

FILED

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Division of Consumer Affairs

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Division of Consumer Affairs

By: Sara J. Koste
Deputy Attorney General
(973) 648-7461

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

In the Matter of

Administrative Action

Element Armament, LLC,

CONSENT ORDER

Respondent.

WHEREAS this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -227 (“CFA”) and/or the Rules Concerning Hazardous Products, N.J.A.C. 13:45A-4.1 to -4.3 (“Hazardous Products Regulations”) (hereinafter referred to as the “Investigation”), have been or are being committed by Element Armament, LLC, as well as by its owners, officers, directors, managers, employees, representatives and/or agents (collectively, “Respondent”);

WHEREAS Respondent, with its place of business located at 51 N. U.S. Highway 31, Whiteland, Indiana 46184, is engaged in the Advertisement, offer for Sale, and Sale of Merchandise to Consumers in the State of New Jersey;

WHEREAS large capacity ammunition magazines (“LCMs”), as defined in N.J.S.A. 2C:39-1(y), are firearm magazines capable of holding more than the standard number of rounds provided by the manufacturer. LCMs allow the firearm’s possessor to fire multiple shots in a matter of seconds, without pausing to reload;

WHEREAS LCMs have been used in numerous mass shootings, and the use of LCMs is more likely to result in increased fatalities and injuries;

WHEREAS on June 13, 2018, New Jersey Governor Phil Murphy signed into law a bill that prohibited, with limited exceptions, possession of LCMs with a capacity of more than ten rounds of ammunition, in order to “protect [] children and families from the reckless dangers of gun violence”;

WHEREAS New Jersey law, specifically N.J.S.A. 2C:39-3(j) provides that the knowing possession of an LCM is a fourth-degree crime;

WHEREAS LCMs are Merchandise within the meaning of the CFA, N.J.S.A. 56:8-1(c), as well as “consumer products” within the meaning of the Hazardous Products Regulations, N.J.A.C. 13:45A-4.2;

WHEREAS the Hazardous Products Regulations, specifically N.J.A.C. 13:45A-4.1(b), provide that “it shall be an unconscionable practice for any Person, including any business entity, to Advertise or market to . . . a resident of this State, a consumer product that is illegal to possess or use in this State . . . where the possession or use . . . would subject the Person possessing or

using the product to criminal prosecution, without clearly and conspicuously disclosing that the product is illegal to possess or use in this State.”

WHEREAS the sanctions contained in the CFA apply to any violation of the Hazardous Products Regulations, N.J.A.C. 13:45A-4.3;

WHEREAS the Division commenced this Investigation as a result of Respondent’s online Advertisement, offer for Sale, and Sale of LCMs to New Jersey Consumers;

WHEREAS based on the Investigation, the Division, among other things, alleges that Respondent Advertised, offered for Sale, and Sold LCMs to New Jersey Consumers through the Element Armament Website in violation of the CFA, and the Hazardous Products Regulations (the “Covered Claims”);

WHEREAS as of June 29, 2022, the Element Armament Website Advertised and/or offered for Sale Merchandise that included 162 ammunition magazines. Based upon the product descriptions, several ammunition magazines were LCMs, including, for example: (i) Arsenal Circle 10 Magazine for AK/AKM - 7.62x39mm - 30 round capacity; (ii) Butler Creek Savage A-Series (A22) Magazine - 25 Round Capacity - 22LR; and (iii) Beretta 92FS Mag - 20 Rounds;

WHEREAS as of June 29, 2022, the Element Armament Website did not include any statement that New Jersey law makes it a fourth-degree crime, punishable by fines up to \$10,000 per violation and imprisonment of up to eighteen months, to knowingly possess an LCM;

WHEREAS on July 9, 2022, using an undercover identity, an Investigator from the Division used the Element Armament Website to purchase from the Respondent four LCMs: (i) two Glock OEM 13 Round Magazine G23 - 40 S&W, SKU Glock_G23-13RNDS_MF23013; (ii) one FN PS90/P90 Magazine - 5.7x28mm – 50 Round Capacity, SKU FNP90_3810110093; and

(iii) one Magpul PMAG D-60 - AR/M4, SKU Magpul_D60_MAG576-BLK (“July 9, 2022 Purchase”). Respondent shipped these LCMs from D. Hill, Element Armament, 51 N US Highway 31, Whiteland, Indiana 46184 to an undercover New Jersey address; and

WHEREAS the Division and Respondent (collectively, “Parties”) have reached an amicable agreement hereby resolving the issues in controversy and concluding the Investigation without the need for further action, and Respondent having voluntarily cooperated with the Investigation and consented to the entry of the within order (“Consent Order”), and for good cause shown:

IT IS ORDERED AND AGREED as follows:

1. EFFECTIVE DATE

1.1 This Consent Order is effective on the date that it is filed with the Division (“Effective Date”).

2. DEFINITIONS

Capitalized terms not otherwise defined in this Consent Order, shall have the following meanings:

2.1 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a). This definition applies to other forms of the word “Advertisement” including, without limitation “Advertise” and “Advertised.”

2.2 “Attorney General” shall refer to the Attorney General of the State of New Jersey, or Acting Attorney General of the State of New Jersey, as applicable, and the Office of the Attorney General of the State of New Jersey.

2.3 “Clear and Conspicuous” or “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such size, color, contrast, duration, location, and audibility compared to the other information with which it is presented that it is readily apparent and understandable and in language and in terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies in a manner that is readily apparent and understandable.

2.4 “Consumer[s]” shall refer to any Person who is offered Merchandise for Sale.

2.5 “Correspondence” means any Document intended to transmit information, including letters, memoranda, electronic mail, faxes, “instant messages,” “text messages,” voice mail messages, and handwritten and other notes.

2.6 “Document[s]” Includes all writings, word processing documents, records saved as a .pdf, spreadsheets, charts, presentations, graphics/drawings, images, emails and any attachments, instant messages, text messages, phone records, websites, audio files, and any other Electronically Stored Information. Documents Include originals and non-identical duplicates. If a printout of an electronic record is a non-identical copy of the electronic version (for example, because the printout has a signature, handwritten notation, other mark, or attachment not included in the computer document), both the electronic version in which the Document was created and the non-identical original Document must be produced.

2.7 “Electronically Stored Information” or “ESI” means any Document, Correspondence, or information stored or maintained in electronic format.

2.8 "Element Armament Website" means the website located at www.elementarmament.com, as well as any other website owned or controlled by Respondent through which Respondent Advertises, offers for Sale, and Sells Merchandise.

2.9 "Include" and "Including" shall be construed as broadly as possible and shall mean "without limitation."

2.10 "LCM[s]" means large capacity ammunition magazine[s], as defined in N.J.S.A. 2C:39-1(y).

2.11 "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes LCMs.

2.12 "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.13 "Policy" or "Policies" shall refer to any procedures, practices, directives, and/or established courses of action, whether written or oral.

2.14 "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(e). This definition applies to other forms of the word "Sale" including, without limitation, "Sell[s]" and "Sold."

2.15 "State" and "New Jersey" shall mean the State of New Jersey.

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended including, but not limited to, the CFA and the Hazardous Products Regulations.

3.2 Respondent shall not Advertise, offer for Sale, Sell, or ship LCMs to New Jersey Consumers.

3.3 Respondent shall prevent the ordering and shipping of Respondent's LCMs to any New Jersey address.

3.4 Respondent shall Clearly and Conspicuously disclose, on the LCM product pages of the Element Armament Website, that certain U.S. jurisdictions restrict firearm magazine sales and that Element Armament cannot process Sales/shipments prohibited by law. Along with such notice, Respondent shall conspicuously disclose that "New Jersey law prohibits large capacity ammunition magazines with a capacity of more than ten rounds of ammunition — and any person who knowingly possesses an LCM is guilty of a crime of the fourth degree, punishable by fines and imprisonment," or include a link to a page containing such information.

3.5 Respondent shall maintain Policies regarding the prohibition of LCM Sales to New Jersey Consumers and shall ensure that all employees charged with reviewing and/or fulfilling LCM purchases are apprised of such Policies, and any changes thereto.

3.6 Respondent shall continue to make and keep any and all Documents concerning all Sales, attempted Sales, and purchases of Merchandise to any New Jersey shipping address, Including, but not limited to, checkout pages, invoices, order confirmations, shipping confirmations, receipts, payment confirmations, packing lists, and shipment tracking.

4. SETTLEMENT AMOUNT

4.1 The Parties have agreed to a settlement of the Investigation in the amount of Seventeen Thousand Seven Hundred and Five and 0/100 Dollars (\$17,705.00) ("Settlement Amount").

4.2 The Settlement Amount consists of civil penalties in the amount of Twelve Thousand and 00/100 Dollars (\$12,000.00), pursuant to N.J.S.A. 56:8-13, and reimbursement of

the Division's attorneys' fees in the amount of Five Thousand Seven Hundred and Five 00/100 Dollars (\$5,705.00), pursuant to N.J.S.A. 56:8-19.

4.3 Respondents shall pay the Settlement Amount in installments ("Settlement Payments") as follows:

- a. Five Thousand Seven Hundred Five and 00/100 Dollars (\$5,705.00) shall be paid contemporaneously with the signing of this Consent Order due January 5, 2024.
- b. The remaining balance of Twelve Thousand and 00/100 Dollars (\$12,000.00) shall be paid in six (6) equal payments of Two Thousand and 00/100 Dollars (\$2,000.00) on or before the 1st of each month, starting on February 1, 2024 through July 1, 2024.

4.4 The Settlement Payments referenced in Section 4.3 shall be paid by certified check, cashier's check, money order, credit card or wire transfer payable to the "New Jersey Division of Consumer Affairs" and forwarded to:

Case Management and Tracking Unit
New Jersey Department of Law and Public Safety
Division of Consumer Affairs
124 Halsey Street
P.O. Box 45025
Newark, New Jersey 07101
Attention: Van Mallett, Lead Investigator

4.5 Upon paying the Settlement Payments referenced in Section 4.3, Respondent shall immediately be fully divested of any interest in, or ownership of, the moneys paid. All interest in the moneys, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

5. GENERAL PROVISIONS

5.1 This Consent Order is entered into by the Parties of their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

5.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

5.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

5.4 This Consent Order contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

5.5 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

5.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

5.7 This Consent Order shall be binding upon Respondent as well as its managers, agents, employees, successors and assigns, and any Person through which they may now or hereafter act, as well as any Person who has authority to control or who, in fact, controls and directs their business.

5.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order be used to avoid compliance with this Consent Order.

5.9 This Consent Order is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute or be construed as an approval, sanction or authorization by the Division or any other governmental unit of the State of any act or practice of Respondent.

5.10 This Consent Order is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.11 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

5.12 This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

6. REPRESENTATIONS AND WARRANTIES

6.1 The Parties represent and warrant an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to legally bind the respective Party.

6.2 Respondent represents and warrants that, subsequent to the July 9, 2022 Purchase, Respondent cancelled additional orders for LCMs with shipping addresses in New Jersey. Respondent represents and warrants that the Element Armament Website prevents acceptance and fulfillment of any LCM orders to New Jersey Consumers.

6.3 Respondent represents and warrants that it has discontinued the online Sales of LCMs to any New Jersey Consumer.

6.4 Respondent represents and warrants that it has fully read and understands this Consent Order, the legal consequences involved in signing the Consent Order, and that there are no other representations or agreements not stated in writing herein.

7. RELEASE

7.1 In consideration of the payments, undertakings, mutual promises, and obligations provided for in this Consent Order and conditioned on Respondent paying the Settlement Amount in the manner specified in Section 4, the Division hereby agrees to release Respondent from any and all civil claims or Consumer-related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondent arising out of or concerning the Covered Claims (the “Released Claims”).

7.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

8. PENALTIES FOR FAILURE TO COMPLY

8.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Order or to seek sanctions for violations hereof or both.

8.2 The Parties agree that any future violations of the provisions of Section 3 of this Consent Order or the CFA shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

9. COMPLIANCE WITH ALL LAWS

9.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- a. Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- b. Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

10. NOTICES UNDER THIS CONSENT ORDER

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Assistant Deputy of Enforcement, Office of Consumer Protection
Division of Consumer Affairs, State of New Jersey

Office of the Attorney General
Department of Law and Public Safety
124 Halsey Street - 7th Floor
P.O. Box 45028
Newark, New Jersey 07101

For Respondent:

Russell B. Cate, Esq.
Riley Cate LLC
11 Municipal Drive, Suite 320
Fishers, Indiana 46038

IT IS ON THE 25th DAY OF January, ~~2023~~ ²⁰²⁴ SO ORDERED.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: *Cari Fais*
CARI FAIS, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS
CONSENT ORDER ON THE DATES ADJACENT TO THEIR RESPECTIVE
SIGNATURES.**

FOR THE DIVISION:

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: 

Dated: Jan 3, 2023

Sara J. Koste
Deputy Attorney General
Consumer Fraud Prosecution Section

124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

FOR RESPONDENT:

RILEY CATE LLC

By: 

Dated: January 1, 2024

Russell B. Cate, Esq.
Riley Cate LLC
Counsel for Element Armament, LLC

11 Municipal Drive, Suite 320
Fishers, Indiana 46038

ELEMENT ARMAMENT, LLC

By: 

Dated: 01.02, 2023/4 ^{DH}

David Hill, Owner
Element Armament, LLC

51 N. US Highway 31
Whiteland, Indiana, 46184