EFFECTIVE AS A FINAL ORDER

DATE: 8.11.20

FILED

JUL 23 2020

KS State Board of Healing Arts

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

In the Matter of	)	
	)	**KSBHA Docket No. 21-HA**00002
Jand Inc./Warby Parker	)	
Kansas Registration No. 75-00026	)	

SUMMARY ORDER

NOW ON THIS 23rd day of July, 2020, this matter comes before Tucker Poling, Acting Executive Director, Kansas State Board of Healing Arts ("Board"), in summary proceedings pursuant to K.S.A 77-537. Pursuant to K.S.A 77-537, this Summary Order shall become effective as a Final Order, without further notice, if no written request for a hearing is made within fifteen (15) days of service.

Upon review of the agency record and being duly advised in the premises, the following findings of fact, conclusions of law, and order are made for and on behalf of the Board:

Findings of Fact

1. Jand Inc./Warby Parker ("Registrant") is an entity based in New York, New York which dispenses contact lenses in Kansas. Registrant was originally issued registration number 75-00026 to distribute contact lenses in the state of Kansas on or about June 26, 2018. Registrant's current registration designation is Active. Registrant most recently renewed such registration on or about May 7, 2020.

2. The last known mailing address for Registrant is: 233 Spring St 6th Floor E, New York, NY 10013.

3. On or about June 27, 2019, Registrant failed to meet the deadline for registration with the Board for their 2019 renewal.

4. On or around September 17, 2019, the Board received an Application for Registration to Dispense Contact Lenses by Mail and $150 registration renewal fee check from Registrant.

5. On or around October 4, 2019, the Board approved the Application for Registration.

6. Due to the discovery of Registrant's continued dispensing of contact lenses to Kansas residents without proper registration, CONFIDENTIAL was initiated.

7. On or around October 10, 2019, a Board Investigator submitted a request for written response requesting a comprehensive list of all Kansas resident patients for whom Registrant distributed contacts to between June 27, 2019, and October 3, 2019.

8. On or around November 22, 2019, Jill Savage, Managing Counsel for Registrant, provided a written response to the Board Investigator's request stating that between June 27, 2019, and October 3, 2019, Registrant distributed contacts to approximately twenty-three (23) Kansas residents. During this time period, Registrant did not have an Active registration to distribute contact lenses to residents in Kansas.

Applicable Law

9. K.S.A. 65-4967(a) of the Patient's Contact Lens Prescription Release Act defines an entity dispensing contact lenses as:

> ...a person or entity not licensed under K.S.A. 65-1505, and amendments thereto, or licensed to practice medicine and surgery in Kansas who mails or delivers, using commercial courier or overnight or other delivery services, contact lenses to patients in Kansas pursuant to a contact lens prescription which such person or entity did not determine.

10. K.S.A. 65-4967(b) of the Patient's Contact Lens Prescription Release Act further states:

> No person dispensing contact lenses as defined under subsection (a) may dispense contact lenses to Kansas residents unless such person meets the requirements of this section, is registered under this section and pays the annual registration fee set by the state board of

healing arts.

11. K.S.A. 65-4968(b)(1) states:

> Upon a finding of any violation of the patient's contact lens prescription release act, in lieu of or in addition to any other action, ... the state board of healing arts for persons subject to the provisions of K.S.A. 65-4967, and amendments thereto, registered under K.S.A. 65-4967, and amendments thereto, or licensed by the state board of healing arts to practice medicine and surgery may assess a civil fine not in excess of $10,000 against such person dispensing contact lenses under this act.

Conclusions of Law

12. The Board has jurisdiction over Registrant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

13. The Board finds Registrant is subject to the provisions of K.S.A. 65-4967(a) in that it is an entity dispensing contact lenses.

14. The Board finds Registrant violated K.S.A. 65-4967(b) in that Registrant dispensed contact lenses to Kansas residents without meeting the requirements of the section, because Registrant had continued to ship contact lenses to approximately twenty-three (23) Kansas residents between June 27, 2019, and October 3, 2019, the time period in which Registrant's registration had lapsed.

15. Based on the facts and circumstances set forth herein, it appears that the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of law and the protection of the public interest does not require the Board to give notice and opportunity to participate to persons or entities other than Registrant, Jand Inc./Warby Parker.

IT IS, THEREFORE, ORDERED that Registrant is assessed a **CIVIL FINE** in the amount of **seven thousand five-hundred dollars ($7,500)** for Registrant's violations of the

Patient's Contact Lens Prescription Release Act. Such fine shall be paid to the "Kansas State Board of Healing Arts", in full, on or before **September 1, 2020**. All monetary payments, which shall be in the form of check or money order, relating to this Summary Order shall be mailed to the Board certified and addressed to:

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level – Suite A
Topeka, Kansas 66612

PLEASE TAKE NOTICE that upon becoming effective as a Final Order, this document shall be deemed a public record and be reported to any reporting entities authorized to receive such disclosure.

Dated this 23rd **day of** July**, 2020.**

KANSAS STATE BOARD OF HEALING ARTS

Tucker Poling
Acting Executive Director

FINAL ORDER NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service. A party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court as authorized by K.S.A. 77-601, *et seq*. Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within 30 days following service of the Final Order. A copy of any petition for judicial review must be served upon Tucker L. Poling, Interim Executive Director, Kansas Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of the foregoing **FINAL ORDER** was served this 11th day of August 2020 by depositing the same in the United States Mail, first-class, postage prepaid, and addressed to:

Jand Inc./Warby Parker
233 Spring St. 6th Floor E
New York, NY 10013
tax@warbyparker.com
Registrant

Jill Savage
233 Spring St. 6th Floor E
New York, NY 10013
Jill.savage@warbyparker.com
Managing Counsel for Registrant

And a copy was hand-delivered to:

Tammie L. Mundil, Deputy Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612
Tammie.l.mundil@ks.gov

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Office of the General Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And the original was filed with the office of the Executive Director.

Ali R for
Jennifer Cook, Paralegal