

JONATHAN NUECHTERLEIN
General Counsel
HELEN WONG
hwong@ftc.gov
PETER LAMBERTON
plamberton@ftc.gov
Federal Trade Commission
600 Pennsylvania Avenue N.W., CC-10232
Washington, DC 20580
Telephone: 202-326-3779 (Wong)
Telephone: 202-326-3274 (Lamberton)
Facsimile: 202-326-3768

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

**ERIK CHEVALIER, also d/b/a The Forking
Path, Co.,**

Defendant.

CASE NO. _____

COMPLAINT

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendant’s acts or practices in violation of Section 5(a) of

the FTC Act, 15 U.S.C. § 45(a), in connection with Defendant's activities with a crowdfunding campaign, specifically charging consumers for a product which was not delivered.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) and (c)(1), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).

DEFENDANT

6. Defendant, Erik Chevalier ("Chevalier"), also doing business as The Forking Path, Co., initiated a crowdfunding campaign to raise money for a purported board game. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this complaint. Chevalier resided in this district during the time period of the practices at issue in this Complaint, and in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

COMMERCE

7. At all times material to this complaint, Defendant has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT’S BUSINESS PRACTICES

8. Defendant, operating as The Forking Path, Co., launched a crowdfunding campaign to raise money from consumers purportedly to produce a board game. In connection with the crowdfunding campaign, Defendant represented to consumers that they would receive certain reward deliverables, such as a copy of the board game and certain figurines, if the campaign reached its funding goal of \$35,000. Defendant raised nearly four times his original goal for a total of over \$122,000. Instead of producing the game or providing the reward deliverables to consumers, Defendant announced that the game would not be produced and that refunds would be issued. Numerous consumers have complained about the campaign and few, if any, received a refund.

BACKGROUND ON CROWDFUNDING

9. Crowdfunding is the practice of funding a project or venture by raising many small amounts of money from a large number of people, typically via the Internet.

10. Crowdfunding transactions typically involve consumers (sometimes known as “backers”) giving money (known as a “pledge”) to a project “creator” in exchange for a specific “reward.” Typically, the “reward” is the product, service, or content that will be manufactured with the raised funds.

11. There are currently hundreds of platforms for crowdfunding projects. One of the most popular Internet platforms is Kickstarter.com, which has successfully raised over \$1

billion for project creators since its inception. Crowdfunding platforms raised approximately \$2.7 billion in 2012, and approximately \$5.1 billion in 2013.

12. To initiate a Kickstarter “campaign,” the project creator develops a “homepage” that provides information (usually including a video and multiple pictures) about the product, service, or content that will be created with the raised funds. This homepage serves as the launch point for the entire project. In addition to information about the final product, the homepage provides information about the total amount of money needed for the project and the number of days left to fund it. Project creators can choose the length of the fundraising period, but Kickstarter limits the maximum time period to 60 days.

13. Kickstarter is structured for “all or nothing” funding. If the creator does not raise the sufficient funds to meet the original fundraising goal selected within the time period selected, the creator does not receive any money and no backer is charged.

14. Kickstarter’s Terms of Use stated that Kickstarter funds must be used on a project with a “clear goal” that “produces” a deliverable.

15. Every project’s homepage offers multiple “pledge” options. Each tier promises specific deliverables or, in Kickstarter parlance, “rewards.” Usually, the higher the amount pledged, the greater the rewards promised to the consumer.

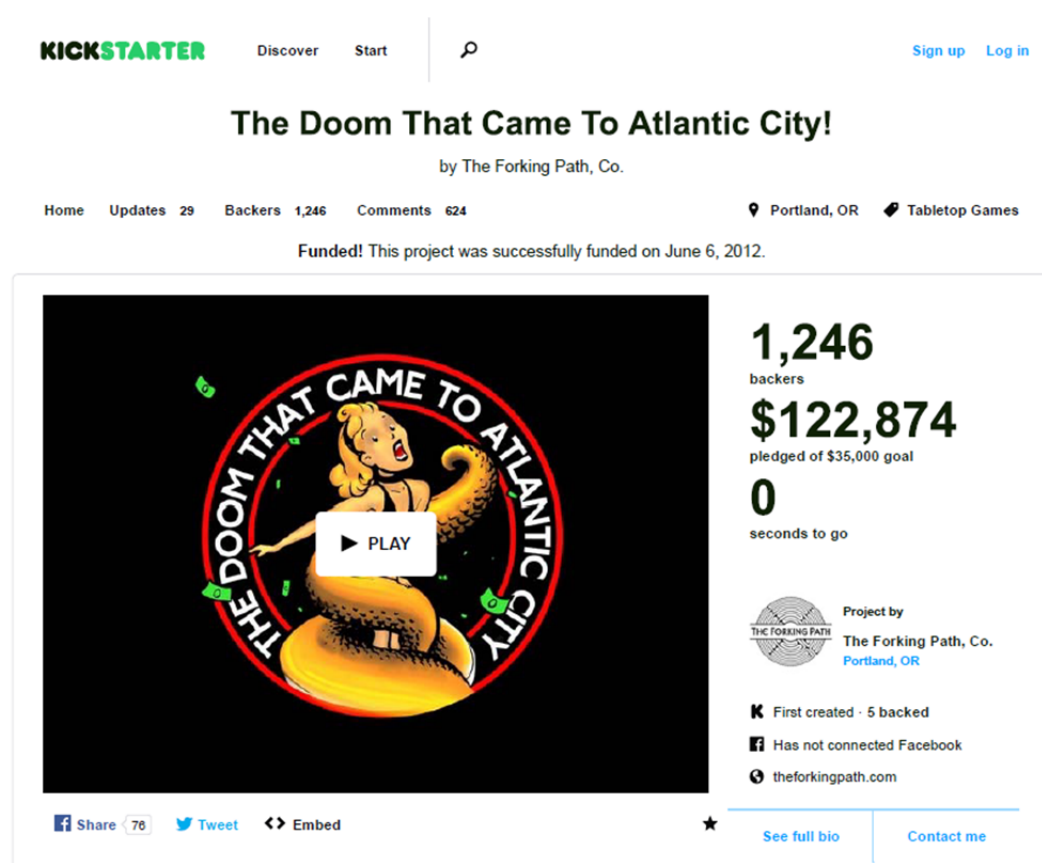
16. To become a project “backer” on Kickstarter, a consumer must first locate that project’s homepage by searching for the project by its name or by browsing the various categories and subcategories within Kickstarter’s main page. A consumer has the option of searching for a project by category (*e.g.*, dance, food, games, etc.) or location (*e.g.*, city or state). Kickstarter’s main homepage also features “staff picks” or “popular” projects that appear

as soon as you arrive at the website. Clicking on the title of the project takes the consumers to its homepage.

17. From the project homepage, consumers can select the amount they wish to pay. Kickstarter will prompt the consumer for his credit card information. The consumer will not be charged until the fundraising period is complete *and* the project reaches its funding goal. Once the project reaches its funding goal, Kickstarter charges the consumer's credit card and transmits the money to the project creator. In the event that a project reaches its funding goal but is unable to provide rewards to its backers, Kickstarter's Terms of Use, during the time period of the practices at issue in this Complaint, stated that the project creator must refund the consumers the amount pledged.

DEFENDANT'S KICKSTARTER CAMPAIGN FOR DOOM

18. On or about May 7, 2012, Defendant launched a Kickstarter campaign purportedly to develop, produce, and distribute a board game entitled "The Doom That Came To Atlantic City!" ("Doom"). The game had been created by two prominent game board artists of the dark fantasy genre. The Kickstarter campaign for Doom initially had a goal of raising \$35,000 within a fundraising period of 30 days to conclude on June 6, 2012 ("Doom campaign"). The homepage provided a video of the artists describing the game as well as a demonstration of people playing a prototype of the game. A partial screenshot of the homepage, as captured on October 7, 2014, appears below, and the complete homepage is shown as Exhibit A.



19. Through the Doom campaign, Defendant represented that money raised would be used primarily for the development, production, completion, and distribution of the board game Doom. For example, as shown in Exhibit A, the project's homepage informed consumers that, by backing the project, they would be "bringing *The Doom That Came to Atlantic City* to retail shops, game tables and frothing cultists around the world."

20. Through the Doom campaign, Defendant also represented that, if it reached its funding goal, consumers would receive specific reward deliverables, such as a copy of the board game and pewter figurines created by a prominent dark fantasy and horror genre artist/sculptor, depending on the amount pledged. For example, as shown in Exhibit A, consumers who pledged \$50 or more would receive "[a] copy of the core game shipped out as soon as we get them from the printer. Figures not included, comes with printed cardboard character markers."

Consumer who pledged \$75 or more would receive “[a] copy of the game with Paul Komoda’s figures in pewter.” Consumers who pledged \$105 or more would receive “[a] copy of the game with Paul Komoda’s figures in pewter. Plus an ADDITIONAL set of all 8 pewter pieces.”

21. By launching a campaign on Kickstarter, Defendant also held himself out as abiding by Kickstarter’s Terms of Use at the time of the Doom campaign, which required project creators to refund the consumer’s money if a reward deliverable was not provided to the consumer.

22. As shown below, the Doom campaign homepage also provided photographs of the board game that backers would receive upon making a pledge and photographs of the figurines that backers who pledged at least \$75 would receive.

How The Old Ones Roll...

While elements of *Doom* are reminiscent of a certain real estate trading game, the gameplay is completely different. Instead of playing a puny mortal building a city or closing gates to save the world, you play one of the Great Old Ones, seeking to tear down the city, open gates, and destroy the world.



Backers who invest at least \$75 receive a set of eight playable **pewter** miniatures sculpted by Paul Komoda in addition to the base game.



23. The Doom campaign ended on June 6, 2012. The project raised \$122,874 – more than four times the original goal – from 1,246 backers. Of the 1,246 backers, 1,067 (or 85%) pledged \$75 or more.

24. The Defendant’s original projected delivery date was November 2012. Between June 2012 and June 2013, Defendant provided sporadic updates via the Kickstarter page, citing a variety of reasons for delays in production, including patent infringement issues and manufacturing issues abroad.

25. Each update indicated that, though delayed, the board game was in production and would be released eventually. In updates issued on May 7, 2013 and June 2, 2013, Defendant stated that production problems had been resolved and that the game was going to be ready for release within a few months.

26. In an update issued on July 23, 2013, Defendant stated that the project was being cancelled because “the intention was to start a board game company with the Kickstarter funds” and that “[a]fter paying to form the company, for the miniature statues, moving back to Portland, getting software licenses and hiring artists to do things like rule book design and art conforming[,] the money was approaching a point of no return.”

27. In reality, Defendant never hired artists for the board game and instead used the consumers’ funds for miscellaneous personal equipment, rent for a personal residence, and licenses for a separate project.

28. More recently, Defendant promised consumers that he would provide an accounting of his expenses, but he has not done so. Consumers continue to file complaints regarding Defendant’s failure to provide the promised products and rewards, or refunds.

29. Eventually, after numerous complaints from the backers and the artistic creators of the game, another game developer stepped in and published the game and gave all backers a copy of the board game but not the other, highly-prized deliverables, such as the promised pewter figurines.

30. To date, Defendant has neither provided the promised reward deliverables nor refunded most of the consumers.

VIOLATIONS OF THE FTC ACT

31. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

32. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

33. Through the means described in Paragraphs 8 to 30, in connection with the promotion of the Doom campaign, Defendant represented, directly or indirectly, expressly or by implication, that Defendant would use the money obtained from consumers through the Doom campaign primarily for the development, production, completion, and distribution of the board game Doom, and that Defendant would provide consumers who paid qualifying pledge amounts with specific reward deliverables, including pewter figurines.

34. In truth and in fact, in numerous instances, Defendant did not use the money obtained from consumers through the Doom campaign primarily for the development, production, completion, and distribution of the board game Doom, and did not provide consumers who paid qualifying pledge amounts with specific reward deliverables, including pewter figurines.

35. Therefore, the representation as set forth in Paragraph 33 was and is false and misleading, and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

36. Consumers have suffered and will continue to suffer substantial injury as a result of Defendant's violations of the FTC Act. In addition, Defendant has been unjustly enriched as a result of his unlawful acts or practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

37. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act by Defendant;

B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act, including but not limited to, rescission or

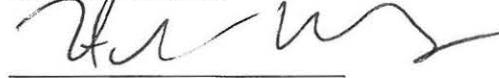
reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

C. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: June 10, 2015

Respectfully submitted,

JONATHAN E. NUECHERTERLEIN
General Counsel



HELEN WONG

hwong@ftc.gov

PETER LAMBERTON

plamberton@ftc.gov

Federal Trade Commission

600 Pennsylvania Ave., N.W., CC-10232

Washington, D.C. 20580

Telephone: 202-326-3779 (Wong)

Telephone: 202-326-3274 (Lamberton)

Facsimile: 202-326-3768

Attorneys for Plaintiff

FEDERAL TRADE COMMISSION