

FILED

JUN - 9 2008

BRENDA A. UMSTATTD
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, ex rel.)
JEREMIAH W. (JAY) NIXON)
Attorney General,)

Plaintiff,)

vs.)

HEAVEN SCENT PAWS, INC.)

Serve: Michele Reinkemeyer)
Registered Agent)
108 PP Hwy.)
St. Elizabeth, MO 65075)

and)

MICHELE REINKEMEYER)

Serve: 108 PP Hwy.)
St. Elizabeth, MO 65075)

Defendants.)

Case No: 08 AC-CC 00459

Division:

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTIONS,
RESTITUTION, CIVIL PENALTIES AND OTHER COURT ORDERS**

COMES NOW State of Missouri as Plaintiff in this action, by and through its Attorney
General Jeremiah W. (Jay) Nixon and Assistant Attorney General Stewart M. Freilich, and
states as follows:

PARTIES

1. Jeremiah W. (Jay) Nixon is the duly elected, qualified, and acting Attorney
General of the State of Missouri and brings this action in his official capacity pursuant to

Chapter 407, RSMo 2000.¹

2. Defendant Heaven Scent Paws, Inc. (hereinafter "HSP") is a Public Benefit Non-Profit Corporation with its principal place of business in St. Elizabeth, Missouri.

3. Defendant Michele Reinkemeyer (hereinafter "Reinkemeyer") is the founder, President and executive director of HSP. Reinkemeyer is sued both in her capacity as founder, president and executive director of HSP and in her individual capacity.

4. Any acts of Defendants HSP and Reinkemeyer alleged in this Petition include the acts of those Defendant's employees, agents, or other representatives acting under that Defendant's direction, control or authority.

JURISDICTION

5. The Circuit Court has personal jurisdiction over the Defendants pursuant to Section 506.500.

6. The Circuit Court has subject matter jurisdiction of this action pursuant to Section 407.100 of the Merchandising Practices Act which provides as follows:

- (1) Whenever it appears to the attorney general that a person has engaged in, is engaging in or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitation, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

7. The Circuit Court also has jurisdiction of this action pursuant to Section

¹ All references are to Missouri Revised Statutes 2000, unless otherwise noted.

407.472.2 of the Merchandising Practices Act which provides as follows:

Whenever it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any method, use, act, or practice declared to be unlawful by sections 407.450 to 407.478, or when it appears that any funds solicited by or on behalf of any charitable organization are being used, or are about to be used, for any purpose in violation of this chapter or section 576.080, RSMo, he or she may bring an action pursuant to section 407.100 for an injunction prohibiting such person from continuing such methods, uses, acts, or practices, or engaging therein, or doing anything in furtherance thereof. In any action brought by the attorney general pursuant to this subsection all of the provisions of sections 407.100 to 407.140 shall apply thereto.

8. The Circuit Court also has jurisdiction to hear this matter pursuant to Chapter 355.

VENUE

9. Venue is proper before this Court pursuant to Section 407.100.7 which provides that "[a]ny action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business."

10. HSP and Reinkemeyer operate the HSP training program in Cole County. The HSP contract was generated in Cole County and lists Cole County as the appropriate forum for litigation brought as a result of the contract. Some of the violations of the Merchandising Practices Act alleged in this Petition occurred in Cole County.

STATEMENT OF FACTS

11. HSP was created as a Non-Profit Corporation on July 1, 2004.

12. The purposes for which the corporation was organized, according to its Articles

of Incorporation, were “religious, charitable, scientific, literary and educational” within the meaning of section 501 (c) (3) of the Internal Revenue Code.

13. Specifically, according to the Articles of Incorporation, HSP was formed “to obtain and train canines to mitigate the dangers of an individual with a disability or special need and all other powers permitted a nonprofit corporation.”

14. HSP advertises and offers a three week training program for diabetics to obtain diabetic alert service dogs.

15. The training program takes place in Cole County, Missouri.

16. The training program is advertised on HSP’s website.

17. The website, in use prior to May 2008, stated that HSP specializes in “Diabetic Alert and Seizure Alert/Response Service Dogs”.

18. The website also stated: “Our highly trained Diabetic Alert Service Dogs detect and alert their diabetic partners and support team . . . to both low blood sugar (hypoglycemia) and high blood sugar (hyperglycemia).”

19. The website also noted that HSP “techniques are Patent Pending” and listed a number 60/639,948.

20. No. 60/639,948 was a provisional patent that expired over a year ago.

21. Since at least May 2007, there has been no patent pending for HSP.

22. The website contained links to applications for enrollment in the HSP 3 week training program.

23. The website advertised to prospective participants that enrollment in the 3 week program “would allow you to return home with a trained dog.”

24. A \$1,500.00 non-refundable deposit was required to enroll in the program.

Fund Raising and Signing the HSP Contract

25. Acceptance in the HSP training program was conditional on the participant raising a minimum of \$6,000.00 in third party donations to be turned over to HSP prior to the start of the 3 week training program.

26. The fund-raising minimum is being raised to \$7,500.00 for participants in training programs beginning after June 2008.

27. The funds turned over to HSP are generally considered to be non-refundable by HSP.

28. Participants in the program are not provided with a contract until after HSP has received the required donations made on behalf of that participant.

29. The contract, titled “HSP Diabetes Alert Service Dog Placement Agreement” governs the terms of participation in the HSP program.

30. Some participants in the program, who objected to terms in the contract provided by HSP, felt that they had no option but to sign the document since they had already raised at least \$6,000.00 to participate in the program.

31. The contract in use prior to February 2008 provided that the following offenses are grounds for dismissal from the program:

- Absences (more than 15 minutes late is considered an absence)
- Repeated Tardiness to Classes or Training Sessions (more than 2 incidences of tardiness qualifies as repeated)
- Failure to attend all classes in full
- Failure to attend all training sessions in full
- Disrespect
- Failure to heed the direction and/or instruction of HSP trainers
- Disruptive or illegal activities
- Any other repeated action that HSP requests be discontinued

32. The contract in use beginning with the February 2008 training program includes the following additional grounds for dismissal:

- Failure to pay heed to the instructor during class time – this includes repeated instances of cell phone use during class time, text messages included, and or talking amongst yourselves while the instructor is giving instruction
- Fraternization
- Failure to complete and return follow up work after returning home (monthly video tapes, weekly low alert reports) by the deadlines given
- Failure to abide by training techniques and program guidelines after returning home
- Failure to re-certify the Service Dog Team annually for a minimum of three

years, per HSP policy

33. There is no provision in the contract for the participant to challenge his or her dismissal from the HSP program.

34. There is no provision in the contract for the participant's donors to receive a refund or for the donated funds to be transferred to another program if the participant is dismissed from the HSP program.

35. The contract also provides that HSP can remove dogs from the program participants upon verbal or written notification of removal by any HSP board member.

36. There is no provision in the contract for the participant to challenge the removal of a dog from a participant.

37. There is also no provision in the contract for the participant's donors to receive a refund or for the donated funds to be transferred to another program if a dog is removed from a participant.

38. The contract further provides that HSP retains ownership of the Diabetes Alert Service Dog for at least 12 months after the contract is signed, even though the participant takes physical possession of the dog at the completion of the 3 week training program.

39. The contract provides that HSP is not liable for any acts of the dogs when the dogs are out of HSP's direct physical control.

40. A separate agreement, required to be signed by participants, provides that the participant must indemnify, defend and hold harmless HSP against any and all claims arising

from the use of the HSP dog by the participant.

Three Week Training Program

41. HSP operates three week training programs out of Cole County, Missouri.
42. Many of the participants in the program are minor children suffering from diabetes who attend the program along with their parent or parents.
43. During the three week training program, participants are paired up with a dog selected by HSP.
44. It's not clear where HSP obtains the dogs that participate in the program, but upon information and belief, some of these dogs are obtained from dog pounds and animal shelters.
45. The purported purpose of the training program is for the diabetic participant to receive a dog at the end of the program that can alert the participant or family members of hypoglycemia or hyperglycemia.
46. The participants and the dogs are trained by HSP staff.
47. Some of the trainers are young teen children of Reinkemeyer.
48. At the completion of the three week program, successful participants are presented with a Certification by HSP that they have successfully completed the course of training and testing as set forth by the International Association of Assistance Dog Partners (hereinafter "IAADP").
49. But the IAADP does not set forth a specific program for diabetes alert dogs.

50. And the IAADP standards are not meant to certify assistance dog teams.

51. In a letter dated March 6, 2008, the IAADP demanded that HSP remove any mention of the IAADP from their graduation certificate.

52. Upon successful completion of the 3 week training program, participants are giving possession (but not ownership) of the selected dog.

Consumer Complaints From HSP Participants

53. The Attorney General's Office has received consumer complaints from participants in the HSP training programs.

54. These complaints include the following:

- a. Dogs received by participants in the HSP training program are not alerting at all for hypoglycemia or hyperglycemia.
- b. Dogs received by participants in the HSP training program are not consistently alerting for hypoglycemia or hyperglycemia.
- c. Participants have not been told during the training program what constitutes an alert.
- d. HSP is not training dogs to provide a specific type of alert and has not adequately trained the participants to spot an alert.
- e. HSP is providing participants with dogs that do not have the temperament to act as service dogs.
- f. HSP has threatened to remove participants from the training program after

they have fund-raised at least \$6,000.00 which has been donated to HSP.

g. HSP has threatened to remove dogs from participants after they have fund-raised at least \$6,000.00 which has been donated to HSP.

h. Participants have been required to raise a minimum of \$6,000.00, which is turned over to HSP, prior to signing a contract with HSP.

55. Several dogs, in the possession of complainants, have been evaluated by veterinarians, trainers, FEMA personnel and other experts.

56. These experts have determined that HSP provided dogs are not alerting for hypoglycemia or hyperglycemia, lack recognizable scent training, and lack the temperament to act as service dogs.

Examples of Complaints

Bertness Family

57. The Bertness family filed a consumer complaint with the Attorney General's Office on March 15, 2008.

58. In the complaint, Mrs. Bertness relates that she and her 6 year old daughter Bayleigh entered the 3 week HSP training program in February 2008.

59. Mrs. Bertness did not see much alerting going on during the 3 week HSP training program.

60. Radar, the dog received by the Bertness family did not alert during the first 2 weeks after they returned home from the program.

61. The Bertness family asked Reinkemeyer what would constitute an alert and Reinkemeyer told them that the dog will wander and stare at you.

62. The Bertness family objected to some of the terms in the HSP contract but felt that they had no choice but to sign the contract since the contract wasn't provided until all of the money they had fund-raised was in the possession of HSP.

63. An expert evaluating Radar concluded that the dog gave no noticeable sign that he recognized the odor of clothing worn by Bayleigh when she was experiencing a diabetic low and that the dog provided no recognizable alert response.

64. The same expert observed that Radar growled and shook when approached by the expert and hid behind Bayleigh.

65. The expert concluded that the dog provided to the Bertness family was not a proper service dog candidate.

McKenzie Family

66. The McKenzie family filed a complaint with the Attorney General's Office on March 27, 2008.

67. In the complaint, the McKenzie's relate that they were originally assigned a dog by HSP that growled and shook while children were playing on the playground.

68. That dog was removed by HSP and a second dog was assigned which chewed a hole in a bed skirt and threw itself at a hotel room door.

69. A third dog, Skye, was assigned to the McKenzie's and Reinkemeyer told the

McKenzie's that the dog had scent training.

70. The McKenzie family has not seen Skye alert.
71. When the McKenzie's asked HSP what would constitute an alert, they were told to check their child's blood sugar whenever the dog did something out of the ordinary.
72. The McKenzie's also complained about not being presented with an HSP contract until after all of the funds they raised were sent to HSP.
73. The McKenzie's were told by HSP that failure to sign the contract would result in their being dismissed from the training program.
74. Since all of the funds they raised were already in the possession of HSP, the McKenzie's didn't feel that they had any choice but to sign the contract.
75. An expert evaluating Skye found that the dog did not alert when provided with a low blood sugar scent source.
76. The dog did not find the scent source unless it was hungry.
77. The same expert found that Skye is timid, shy and lacks drive.
78. The expert concluded that the McKenzie's dog was not an appropriate candidate for scent work which requires a very high drive and confidence.

Smith Family

79. The Smith family filed a complaint with the Attorney General's Office on March 24, 2008.
80. Mrs. Smith and her daughter Ciara attended the three week HSP training

program held in February 2008.

81. In their complaint, the Smiths allege that HSP and Reinkemeyer failed to inform them, prior to the time that they raised over \$6,000.00 for the benefit of HSP, that they would be required to sign a contract providing that HSP would retain ownership of the service dog assigned to them.

82. The Smith family states that Reinkemeyer made it clear that failure to sign the contract would result in their removal from the HSP program.

83. The Smith's also relate in their complaint that Reinkemeyer threatened to remove them from training program because of "negativity".

84. Mrs. Smith notes that Reinkemeyer threatened them with removal from the program because they were late to 2 program events, even though one of the lateness's was caused by medical problems experienced by Ciara.

85. An expert evaluating Bo, the dog provided to the Smith family, found that the dog was fearful of loud noises, strange situations or unusual surroundings.

86. The expert also found that the dog did not alert to a very high blood sugar experienced by Ciara and that the dog does not know what to do to alert.

87. This expert concluded that Bo does not have the strength of temperament to be a well rounded solid service dog.

The Thornton Family

88. The Thornton Family filed a complaint with the Attorney General's Office on March 15, 2008.

89. The Thornton Family contends that they received a service dog from HSP that was not properly trained.

90. They also allege that Reinkemeyer made numerous threats to remove participants, including themselves, from the training program.

91. Mrs. Thornton states that there were only 2 instances where the training class worked on scent detection and that Defendants never told the class what an alert to a diabetic episode would be.

92. The Thornton's claim that Eggo, the dog they received from HSP, has not alerted.

93. An expert evaluating Eggo observed that Eggo was uneasy, nervous and shy, often hiding behind the Thornton child.

94. The expert also found that Eggo growled at 2 women, at Mr. Thornton, and at Mrs. Thornton when she entered her child's bedroom.

95. The expert concluded that Eggo exhibits fear aggression, has the capacity to bite if cornered, and should not be a service dog.

96. The expert also found that Eggo did not understand that the target odor is the odor of a low blood sugar.

The Rinkel Family

97. The Rinkel Family filed a complaint with the Attorney General's Office on March 10, 2008.

98. The Rinkels raised over \$16,000.00 to qualify for the HSP training program.

99. They contend that during the program Defendants threatened to remove the Rinkels from the HSP program and remove their assigned dog Jedi from their 10 year old son.

100. An expert evaluating Jedi concluded that the dog was unqualified as a service dog due to temperament and to lack of ability to alert to the scent of a specific level of blood glucose.

101. This expert found that Jedi was anxious and fearful and had the capacity to bite.

102. The expert also found that the dog did not alert even when clothing with the low blood sugar odor was placed on the Rinkel's child.

103. The expert found no evidence that Jedi had been trained in scent detection.

Expenditure of Non-Profit Funds

104. HSP purports to have been recognized by the IRS as exempt from taxation pursuant to Section 501 (c) (3) of the Internal Revenue Code.

105. Funds received by HSP are required to be used for tax exempt Section 501 (c) (3) purposes, which include religious, charitable, scientific, literary and educational.

106. Upon information and belief, some HSP funds may have been used for personal expenditures.

107. HSP is not registered with the Missouri Attorney General’s Office as a charitable organization or as a professional fund-raiser.

MERCHANDISING PRACTICES ACT VIOLATIONS

108. Section 407.020 of the Merchandising Practices Act provides in pertinent part:

1. The act use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice....Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

109. Section 407.010 (4) defines Merchandise as “any objects, wares, goods, commodities, intangibles, real estate or services.

110. Section 407.453 (2) defines charitable purpose as “any purpose which promotes, or purports to promote, directly or indirectly, the well-being of the public at large or any number of persons, whether such well-being is in general or limited to certain activities, endeavors or projects.

111. Section 407.453 (6) defines solicitation as “any request or appeal, either oral or written, or any endeavor to obtain, seek or plead for funds, property, financial assistance or other thing of value, including the promise or grant of any money or property of any kind or value for a charitable purpose, but excluding:

(a) Direct grants or allocations of funds received or solicited from any affiliated

fund-raising organization by a member agency; and

- (b) Unsolicited contributions received from any individual donor, foundation, trust, governmental agency or other source, unless such contributions are received in conjunction with a solicitation drive.

112. Defendants solicited funds for a charitable purpose within the meaning of Sections 407.453 or sold merchandise within the meaning of Section 407.010.

113. Pursuant to Section 407.456, charitable organizations are not permitted to solicit funds in Missouri for a charitable purpose unless they have filed all registrations required by Sections 407.450 to 407.478 with the Missouri Attorney General's Office.

114. HSP is a charitable organization within the meaning of Section 407.453 (1).

115. Pursuant to Section 407.456, organizations that have obtained an exemption from the payment of federal income taxes under Section 501 (c) (3) are exempt from the registration requirements of Sections 407.450 to 407.478, but only "if, in fact, no part of the net earnings of the organization inure to the benefit of any private party or individual associated with such organization."

116. Pursuant to authority granted in § 407.145, the Attorney General has promulgated rules explaining and defining terms utilized in § 407.010 to § 407.145 of the Merchandising Practices Act. Said Rules are contained in the Missouri Code of State Regulations (CSR). The rules relevant to the Merchandising Practices Act allegations herein include, but are not limited to, the provisions of 15 CSR 60-3.010 to 15 CSR 60-14.040. These rules are adopted and incorporated by reference.

117. Defendants Heaven Scent Paws, Inc. and Michele Reinkemeyer have violated Section 407.020, in connection with the solicitation of funds for a charitable purpose, or in connection with the sale of merchandise, by:

- a. Misrepresenting that HSP trained service dogs to alert for hypoglycemia and hyperglycemia, when, in fact, some HSP trained dogs do not alert for hypoglycemia or hyperglycemia.
- b. Misrepresenting that HSP techniques are patent pending, when, in fact, there is no existing patent or any patent pending.
- c. Misrepresenting that participants in the 3 week HSP training program would return home with a trained dog, when, in fact, some participants returned home with a dog that was not adequately trained to perform its primary function of alerting for hypoglycemia or hyperglycemia.
- d. Engaging in the unfair practice of requiring prospective participants to fund raise and turn over to HSP a minimum of \$6,000.00 in non-refundable donations prior to providing prospective participants with a copy of the contract setting forth numerous terms and conditions which participants were required observe to remain in the program.
- e. Engaging in the unfair practice of requiring prospective participants in the HSP training program to sign a contract which permits HSP to dismiss participants from the program for reasons that are vague, subject to unilateral

interpretation by HSP, and which provides no recourse to the dismissed participant to challenge their dismissal or to recover any of the donations turned over to HSP.

f. Engaging in the unfair practice of requiring prospective participants in the HSP training program to sign a contract which permits HSP to remove a dog from the possession of the participant, at the discretion of HSP, with no recourse for the participant to challenge the removal of the dog or to recover any of the donations turned over to HSP.

g. Engaging in the unfair practice of requiring prospective participants in the HSP training program to sign a contract which provides that HSP retains ownership of the dogs provided to participants, even after the completion of the training program, but absolves HSP of any liability for the dogs which they selected and trained once the dogs go home with the participants.

h. Omitting to disclose to HSP training program participants the material fact that the reference to IAADP training and testing contained in HSP graduation certificates is a reference to standards that were not created to certify assistance dog teams and is a reference which is not sanctioned by the IAADP.

i. Omitting to disclose to some program participants the material fact of what specific behavior by a participating dog constitutes an alert for hypoglycemia or hyperglycemia.

- j. Misrepresenting that HSP trained dogs are service dogs, when, in fact, some of the dogs trained by HSP do not have the temperament to act as service dogs.
- k. Omitting to disclose the material fact that some HSP trained dogs lack the temperament to act as service dogs and may be bite risks.
- l. Engaging in the unfair practice of threatening to remove participants from the HSP training program after the participant raised at least \$6,000.00 for the benefit of HSP, traveled great distances to participate in the HSP program, and spent many days and hours training their assigned dog and bonding with that dog.
- m. Engaging in the unfair practice of threatening to remove dogs from participants in the HSP training program after the participant raised at least \$6,000.00 for the benefit of HSP, traveled great distances to participate in the HSP program, and spent many days and hours training their assigned dog and bonding with that dog.
- n. Engaging in the unfair practice of using funds donated for or dedicated to charitable and tax exempt purposes for personal expenditures.

118. Defendants Heaven Scent Paws, Inc. and Michelle Reinkemeyer may have violated Sections 407.456 and 407.462 by failing to file all registrations and reports required by Sections 407.450 to 407.478 in the event that Defendants have not been recognized as exempt

from taxation pursuant to Federal Section 501 (c) (3) or if Defendants used earnings of HSP for personal expenditure.

Violations Of The Not-For-Profit Law

119. Chapter 355 governs the requirements for a not-for-profit corporation.

120. HSP is registered as a public benefit not-for-profit corporation with the Missouri Secretary of State.

121. Defendants may have violated Chapter 355 and the common law requirements for not-for-profit corporations by:

- a. Breaching their fiduciary duty by using funds properly belonging to a not-for-profit corporation for personal expenditures.
- b. Violating Section 355.661 by making a distribution from a not-for-profit corporation.
- c. Engaging in actions violating Section 407.020 which HSP lacked power to undertake pursuant to Section 355.141.

RELIEF

WHEREFORE, Plaintiff prays this Court to order the following relief:

- 1. An Order of this Court finding that the Defendants have violated the provisions of Section 407.020, 407.456, 407.462, Chapter 355 and other not-for-profit corporation laws.
- 2. A Preliminary and Permanent Injunction issued pursuant to § 407.100, prohibiting and enjoining Defendants and their agents, servants, employees, representatives and

other individuals acting at their direction or on their behalf, who have notice of the Injunction, from violating Sections 407.020, 407.456, 407.462, Chapter 355 and other not-for-profit corporation laws.

3. An order freezing or sequestering funds or accounts issued pursuant to section 407.100.2.

4. An Order of this Court, issued pursuant to section 407.100.4, requiring Defendants, jointly and severally, to provide full restitution to all HSP participants and/or donors from whom Defendants have received monies who have been aggrieved by the use of any of the unlawful, unfair and deceptive acts and practices alleged herein.

5. An Order of this Court, issued pursuant to section 407.100.6, awarding the State a civil penalty from Defendants, jointly and severally, of One Thousand Dollars (\$1,000.00) per violation of § 407.020 that the Court finds to have occurred.

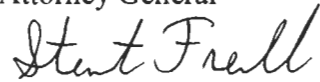
6. An Order of this Court, issued pursuant to section 407.140.3, ordering Defendants, jointly and severally, to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against said Defendants, or such other amount as the Court deems fair and equitable.

7. An Order of this Court, issued pursuant to section 407.130, requiring the Defendants, jointly and severally, to pay all court and investigative and prosecution costs of this case.

8. Any further relief the Court deems just and equitable in this action.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

A handwritten signature in cursive script that reads "Stewart Freilich".

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