

FILED

IN THE FIRST CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

2016 JUN -9 AM 9:09

STATE OF TENNESSEE, *ex rel.* )  
HERBERT H. SLATERY III, )  
Attorney General and Reporter, )

Plaintiff, )

v. )

No. 16C306

EDWARD J. POLCHLOPEK, III, )  
*a/k/a* ED NASH, individually and *d/b/a* )  
ALTIUS MANAGEMENT, LLC, )

Defendant. )

RICHARD R. ROOKER, CLERK

*R. Rooker*  
D.C.

AGREED FINAL JUDGMENT

1. The State of Tennessee, by and through Herbert H. Slatery III, the Attorney General and Reporter, at the request of Bill Giannini, the Acting Director of the Division of Consumer Affairs of the Department of Commerce and Insurance, accepts subject to Court approval, this Agreed Final Judgment given by Edward J. Polchlopek, III, individually and doing business as Altius Management, LLC.

WITNESSETH:

2. Some of the facts and circumstances surrounding the execution of this Judgment are as follows:

A. The Attorney General conducted an investigation of Defendant. Defendant's business practices are more fully described in the State of Tennessee's Complaint. As a result of the investigation, the Attorney General has determined that certain acts and practices of Defendant violated the Tennessee Consumer Protection Act

of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*

- B. Defendant expressly denies any wrongdoing associated with this litigation or the facts alleged in the State of Tennessee's Complaint.
- C. Therefore, pursuant to Tenn. Code Ann. § 47-18-108, Defendant desires to give this Judgment, and the Attorney General desires to accept it, in order to avoid the expense associated with litigation.

### DEFINITIONS

3. As used in this Judgment, the following words or terms shall have the following meanings:

- A. **"Agreed Final Judgment"** or **"Judgment"** shall mean and refer to this document entitled Agreed Final Judgment in the matter of *State of Tennessee ex rel. Herbert H. Slatery III, Attorney General and Reporter, v. Edward J. Polchlopek III, a/k/a Ed Nash, both individually and d/b/a Altius Management, LLC.*
- B. **"Asylum Playing Cards"** shall mean the playing cards, dice, poker chips, and other related products, featuring the "Asylum" series of artwork from the Serbian artist Milan Colovic, which were the subject of a crowdfunding campaign, organized by Defendant, and featured on Kickstarter.com from September through October 2012.
- C. **"Attorney General"** shall mean the Office of the Tennessee Attorney General and Reporter, Herbert H. Slatery III.
- D. **"Clear and Conspicuous"** shall mean a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, physical or temporal location, or volume (if applicable), compared to other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement is necessary to prevent other information from being misleading, deceptive or unfair, then the statement must be presented in close proximity to the other information, in a manner that is readily noticeable, readable and understandable, and it must not be obscured in any manner. To be "clear and conspicuous," warnings, disclosures, limitations or exceptions must be set out in close temporal or physical conjunction with the benefits or goods described or referenced, or with appropriate captions, of such prominence that warnings, disclosures, limitations or exceptions, are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled

with the context of the statement so as to be confusing or misleading or contradictory. The statement shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the statement shall be used in any communication.

- E. **“Crowdfunding”** shall mean the practice of raising funds from two or more people over the internet towards a common service, project, or product. The crowdfunding model is fueled by three types of actors: the project initiator who proposes the idea and/or project to be funded; individuals or groups who support the idea; and a moderating organization (*i.e.* Kickstarter.com) that brings the parties together to launch the idea.
- F. **“Defendant”** shall mean and refer to **Edward J. Polchlopek, III, a/k/a Ed Nash**, both individually and doing business as **Altius Management, LLC** and/or any and all general partners, parent company(ies), affiliates, subdivisions, future or past purchasers, merged parties, inheritors or other successors in interest, and all officers, directors, owners, employees, sales staff, managers, partners, parents, subsidiaries, affiliates, successors, assigns, attorneys, agents and representatives acting on behalf of **Edward J. Polchlopek, III**.
- G. **“Division”** or **“Division of Consumer Affairs”** shall mean the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- H. **“Tennessee Consumer Protection Act”** or **“TCPA”** shall mean the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*

#### JURISDICTION AND VENUE

4. Jurisdiction of this Court over the subject matter and over the person of the Defendant for the purposes of entering into and enforcing this Judgment is admitted. Jurisdiction is retained by this Court for the purpose of enabling the Attorney General to apply for such further orders and directions as may be necessary or appropriate for the construction, modification, or execution of this Judgment, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof.

5. Venue as to all matters between the Parties related to the construction, modification, execution, or enforcement of this Judgment is vested solely in this Court.

**PERMANENT INJUNCTION AND REHABILITATION**

6. Accordingly, it is hereby agreed that upon approval of this Judgment by the Court, pursuant to Tenn. Code Ann. § 47-18-108(a)(1),(4) and (5), Defendant shall be permanently and forever enjoined, restrained and bound from directly and indirectly engaging in the practices set forth herein, and further, permanently required to directly or indirectly satisfy the affirmative requirements set forth herein:

- A. Defendant shall be prohibited from engaging in any misleading, unfair, or deceptive acts or practices in the conduct of business. Defendant shall fully comply with all provisions of the TCPA, including but not limited to § 47-18-104(a) and (b)(27), which prohibit unfair and deceptive acts and practices.
- B. Defendant shall be prohibited from advertising goods or services with intent not to sell them as advertised, in violation of Tenn. Code Ann. § 47-18-104(b)(9).
- C. Defendant shall be prohibited from using any advertisement containing an offer to sell goods or services when the offer is not a bona fide offer to sell the advertised goods or services, in violation of Tenn. Code Ann. § 47-18-104(b)(22).
- D. Defendant shall be required to place all funds raised by a successful crowdfunding campaign or similar offering in a separate interest bearing escrow account and adhere to strict accounting standards. Any time prior to Defendant's full achievement of the respective campaign's stated objectives, Defendant shall be prohibited from spending any monies from the separate interest bearing escrow account on anything not directly related to the particular campaign.
- E. Defendant shall clearly and conspicuously disclose in writing prior to purchase an approximate delivery time frame for each order of goods or services to be delivered to the consumer.
- F. Defendant shall be prohibited from stating, implying or causing to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, the Consumer Protection and Advocate Division, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Defendant.

**CONSUMER RESTITUTION**

7. Defendant represents and warrants that 810 consumers paid money totaling \$25,146 to Defendant in exchange for Asylum Playing Cards.

8. As of the date of entry, Defendant represents and warrants that he has attempted to deliver each of the 810 Asylum Playing Card orders to the most current address of record associated with each sales order.

9. Defendant represents and warrants that approximately 795 of the Asylum Playing Cards orders have been successfully delivered to the consumer's satisfaction, and that approximately 15 of the orders were returned as undeliverable.

10. To the extent that any consumers have not received their Asylum Playing Cards, Defendant represents and warrants that he has and will continue to make a good faith effort to fulfill and ship the orders.

11. Defendant has provided certain documents and spreadsheets to the Attorney General detailing the fulfillment and shipment of Asylum Playing Cards to consumers. The State expressly relies upon and conditions the acceptance of this Judgment upon the truthfulness and accuracy of this information.

**CIVIL PENALTIES**

12. Pursuant to Tenn. Code Ann. § 47-18-108(b)(3), \$50,000.00 is awarded to the State of Tennessee against Defendant as a reasonable and appropriate remedial civil penalty. Significantly higher civil penalties would have been asserted by the Attorney General had further litigation been pursued.

13. These remedial civil penalties shall be suspended and held in abeyance as set forth

in (A) and (B) below:

- A. The State of Tennessee's agreement to suspend the award of civil penalties is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's sworn financial statement and restitution information submitted to the State; and
- B. The State of Tennessee's agreement to suspend the award of civil penalties is further expressly premised upon Defendant's full compliance with the permanent injunctive provisions and restitution obligations detailed herein.

**ATTORNEYS' FEES AND COSTS**

14. Pursuant to Tenn. Code Ann. § 47-18-108(a)(5) and (b)(4), \$10,000.00 is awarded to the State of Tennessee, Attorney General and against the Defendant as a reasonable and appropriate reimbursement of its attorneys' fees and costs of investigation.

15. The reimbursement of the State's attorneys' fees and costs of investigation shall be suspended and held in abeyance as set forth in (A) and (B) below.

- A. The State of Tennessee's agreement to suspend the award of attorneys' fees and costs of investigation is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's sworn financial statement and restitution information submitted to the State; and
- B. The State of Tennessee's agreement to suspend the award of attorneys' fees and costs of investigation is further expressly premised upon Defendant's full compliance with the permanent injunctive provisions and restitution obligations detailed herein.

**COMPLIANCE**

16. Defendant shall provide books, records, and documents to the State of Tennessee at any time upon request and to provide testimony and other information under oath relating to compliance with this Judgment. Defendant shall make any requested information available within one week of the request at the Office of the Attorney General in Nashville, Tennessee or at any other location within the State of Tennessee that is mutually agreeable, in writing, to the Defendant

and the Attorney General. This section shall in no way limit the State of Tennessee's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

**PENALTIES FOR FAILURE TO COMPLY**

17. Upon the execution and filing of this Judgment, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the TCPA.

18. Pursuant to Tenn. Code Ann. § 47-18-108(c), any knowing violation of the terms of this Judgment shall be punishable by civil penalties of not more than \$2,000 for each violation, in addition to any other appropriate penalties, remedies and sanctions, including but not limited to, contempt sanctions and the imposition of attorneys' fees and civil penalties.

**REPRESENTATIONS AND WARRANTIES**

19. Defendant represents and warrants that the execution and delivery of this Judgment is his free and voluntary act, that the terms of this Judgment are fair and reasonable and the result of good faith negotiations.

20. Defendant represents and warrants that no offers, agreements, or inducements of any nature whatsoever have been made to the Defendant by the State of Tennessee, its attorney, or any employee of the Attorney General or the Division, to procure this Judgment.

21. Defendant represents that signatories to this Judgment have authority to act for and bind the Defendant.

22. Defendant represents and warrants that Edward J. Polchlopek, III is the true legal name of the individual entering into this Judgment.

23. Defendant Edward J. Polchlopek, III individually represents and warrants that he is the proper party to this Judgment.

24. Defendant represents and warrants that 810 consumers paid a total of \$25,146 to Defendant in connection with the Asylum Playing Cards Kickstarter campaign.

25. Defendant represents and warrants that the financial forms provided to the Attorney General are true, accurate and complete, and do not withhold any information.

26. Defendant represents and warrants that he has not created and failed to timely perform or fulfill any other crowdfunding campaigns.

27. Defendant understands that the State of Tennessee expressly relies upon all of the representations and warranties set forth in this Judgment.

28. By agreeing to this Judgment, Defendant reaffirms and attests to the truthfulness, accuracy, and completeness of all of the information provided by Defendant to the Attorney General prior to entry of this Judgment, which information was relied upon by the State of Tennessee in negotiating and agreeing to the terms and conditions of this Judgment.

29. Should the Attorney General find that Defendant failed to disclose material information, or made any other material misrepresentation or omission relevant to the resolution of the Attorney General's investigation, the State of Tennessee retains the right to fully collect the suspended award of civil penalties and attorneys' fees detailed herein.

#### **GENERAL PROVISIONS**

30. The acceptance of this Judgment by the Attorney General shall not be deemed approval by the Attorney General of any of Defendant's advertising or business practices. Further, neither Defendant nor anyone acting on his behalf shall state or imply or cause to be stated or implied that the State of Tennessee, the Attorney General, the Department of Commerce and Insurance, the Division of Consumer Affairs or any other governmental unit of the State of

Tennessee has approved, sanctioned or authorized any practice, act, advertisement or conduct of Defendant.

31. Nothing in this Judgment constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

32. No waiver, modification, or amendment of the terms of this Judgment shall be valid or binding unless made in writing, signed by the party to be charged, and approved by this Honorable Court, and then only to the extent set forth in such written waiver, modification or amendment.

33. Any failure by any party to this Judgment to insist upon the strict performance by any other party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgment and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys' fees to the State of Tennessee.

34. If any clause, provision or section of this Judgment shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Judgment and this Judgment shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

35. Nothing in this Judgment shall be construed to affect, limit or alter any private right of action that any consumer, person, or any local, state, federal or other governmental entity, may

hold against Defendant.

36. Time shall be of the essence with respect to each provision of this Judgment that requires action to be taken by the Defendant within a stated time period or upon a specified date.

37. Defendant will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Judgment or for any other purpose which would otherwise circumvent the spirit or purposes of this Judgment.

38. Defendant further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Judgment.

39. Defendant waives and relinquishes any arguments, rights or defenses regarding the fact that this Judgment includes an injunction but no findings of fact or conclusions of law.

**NOTIFICATIONS**

40. Any notices required by this Judgment shall be sent certified United States mail - return receipt requested to the following addresses:

<p><b>For the Tennessee Attorney General:</b>  Deputy Attorney General  Office of the Attorney General  Consumer Protection and Advocate Division  Post Office Box 20207  Nashville, Tennessee 37202  Telephone: (615) 741-1671  Facsimile: (615) 532-2910</p>	<p><b>For Respondents:</b>  Edward J. Polchlopek, III  5543 Edmonson Pike, #107  Nashville, TN 37211  Telephone: (615) 948-9199</p>
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41. Defendant shall be required to provide the Attorney General with any changes to the above contact information ten days prior to any change becoming effective.

**PAYMENT OF COURT COSTS**

42. All court costs associated with the filing this Judgment shall be borne by Defendant.

No costs shall be taxed against the State of Tennessee as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State of Tennessee.

**ENTIRE AGREEMENT**

43. This Judgment sets forth the entire agreement between the Parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Judgment which are not fully expressed herein or attached hereto.

**FOR THE STATE OF TENNESSEE, ATTORNEY GENERAL:**



**HERBERT H. SLATERY III**  
Attorney General and Reporter  
B.P.R. No. 009077



**NATE CASEY**  
Assistant Attorney General  
B.P.R. No. 031060  
**BRANT HARRELL**  
Senior Counsel  
B.P.R. No. 024470  
Office of the Tennessee Attorney General  
Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, Tennessee 37202-0207  
Phone: (615) 741-1671  
Facsimile: (615) 532-2910

**DEFENDANT EDWARD POLCHLOPEK, III SIGNATURE AND  
ACKNOWLEDGMENT**

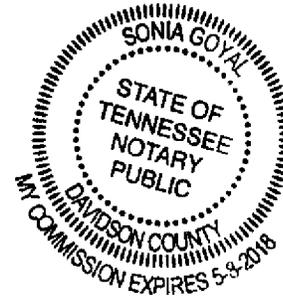
I, Edward Polchlopek, III, being first duly sworn on oath, depose and say that I have read and understand this Agreed Final Judgment and each of its terms. I admit to the jurisdiction of the Court in this matter and consent to the entry of this Judgment. I agree to each and every term contained herein.



Name: Edward Polchlopek, III  
Title: *PRESIDENT*  
Social Security #: [REDACTED]  
Name of Business: *ALTIUS MANAGEMENT*  
Address: *5543 EDMONDSON PIKE, #107 NASHVILLE TN 37211*  
Phone: *615-948-9199*  
Facsimile: *N/A*  
Email: *ed@altiusmanagement.com*

SUBSCRIBED AND SWORN to before  
me this 27 day of APRIL, 2016.

Notary Public  
My Commission Expires:



IT IS SO ORDERED.

ENTERED this 9<sup>th</sup> day of JUNE, 2016.

  
\_\_\_\_\_  
JUDGE HAMILTON GAYDEN