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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

QYK BRANDS LLC d/b/a Glowyy; et al,

Defendants

Case No. 8:20-cv-01431-PSG-KES

DECLARATION OF RAKESH TAMMABATTULA

I, RAKESH TAMMABATTULA, DO HEREBY DECLARE AND STATE AS FOLLOWS:

1. I have personal knowledge of the following facts, and, if called upon, would testify to them.
2. I am the President of QYK Brands dba Glowyy ("QYK") and have been the CEO during all relevant times in the lawsuit. As CEO, I ran the day-to-day

operations of QYK and am familiar with the events, hurdles and challenges that occurred from March through May, 2020, when the Covid-19 pandemic suddenly hit the world.

3. I formed QYK in November of 2017 to provide personal care and skin care products to consumers, including hand sanitizer. Our initial business model was to sell directly to consumers through the internet products customized under our brands from manufacturers in India China & USA.

4. QYK moved to 10517 Garden Grove Blvd, Garden Grove CA around March 2019 and by February 2020, we had between 3-5 employees.

5. QYK used the Glowyy.com website to sell health and beauty products initially and continued to advertise all of its products at the beginning of the Pandemic. At the beginning and throughout the pandemic, QYK received orders for all of its products including hand sanitizer.

6. On March 4, 2020, QYK began selling hand sanitizer through its Glowyy website. At that time, we had an inventory of about 2,000 bottles of sanitizer, which, according to our history orders, was more than sufficient to cover any anticipated orders.

7. In addition, on February 24, 2020, we had ordered 100,000 bottles from our source in India of which 10,000 bottles were shipped by FedEx on Feb 26th, and Fed Ex confirmed these were in transit and would be delivered to our warehouse in Garden Grove on March 3. A copy of the 100,000 bottle order

is attached as **Ex: A** and a copy of the Fed Ex confirmation is attached as **Ex: B.** Unfortunately, the order did not arrive on March 3rd as confirmed. We immediately started checking why the order had not received. We checked daily but were only told that it was in transit and experiencing unexpected delays. Fed Ex finally delivered the order on March 9.

8. All of the product delivered by Fed Ex was fully bottled, fully labeled, and ready for shipment. If it had been delivered as promised and confirmed on March 3, then we could have shipped it out the following day.

9. In addition, starting in early March we quickly ramped up our orders of hand sanitizer. These orders were made from our sources in India and China as well as here in the United States.

10. On March 4, 2020, we launched a Google Ad campaign for the hand sanitizer. This ad contained the "ships today" language which was an accurate estimate of processing time based on existing inventory, expected shipments of more inventory, and past order experience.

11. This Google Ad campaign only had a minor impact on sales, accounting for approximately 11% of total sales or 6,005 out of 45,106 total orders, which is roughly $300,000 out of $2,700,000 in sales. The Google Ad is the only ad that contained the "ships today" language that the FTC has complained about. This Ad was taken down by March 18, 2020.

12. In addition to the Google Ad, QYK marketed the hand sanitizer through approximately 100 other sources such as bing, yahoo, facebook, gogoduck, etc. None of these other ads had the "ships today" language. In fact, to my knowledge, they made no shipping claims at all. When the source of orders is analyzed, these other ads accounting for 89% of our sales.

13. QYK uses a well-known, third party, online retail platform called Shopify to facilitate its sales and fulfillment. As part of its service, Shopify maintains and provides various reports relating to sales and fulfillment. One of the reports provided by Shopify is the Traffic Referrer Report which shows from which source the sale was generated. Attached as **Ex: C** is the Shopify Traffic Referrer chart showing where the traffic to the Glowyy website came from and what portion of sales came from each source.

14. On March 2, 2020, I was continuously ordering additional hand sanitizer from our sources in China. These orders (all of which were full paid in advance) included:

2,000 bottles on March 2, 2020

3,024 bottles on March 3, 2020

856 bottles on March 4, 2020

9,000 bottles on March 6, 2020

20,000 bottles on March 8, 2020

59,352 bottles on March 9, 2020

576 bottles on March 10, 2020

5856 bottles on March 12, 2020

292,462 bottles on March 20, 2020

201,285 bottles on March 24, 2020

60,000 bottles on March 26, 2020

8,140 bottles on March 30, 2020

879,920 bottles on April 2, 2020

Additional sanitizer was ordered after this time. These are described in the spreadsheet attached as **Ex: D.**

15. These ordered sanitizers from sources in India and China were expected to arrive in 3-4 days based on past experience.

16. The delivery date for the 35,070 bottles from China ordered prior to March 8 was confirmed to be delivered on March 10th but did not actually arrive until March 13, 2020.

17. On March 4, 2020, I discussed with Sainno Care Pharmaceuticals, located in Pennsylvania, the filling of hand sanitizer bottles. I was informed that they could immediately fill and ship up to one million bottles if I would provide them with the empty bottles. On March 5, I shipped overnight our inventory of about 30,000 bottles to Sainno Care as well as arranging for alcohol to be sent to them the next day. I also sent my brother, Balaji Tammabattula, to oversee the production. **Ex. E.**

18. Based on the assurances provided by Sainno Care we began securing empty bottles and alcohol as quick as we could.

19. On March 6, 2020, Balaji inspected the Sainno Care facility and confirmed the order.

20. On March 6, 2020, my brother, Balaji, also confirmed an additional order for 100,000 bottles of hand sanitizer from India. **Ex: F.**

21. On March 7, 2020, we instructed our sources overseas to increase production in India and China and to provide "real time" updates on the delays from Fed Ex.

22. On March 8, 2020, the team in India confirmed that the additional hand sanitizer of 100,000 bottles was ready to ship and was immediately booked to be shipped by air freight. However, on March 13, 2020 this shipment was held up by the India government and has not been released since. **Ex. G.**

23. On March 9, 2020, the Fed Ex shipment that was supposed to arrive on March 3 finally arrived to QYK headquarters.

24. On March 13, 2020, the additional shipment of hand sanitizer from China arrived at LAX and was picked up by Balaji in the middle of the night and delivered to QYK's office.

25. From March 13 onwards we started to receive shipments on a continuous basis.

26. We began to receive a significantly larger number of customer orders for hand sanitizer than we anticipated so we increased our efforts to secure additional product. This was fueled by the Covid-19 pandemic which was completely unforeseen and unprecedented. Sometime in the middle of March 2020 is when I learned that the pandemic was officially announced. Before that time, our understanding was that it was a problem overseas and should not have a great effect on us here in the United States. Of course, we all know that these reports by our own government were wrong and that the pandemic had a devastating effect on our ability to do business. On March 24, 2020, California issued its order for all businesses in California to shut down.

27. When an order is placed on Shopify, Shopify will inform us of the order. We then can print out a mailing label. At the time that the label is printed out by us, Shopify automatically generates an email to the consumer informing him or her that the product is on the way. I had no control over these emails as this is part of the Shopify system.

28. When we printed out the labels, we would sort them according to product size, product source and shipping method. For instance, the Google orders were given priority given the shipping claim provided in the Google ad. The product was then placed in a shipping box and the label attached to it. The boxes were then placed in bins ready for pick-up.

29. We would often have thousands of orders each day that need to be prepared for shipment and generally the bins contained thousands of boxes ready for shipment. In fact, we spoke to the USPS, and the USPS agreed to send daily a two-ton truck multiple times a day in order to try and pick-up the thousands of packages ready for pick up each day. However, sometimes the USPS would fail to show to make a pick-up. When this occurred, we would try to load our vans and take as many packages as possible to the post office in Garden Grove.

30. We are a small company and in early March 2020 we had only 3-5 employees. To try and accommodate the huge demand that was occurring, the employees, as well as myself and my wife, were working 16-18 days to get the product out. We would often go with only 3-4 hours' sleep and we would work 7 days a week. Despite the stay-at-home orders due to the pandemic, these employees agreed to work in order to get out this product, that we all viewed as important to the country, as quickly as humanly possible. By mid-May, all of our product was timely shipped as far a I can remember. Before that, even during the chaotic months of March and April, I believe, the overwhelming majority of the our product was timely shipped.

31. Over the ensuing weeks in March and into April of 2020, I started hiring temporary help to assist in the fulfillment process. This was difficult as most people that I contacted were not interested in working during these early

weeks of the pandemic. However, as we pushed, I was able to hire additional employees. By April 2020 we had 10-12 employees, who like the other employees, were putting in long hours to get the orders out.

32. Given the manual process used of printing out labels, affixing them to the boxes, packing the boxes, and placing them in the bins for pick-up by the USPS, I am sure that some labels or boxes were lost. It is an understatement to say that these were chaotic times. I am confident that the declarations of the customers that the FTC has offered in this motion concerned customers whose labels or boxes may have been misplaced. However, every one of these four customers who wanted to receive their product did receive it. Indeed, some of them not only received their product but also received a refund and never bothered to return the product.

33. I know of no customer that ordered hand sanitizer who did not receive either the product or a refund.

34. As stated above, at times the USPS did not show up to pick up the packages that were ready for pick-up. In addition, although before the pandemic the USPS would scan every package it picked up, they failed to scan the sanitizer packages during this time. We were told that they were too understaffed and too busy to do these "first scans." We do not know how many days after the pick-up occurred that the first scans were done, but a review of the records show that in numerous instances the first scan was not

done until the package was in a different state. The result of this is that the USPS records (particularly the first scan date) is not reliable as the date that the packages were picked up, as the packages may have been picked up days, or even weeks, before the first scan occurred.

35. To manage our customer service, QYK used another online, third-party platform called Gorgias. When a customer inquiry came in, Gorgias created a chat log and an employee would respond.

36. As customer service calls increased, we added additional customer service personnel and eventually hired an independent customer service team to work in conjunction with our in-house customer service department.

37. From March 4 – May 31, 2020, we sold $301,664 of goods through our Google Ad. As stated above, that accounted for only about 11% of our total sales.(**Ex. D)**

38. On March 11, 2020, QYK sent an email through Sendinblue to all customers who had purchased at that time informing them that "we are currently experiencing longer than normal processing time due to the heavy demand for outbreak preparedness…The current processing times for orders placed after March 8th is 3-5 days …If this delay is not acceptable, you may cancel your order for a full refund any time before we ship." A copy of this email is attached as **Ex. H.**

39. QYK had a liberal refund policy and any customer who requested a refund would receive a refund unless the product was in transit, in which case, the consumer would need to confirm that it had been rejected or sent back before a refund issued. If a customer received a refund and received their product, they would be requested to pay for the product or return it.

40. I am unaware of any customer who requested a refund that did not receive one. Indeed, in excess of $266,000 in refunds have been paid.

41. A product is in pre-shipment when is being put into packaging in the warehouse, is packaged and ready to be picked up by carriers, or is picked up by carriers but not yet scanned. A product can be in transit when it is included in a fully boxed, labeled product that has been picked up by USPS or is in a bin waiting to be picked up by USPS. The bins contained hundreds and hundreds of other packages, so it was virtually impossible for us to go through and find a particular package.

42. In August 2020, we decided to change our business model and market almost exclusively as a wholesaler to retail merchants instead of marketing online to consumers. We had been putting major focus on manufacturing products domestically because of the issues we faced with the supply chain and logistic overseas, therefore, we decided to shift our model to B2B entirely in order to sustain the manufacturing volumes.

43. Since August 2020, QYK has made on about $3,000 in sales to consumers via the internet. This is because of our major change from internet consumer sales to wholesale retail business sales.

44. Retail merchants buy on a net 30 or net 60 basis or a COD basis, so they do not pay for any product until they have received the product.

45. The only ads containing shipping time claims were the Google ad campaign, the Twitter post, and the Glowyy.com website claims.

46. The FTC is apparently seeking to ban us from being involved in any way in the Personal Protective Equipment or services business. Given that QYK's only issue was for a few months with MITOR—a law that I was completely unaware of—and given that virtually our entire business is fulfilling product sales to retailers as a wholesaler, such a ban would accomplish little but would destroy our entire business, force us to close down, and put our employees out on the street. This is unfair, especially to a company that has done so much and continues to put tremendous efforts on domestic manufacturing.

47. In its motion, the FTC brings up a wholesale purchase by Mr. Jerry Ji Guo that occurred in late 2020 and early 2021. The FTC makes the assertion that QYK sold defective cannisters to Mr. Guo. This is untrue. First, the order was for 131,480 cannisters. At no time did Mr. Guo ever complain of any defective cannisters. Indeed, Mr. Guo even made additional orders from us

and if he was really upset over defective products, then such repeat purchases logically would not have occurred. Finally, Mr. Guo was convicted and imprisoned in early 2021 for embezzling $5 million and defrauding his clients. A copy of the article from the CBS reporting this is attached as **Ex: I.**

48. In its motion, the FTC asserts that on April 7, 2020 I claimed that QYK was out of raw materials and backordered for about 8 weeks. However, I was not discussing QYK specifically and was instead describing problems in the industry generally.(See INTERVIEW (PX1 Att. T at 382))

49. Additionally, the FTC claims that we never manufactured in-house, which is false since we did down pack in-house by March 29, 2020. They further assert that the manufacturing facilities are not FDA and CGMP certified but this is also not true, the manufacturing facilities are FDA and CGMP certified and utilized a formula provided to them by myself and QYK.

50. If a person purchased from a source that stated "made in USA" or a customer requested a product made in the USA, we would fulfill that product from a domestic, USA source. Indeed, all the product from China and Indian had labels affixed stating they were made in China or the India. We could not have provided a product that was made in the USA unless it was actually made here.

51. We had mostly satisfied customers which is shown by the fact that we had hundreds of repeat customers.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 18th day of March, 2022 at Garden Grove, California.

/s/ Rakesh Tammabattula
Rakesh Tammabattula