and handling through the Respondents' website www.sinlessvapor.com to receive the "free trial" e-cigarette. [REDACTED] reports that he has been charged an additional \$99.95 by the Respondents without his knowledge or approval, [REDACTED] attempts to contact the company to cancel and receive a refund have been unsuccessful.

-ADDITIONAL COMPLAINTS-

17- In addition to the above described complaints, the Division is aware of at least 20 additional consumer complaints filed through the Better Business Bureau "Exhibit A", all of which demonstrates a pattern of misconduct alleging similar facts and experiences to those specified. The acts complained of are in violation of the *Utah Consumer Sales Practices Act*, and the administrative rules promulgated pursuant to that Act. UTAH CODE § 13-11-17(4)(a) which allows the Division, among other things, to impose an administrative fine of \$2,500.00 for each violation of the chapter.

COUNT I: The above described instance in paragraphs 3, 11 and 14 are in violation to the *Utah Consumer Sales Practices Act*, UTAH CODE §13-11-4. Deceptive act or practice by supplier.

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not;

Respondents' statements on its website and promotional materials that its product can be smoked anywhere is a false, deceptive or substantially inaccurate

statement. Respondents have represented that its product can be used in several public places, including airplanes, which is not true.

Additionally, Respondents' advertisement that its product is a healthy alternative, has health benefits, and are a healthy improvement over traditional cigarette smoking are also a false, deceptive or unsubstantiated statement. Respondents have represented its product has health benefits it does not.

(3 incidents occurred in violation under this count, a potential fine of \$2,500.00 per violation, for a maximum potential fine of \$7,500.00).

COUNT II: The above described instance in paragraphs 4, 7, 11, 13 and 16 are in violation to the *Utah Consumer Sales Practices Act*, Administrative Rules R152-11-2. Exclusions and Limitations in Advertisement. R152-11-4. Use of the Word "Free" etc.

B. Disclosure of Conditions. A "free" or similar offer is deceptive unless all the terms, conditions, and obligations upon which receipt and retention of the "free" item are contingent are set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood.

Respondents used the word "free" in multiple instances referencing its product trial as without risk or cost, when in fact the Respondents' trial was not free of risk or without cost, but rather obligated the consumer to additional terms, conditions, and recurring fees of \$99.95.

(1 incident occurred in violation under this count, a potential fine of \$2,500.00 per violation, for a maximum potential fine of \$2,500.00).

COUNT III: The above described instances are in violation to the *Utah Consumer Sales Practices Act*, Administrative Rules R152-11-2. Exclusions and Limitations in Advertisement.

A. It is a deceptive act or practice for a supplier in connection with a consumer transaction, in the sale or offering for sale of a consumer commodity to make any offer in written or printed advertising or promotional literature without stating clearly and conspicuously in close proximity to the words stating the offer of any

material exclusions, reservations, limitations, modifications, or conditions. The following are examples of the types of material exclusions, reservations, limitations, modifications, or conditions of offers which must be clearly stated:

(1) An advertisement for any consumer commodity not disclosing the amount of any additional charge for any of the features displayed or listed in the advertisement would be deceptive.

Respondents failed to make clear and conspicuous written disclosures within close proximity to any of its offers stating any material exclusions, reservations, limitations, consistent price modifications, terms or conditions.

Respondents failed to disclose the full retail value of its product that would be charged after the 12 day trial and the full cost of the Replacement Packs that were to be charged every 30 days thereafter.

(2 incidents occurred in violation under this count, a potential fine of \$2,500.00 per violation, for a maximum potential fine of \$5,000.00).

COUNT IV: The above described instances are in violation to the *Utah Consumer Sales Practices Act*, UTAH CODE §13-11-4. Deceptive act or practice by supplier.

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(j) (i) indicates that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the representation is false;

Respondents' advertisements fail to clearly and conspicuously disclose the obligations of the consumer to cancel the Risk Free Trial, within 12 days to avoid being billed the full retail value.

Respondents' advertisements also failed to clearly and conspicuously disclose such terms, rights, remedies, or obligations of the auto-ship program for Replacement Packs that were to occur after the 12 day period.

Respondents advertise a "100% Satisfaction Guarantee" however no terms, conditions, restrictions or polices were stated for this guarantee in any of Respondents representations to consumer, including on Respondents' website or in any of the email correspondence regarding the consumer transaction.

Representatives of the Respondent advised consumers of company policies that

contradict its written policies including, but not limited to: when the 12 day trial starts, when a consumer can cancel and whether or not a restocking fee applies.

(4 incidents occurred in violation under this count, a potential fine of \$2,500.00 per violation, for a maximum potential fine of \$10,000.00).

COUNT V: The above described instances are in violation to the *Utah Consumer Sales Practices Act*, Administrative Rules R152-11-12. Negative Options.

A. A negative option, as defined in 16 C.F.R. 425.1, is a deceptive act or practice only if the negative option violates 16 C.F.R. 425.1.

Respondents' evaluation offer and auto-ship refill program fail to comply with the following 16 C.F.R. 425.1 negative option rules:

(a)(1) Promotional material shall clearly and conspicuously disclose the material terms of the plan, including:

(i) That aspect of the plan under which the subscriber must notify the seller, in the manner provided for by the seller, if he does not wish to purchase the selection;

(iii) The right of a contract-complete subscriber to cancel his membership at any time;

(iv) Whether billing charges will include an amount for postage and handling;

(2) Prior to sending any selection, the seller shall mail to its subscribers, within the time specified by paragraph (a)(3) of this section:

(ii) A form, contained in or accompanying the announcement, clearly and conspicuously disclosing that the subscriber will receive the selection identified in the announcement unless he instructs the seller that he does not want the selection, designating a procedure by which the form may be used for the purpose of enabling the subscriber so to instruct the seller, and specifying either the return date or the mailing date.

(b)(4) Fail to terminate promptly the membership of a properly identified contract-complete subscriber upon his written request.

(5) Ship, without the express consent of the subscriber, substituted merchandise for that ordered by the subscriber.

Respondents failed to clearly and conspicuously disclose:

- i. how the consumer was to cancel the next shipment, or
- ii. that the consumer could cancel any time in its e-mailed communications with the consumer and on its site.
- iii. whether its price of \$99.95 included shipping and handling and if the initial shipping

and handling fee paid to enter the trial was deducted or credit towards the initial purchase price.

iv. that the consumer would receive a replacement or refill pack unless cancelled in a stated manner by a specified date prior to sending its products .

Respondents failed to promptly and effectively cancel consumer's subscription to its auto-ship program after consumer's written and verbal requests.

Respondents failed to obtain the consumer's expressed consent to bill and send its "Replacement Packs".

(26 incidents occurred in violation under this count, one incident for each complaint known, a potential fine of \$2,500.00 per violation, for a maximum potential fine of \$65,000.00).

COUNT VI: The above described instances are in violation to the *Utah Consumer Sales Practices Act*, UTAH CODE §13-11-4. Deceptive act or practice by supplier.

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(e) indicates that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not;

Respondents represented that the price of \$4.95 was charged for shipping and handling to receive a starter kit and try the product, when in fact the consumers Pilihos Bujoso and Thee, as well as thirteen other consumers listed in Exhibit A, did not receive anything in exchange for the fee charged. In these instances no trial period was given. Respondents failed to advise the consumers that they would be billed an alternate amount prior to a receiving repeated shipments, when they had not received an initial trial.

(16 incidents occurred in violation under this count, a potential fine of \$2,500.00 per violation, for a maximum potential fine of \$40,000.00).

COUNT VII: The above described instances are in violation to the *Utah Consumer Sales Practices Act*, UTAH CODE §13-11-4. Deceptive act or practice by supplier.

(l) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, unless within the applicable time period the supplier provides the buyer with the option to:

- (i) cancel the sales agreement and receive a refund of all previous payments to the supplier if the refund is mailed or delivered to the buyer within 10 business days after the day on which the seller receives written notification from the buyer of the buyer's intent to cancel the sales agreement and receive the refund; or
- (ii) extend the shipping date to a specific date proposed by the supplier;

Respondents received Pilihos, Bujdoso and Thee's payments of \$4.95 as well as thirteen other consumers listed in Exhibit A, but did ship or otherwise deliver the goods within 1 to 2 business days as represented. Respondent did not ship the consumer the goods until after the consumer's initial "12 day" trial ended. Respondents failed to provide consumers with an option to cancel and receive a refund or provide a specified extension date.

(16 incidents occurred in violation under this count, a potential fine of \$2,500.00 per violation, for a maximum potential fine of \$40,000.00).

COUNT VIII: The above described instances are in violation to the *Utah Consumer Sales Practices Act, Administrative Rules R152-11-10. Deposits and Refunds.*

C. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier who has accepted a deposit and has received from the consumer within a reasonable time a valid request for refund of the deposit to fail to make the refund within 30 calendar days after receipt of such request.

Respondents failed to honor valid refund requests of Saufferer, Skipper, Pilihos, Bujdoso, Thee, Schaltenbrand as well as twenty other consumers listed in Exhibit A, and in many instances continued billing the consumers and sending unrequested refill packs.

(26 incidents occurred in violation under this count, a potential fine of \$2,500.00 per violation, for a maximum potential fine of \$65,000.00).

The above 8 counts carry a total maximum fine of \$235,000.00

THIS CITATION AMENDED THE 16th DAY OF June 2014


Liz Blaylock-INVESTIGATOR
Utah Division of Consumer Protection

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned has this day served, via first class and certified mail, postage prepaid, a true and exact copy of the foregoing Citation upon the following:

SINLESS VAPOR LLC
450 W 910 S STE 201
HEBER CITY UT 84032

Certified Article Number
9414 7266 9904 2007 2378 59
SENDERS RECORD

19TH HOLE CONSUTLING COMPANY
450 W 910 S STE 201
HEBER CITY UT 84032

Certified Article Number
9414 7266 9904 2007 2378 80
SENDERS RECORD

TODD WESTRA
890 E DUTCH VIEW CT
MIDWAY UT 84049

Certified Article Number
9414 7266 9904 2007 2378 73
SENDERS RECORD

SHAROLYN STODDARD WESTRA
890 E DUTCH VIEW CT
MIDWAY UT 84049

Certified Article Number
9414 7266 9904 2007 2378 66
SENDERS RECORD

BY: 
Liz Blaylock

IMPORTANT NOTICE - READ CAREFULLY

This citation may be contested by filing a request for a hearing, in writing, within ten (10) days from receipt of this citation. Such hearing shall be conducted as an informal hearing pursuant to UTAH CODE § 63G-4-203, the Utah Administrative Procedures Act. A citation which is not contested becomes the final order of the Division and is not subject to further agency review. In addition to any fines which might be levied, a cease and desist order shall be entered against you. An intentional violation of a final cease and desist order is a third degree felony pursuant to UTAH CODE §13-2-6(2). If you desire a hearing on this citation you may mail your request to:

**Daniel R.S. O'Bannon – Director
Utah Division of Consumer Protection
PO Box 146704
Salt Lake City, UT 84114-6704**

Please be advised that all inquiries, correspondence, or other contacts concerning this citation, with the exception of any written request for hearing as set out above, should be directed to the below-named Division employee, designated by the Director of the Division of Consumer Protection pursuant to UTAH CODE §13-2-6(3):

**Liz Blaylock – Investigator
Utah Division of Consumer Protection
PO Box 146704
Salt Lake City, UT 84114-6704
Telephone: (801) 530-6397
E-mail: lblaylock@utah.gov**

DIVISION OF CONSUMER PROTECTION
STATE OF UTAH DEPARTMENT OF COMMERCE
160 E 300 S
PO BOX 146704
SALT LAKE CITY UT 84114

**INFORMAL HEARINGS BEFORE THE
DIVISION OF CONSUMER PROTECTION**

You may request an informal hearing to contest an Administrative Citation issued by the Division of Consumer Protection within ten (10) business days from the date of the Citation. Your request should be in writing, include the case number from your Citation, and be directed to the Director of the Utah Division of Consumer Protection at the address listed above. As you prepare for the hearing, please keep in mind the following:

1. **Notice.** You will receive a Notice of Administrative Hearing specifying a time and date of the hearing. On the day of the hearing, the Division receptionist at the address listed above, on the second floor, will give you the room number for the hearing. The name of the Presiding Officer for the hearing is on your Notice. Please address the Presiding Officer by name (e.g., "Mr. Smith" or "Ms. Jones").

2. **Open Hearing.** The hearing is open to all parties, and is open to the public unless closed by the Presiding Officer. The Division will record the hearing.

3. **Access to Information.** Discovery is prohibited, but parties may have access to all materials and information the Division intends to present at the hearing. You may contact the investigator whose name appears on your citation to request access to this information.

4. **Legal Representation.** You may represent yourself or be represented by an attorney. Ordinarily, the Division is not represented by an attorney at the hearing.

5. **Issues.** The primary issues for the hearing are:

- Was there a factual and legal basis to issue the Citation?
- If so, was it fair to issue the Citation?
- If so, what is the appropriate penalty?

6. **Burden of Proof.** If you are denying the offense, the Division is responsible to prove its case against you by a preponderance of the evidence. If you are admitting the offense, you are responsible to prove that the Citation should be dismissed or the penalty should be reduced.

7. **Evidence.** All parties may testify, present evidence, and comment on the issues. In presenting evidence, any party may examine witnesses and submit exhibits. At the request of either party, or at his or her own initiative, the Presiding Officer may examine a witness. Any party may ask to present a witness by telephone. The Presiding Officer will exclude any evidence he or she deems irrelevant, repetitious or improper.

8. **Final Order.** Following the hearing, the Presiding Officer will take the matter under advisement and make a recommendation to the Division Director, who will issue a Final Order to uphold, dismiss or modify the Citation. The Final Order will include a notice of any right of administrative or judicial review.

You should not rely on this letter alone for instructions regarding informal hearings. The hearing is governed by law (Utah Administrative Procedures Act, see Utah Code § 63G-4 *et al.*; Utah Division of Consumer Protection, see Utah Code § 13-2 *et al.* and rule Department of Commerce Administrative Procedures Act Rules, see Utah Admin. Code R151-4. You may access these laws and rules at your local library or at the following Internet sites: le.utah.gov and rules.utah.gov

You may contact the Presiding Officer with any technical or procedural questions, but the Presiding Officer may not discuss the merits of the case with you.

Revision Date: February 13, 2014

Exhibit A

Consumer	Date of Complaint	Summary of Allegations	Applicable Count No.
Shannon [REDACTED]	8-Jan-14	The consumer did not receive the product until after the 12 day trial period expired. The consumer alleges she was billed after she requested to cancel her subscription. The consumer requested to cancel again and receive a refund, but to date has not received a response.	5,6,7,8
Vesta [REDACTED]	8-Jan-14	The consumer agreed to pay \$4.95 for the trial offer and was charged that amount twice. The consumer requested to cancel. She received and returned the product within the 12 day trial period. The consumer alleges she was charged the full amount of \$99.95 after the trail expired. When the consumer requested a refund she was advised there was a \$17.50 restocking fee and that the shipping and handling fees where non-refundable.	5,8
Chrisanne [REDACTED]	13-Jan-14	The consumer alleges the transaction was not complete, but she was billed \$4.95 for the trial offer. The consumer requested to cancel prior to the product being shipped. The consumer alleges her cancellation request was honored, but that a refund has not been received.	5,8
Polly [REDACTED]	16-Jan-14	The consumer alleges she did not authorize the trial and requested to cancel. The consumer alleges she has since been billed and sent additional products after the cancellation.	5,8
Rose [REDACTED]	16-Jan-14	The consumer paid \$4.95 for the trial offer. The consumer alleges she did not receive the product until after the trial period expired. The consumer alleges she was billed twice for the recurring charges of \$99.95 for a single refill pack. The consumer requested to cancel and receive a refund, but to date has not received a response.	5,6,7,8
Rich J [REDACTED]	17-Jan-14	The consumer signed up for the trial offer online. The consumer alleges he was not advised of the recurring \$99.95 charges for refill packs. The consumer alleges he cancelled his subscription, but has not received a refund. After cancelling the subscription the consumer was charged an additional \$99.95 for a refill pack. The consumer requested to cancel and receive a refund again, but to date has not received a response.	5,8
Mickie [REDACTED]	21-Jan-14	The consumer paid \$4.95 for the trial offer. The consumer never received the product. The consumer was charged \$99.95 after the trial period expired. The consumer received an additional two months' worth of refill packs, but no starter kit. The consumer requested to cancel and receive a refund. After cancelling and returning the items, the consumer was charged an additional \$99.95 and sent another refill pack.	5,6,7,8

Exhibit A

John [REDACTED]	22-Jan-14	The consumer paid \$4.95 for the trial offer in December 2013. The consumer did not receive the product and was charged \$99.95 after the trial period expired. The consumer alleges he was not advised of the recurring charges for refill packs and has not been refunded after cancelling his subscription.	5,6,7,8
Pamela [REDACTED]	22-Jan-14	The consumer paid \$4.95 for the trial offer. The consumer requested to cancel prior to the product being shipped. The consumer was advised she could not cancel until after she received the product. The consumer was charged \$99.95 after the trial period expired. The consumer never received the product.	5,6,7,8
Tracy [REDACTED]	23-Jan-14	The consumer alleges the website did not disclose there was a 12 day trial period. The consumer was charged an additional \$99.95 after the trial period had expired. When the consumer requested to cancel she was told she could not cancel until she received the product. The consumer never received the product.	5,6,7,8
Sherrill [REDACTED]	24-Jan-14	The consumer signed up for the trial offer. After the trial period ended the consumer was billed for refill packs. The consumer alleges she did authorize recurring charges for refill packs. The consumer cancelled the subscription and requested a refund. After cancelling the consumer was charged for another refill pack. The consumer again requested to cancel and receive a refund, but has not received a response.	5,8,
Ronald [REDACTED]	24-Jan-14	The consumer alleges the website did not disclose that there were recurring charges or that there was a 12 day trial period. The consumer was charged an additional \$99.95 after the trial period had expired. When the consumer requested to cancel he was told he could not cancel until he received the product. The consumer never received the product.	5,6,7,8
Theodore [REDACTED]	24-Jan-14	The consumer paid \$4.95 for the trial offer. The consumer did not receive the product until after the trial period expired. The consumer was billed an additional \$99.95. The consumer requested to cancel and receive a refund, but has not received a response.	5,6,7,8
Bonnie [REDACTED]	24-Jan-14	The consumer paid \$4.95 for the trial offer. The consumer did not receive the product. After the trial period expired, the consumer was billed \$99.95. The consumer requested to cancel and receive a refund, but has not received a response.	5,6,7,8
Brandy [REDACTED]	27-Jan-14	The consumer paid \$4.95 for the trial offer. The consumer did not receive the product. After the trial period expired, the consumer was billed \$99.95. The consumer requested to cancel and receive a refund, but has not received a response.	5,6,7,8
Phillip [REDACTED]	27-Jan-14	The consumer paid \$4.95 for the trial offer. The consumer did not receive the product. After the trial period expired, the	5,6,7,8

Exhibit A

		consumer was billed \$99.95. The consumer requested to cancel and receive a refund, but has not received a response.	
Patricia [REDACTED]	28-Jan-14	The consumer paid \$4.95 for the trial offer. The consumer alleges nothing in the advertisement, website or interactions with the company advised him of the recurring charges of \$99.95. The consumer requested to cancel and receive a refund after the trial period expired, but has not received a response.	5,8
Amy [REDACTED]	28-Jan-14	The consumer paid \$4.95 for the trial offer. The consumer did not receive the product. After the trial period expired, the consumer was billed \$99.95. The consumer requested to cancel and receive a refund, but has not received a response.	5,6,7,8
Kathy [REDACTED]	29-Jan-14	The consumer paid \$4.95 for the trial offer. The consumer never received the product. After the trial period expired, the consumer was billed \$99.95. The consumer requested to cancel and receive a refund. The consumer was advised that she cannot cancel until she receives the product and her return and refund will be subject to a \$15.00 restocking fee.	5,6,7,8
Steven [REDACTED]	30-Jan-14	The consumer paid \$4.95 for the trial offer. The consumer alleges the full cost of the product and recurring charges were not disclosed to him when he signed up. After the trial period expired, the consumer was billed \$99.95. The consumer requested to cancel and receive a refund. After cancelling and returning the product, the consumer was charged an additional \$99.95 and did not receive a refund.	5,8