

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

  
Rebecca Keaton, Clerk of Superior Court  
Cobb County, Georgia

COBB COUNTY, GEORGIA, )  
)  
Plaintiff, )  
)  
v. ) CIVIL ACTION  
)  
) FILE NO.  
MICHAEL SCOTT MORRISON; )  
ALFRED JAY NAULT; )  
CHRISTOPHER JON COLEMAN; and )  
1290 CLOTHING CO LLC, d/b/a Tokyo )  
Valentino; )  
)  
Defendants. )  
)  
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**COMPLAINT**

Plaintiff Cobb County, Georgia submits its complaint for injunctive relief against Defendants Michael Scott Morrison, Alfred Jay Nault, Christopher Jon Coleman, and 1290 Clothing Co LLC d/b/a Tokyo Valentino (collectively, “Tokyo”). The County seeks interlocutory and permanent injunctive relief prohibiting Tokyo from engaging in business without a business registration certificate / occupation tax certificate (“OTC”) for Tokyo Valentino, in violation of Cobb County Code (“Code”) Section 78-46, and from operating Tokyo Valentino contrary to Cobb County’s sexually oriented business regulations.

**Parties**

1. Plaintiff Cobb County, Georgia, is a political subdivision of the State of Georgia, and it has the capacity to sue and be sued.
2. Defendant 1290 Clothing Co LLC d/b/a Tokyo Valentino is a limited liability

company organized under the laws of the State of Georgia. 1290 Clothing Co LLC operates a commercial establishment in the building at 1290 Johnson Ferry Road in Cobb County, Georgia, where it regularly makes thousands of sexual devices available for sale or rental.

3. Defendant Michael Scott Morrison is the organizer of 1290 Clothing Co LLC, and he manages, supervises, and controls the Tokyo Valentino store at 1290 Johnson Ferry Road.
4. Defendant Alfred Jay Nault, upon information and belief, is an owner and operator of Tokyo Valentino stores, including the Tokyo Valentino store at 1290 Johnson Ferry Road.
5. Defendant Christopher Jon Coleman is general manager of Tokyo Valentino stores.

### **Jurisdiction and Venue**

6. This is an action for an injunction under O.C.G.A. § 9-5-1.
7. Jurisdiction is conferred in part by Ga. Const. 1983, Art. VI, § 1, ¶ IV. The Court has the power to issue injunctive relief under O.C.G.A. § 9-5-1 *et seq.* and O.C.G.A. § 9-11-65.
8. Jurisdiction and venue are proper in this Court, as the acts complained of have occurred and are occurring in Cobb County.

### **Facts**

#### **The General Business License Ordinance**

9. Chapter 78 of the Code regulates businesses, and Articles I and II of Chapter 78 require all businesses to obtain a business registration certificate, also

known as an occupation tax certificate (“OTC”). As with many cities and counties across Georgia, an OTC functions as a general business license in Cobb County.

10. Code Section 78-1 defines “engaged in business” as follows:

*Engaged in business* is when a person or entity is carrying on a trade, occupation, profession, or other commercial enterprise for gain or profit, direct or indirectly, including, but not limited to, selling real or personal property or services, leasing or renting real or personal property, or sales or services of the character as made by a wholesaler or retailer; or who is involved in any of the functions performed as a manufacturer; or who is involved in the development or construction of real property.

11. Code Section 78-33 requires each business to be classified according to its dominant line of business, e.g., the series of goods which produces the largest proportion of the business’s gross revenues:

Every business subject to the provisions of this article shall be classified according to the major group classification of the Standard Industrial Classification Manual, as amended, and published under the auspices of the U.S. Office of Management and Budget. Classification of each business subject to this article shall be based upon the principal activity or dominant line of such business, i.e., that series of goods or services which produces the largest proportion of the business’s gross revenues from all sources.

12. Code Section 78-46(a) states:

It shall be unlawful for any person to engage in any business provided for in this chapter without first applying for and obtaining a business registration certificate as required by this chapter . . . .

13. Cobb County processes more than 10,000 business license applications each year, and depends on applicants to be honest, accurate, and complete in the information they submit to the County.

14. Code Section 78-2 states that “[a]ny person violating any of the provisions of

this chapter shall be punished as provided in section 1-10.”

15. Code Section 1-10(a) defines violations of the Code to include:

- (1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance;
- (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance; or
- (3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

16. Code Section 1-10(c) provides that “[e]xcept as otherwise provided, a person convicted of a violation of this Code shall be punished by a fine and sentence of imprisonment and/or probation not to exceed the maximum punishment as set out by Georgia law under O.C.G.A. § 15-10-60.”

17. Code Section 1-10(e) states that “[v]iolations of this Code that are continuous with respect to time are a nuisance and may be abated by injunctive or other equitable relief. The imposition of a fine or penalty does not prevent equitable relief.”

### **The Sexually Oriented Business Code**

18. Cobb County regulates sexually oriented businesses through Chapter 78, Article III, Division 8 of the Code.

19. Code Section 78-321 sets forth, among others, the following definitions:

*Operate* means to cause to function or to put or keep in a state of doing business.

*Sexual device* means any three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, nipple, or for sadomasochistic use or abuse of oneself or others and shall include devices

commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

*Sexual device shop* means a commercial establishment:

- (a) where more than 100 sexual devices are regularly made available for sale or rental; or
- (b) where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases for sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, positioning sexual devices near cash registers or similar points of sale, hosting events focused on sexual devices, or holding itself out to the public as a place that focuses on sexual devices).

This definition shall not be construed to include any establishment located within an enclosed regional shopping mall, an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises, or an establishment primarily dedicated to providing durable medical equipment.

*Sexually oriented business* means an adult arcade, an adult bookstore, an adult cabaret, an adult motion picture theater, or a sexual device shop.

20. Code Section 78-322(a) states:

Sexually Oriented Business License. It shall be unlawful for any person to operate a sexually oriented business in the County without a valid sexually oriented business license.

21. Code Section 78-331 states:

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

22. Code Section 78-338 states, in relevant part:

- (a) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in unincorporated Cobb County that is:
  - (1) Within 750 feet of a residence or residential zoning district;
  - (2) Within 1,500 feet of a church, school, governmentally owned or

- operated building, library, civic center, public park, hospital<sup>[1]</sup>, community club, or prison;
- (3) Within 1,000 feet of another sexually oriented business; or
  - (4) Within 500 feet of an establishment licensed to sell alcoholic beverages for consumption on the premises or to sell alcoholic beverages as a package store.
- (b) For the purpose of this section, measurements shall be made in a straight line from the closest part of any structure occupied by the sexually oriented business to the closest property line of the zoned property and uses identified in subsection (a), above. Where a use identified in subsection (a) is located in a multi-tenant development, the distance shall be measured to the closest part of the tenant space occupied by that use rather than the property line of the entire development, so as to maximize the number of locations available to sexually oriented businesses.

### **1290 Clothing Co LLC's Application, Opening, and Subsequent Operation**

23. Defendants Morrison, Nault, Coleman, and 1290 Clothing Co LLC are engaged in the business of operating a retail store for gain or profit at 1290 Johnson Ferry Road in unincorporated Cobb County.
24. 1290 Clothing Co LLC was organized by Michael Scott Morrison as a Georgia domestic limited liability company effective January 21, 2020.
25. The Articles of Organization for 1290 Clothing Co LLC refer to Michael Scott Morrison as organizer and as manager of the company.
26. In early March 2020, 1290 Clothing Co LLC applied for a Cobb County business license to operate at 1290 Johnson Ferry Road, doing business as 1290 Clothing.
27. The application listed Tomika Hugley as "President/Managing Member" of 1290 Clothing Co LLC. But Tomika Hugley was not, and has never been, the

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<sup>1</sup> "*Hospital* means a building or portion thereof designed and used for therapeutic treatment of bed patients who are physically or mentally ill." Cobb County Code Section 78-321.

President or Managing Member of 1290 Clothing Co LLC.

28. The application stated the following for the “Full Detailed Description of Business”: “Retail – Clothing, undergarments, shoes, Games, cards & other misc.” But the application made no mention of Tokyo’s thousands of sexual devices, sexual lotions & lubes, and smoking-related products, which constitute 70% of the store’s inventory.
29. The payment card used to pay the amount due with 1290 Clothing Co LLC’s business license application belonged to Christopher J. Coleman.
30. The Cobb County Business License Division issued a 2020 occupation tax certificate to 1290 Clothing Co LLC d/b/a 1290 Clothing on or about March 9, 2020.
31. Defendant Morrison made misrepresentations of fact to Tomika Hugley, who was the initial store manager for 1290 Clothing Co LLC, concerning the kind of store Morrison intended to open and operate at 1290 Johnson Ferry Road.
32. Although Tokyo obtained a business license to operate 1290 Clothing as a retail store selling clothing, undergarments, shoes, games, cards, etc., Defendants actually made preparations to open the store as a Tokyo Valentino that would specialize in sexual “toys” (sexual devices), sexual lubricants and lotions, smoke products, lingerie, sexual leather gear, condoms, and other adult items.
33. On or about May 25, 2020, Defendant Morrison told East Cobb News that he was *not* opening a new store in East Cobb, and Morrison denied being involved with 1290 Clothing Co.

34. On or about May 26, 2020, Defendant Morrison told the Marietta Daily Journal that he had nothing to do with 1290 Clothing and that it was “not even close to possible” that he was listed as an organizer of 1290 Clothing.
35. In May 2020, Defendant Morrison misrepresented to the Marietta Daily Journal that he did not know the location of the store at 1290 Johnson Ferry Road, despite the fact that months earlier he organized an LLC with a name that included the exact street number of that location.
36. Defendant Morrison subsequently admitted to the Marietta Daily Journal that his company was, in fact, opening a store at 1290 Johnson Ferry Road, but he misrepresented it as an “electric dance music and festival clothing store.”
37. On or before May 28, 2020, Morrison contradicted his earlier statements, telling the Atlanta Journal Constitution that the store planned for 1290 Johnson Ferry Road “might be a clothing store, it might be a Tokyo store, we just don’t know.”
38. On or about June 8, 2020, 1290 Clothing Co was issued a building and fire certificate of occupancy for the building at 1290 Johnson Ferry Road.
39. On or about June 9, 2020, Defendants opened a store at 1290 Johnson Ferry Road called “Tokyo Valentino.”
40. Defendants never operated a store at 1290 Johnson Ferry Road doing business as “1290 Clothing.”
41. On June 10, 2020—one day after the store opened—Attorney Daniel R. Aaronson sent a letter to Cobb County Community Development Director



Jessica Guinn on behalf of his “client, 1290 Clothing Co., DBA Tokyo Valentino,” stating the store would sell DVDs and magazines with sexually-explicit nudity, and that it would stock, display, and advertise vibrators and other devices commonly used to stimulate human genitalia (sexual devices).

42. On July 28, 2020, Defendant Alfred Jay Nault sent an email, purportedly on behalf of 1290 Clothing Co LLC to the Cobb County Business License Division, revealing that “the responsible party representing 1290 Clothing Co. LLC” is “Michael Scott Morrison.”
43. On July 31, 2020, Tomika Hugley sent an email to the Business License Division stating, “I would like to cancel the business license for 1290 Clothing - #OCC027788 effective immediately.”
44. On August 10, 2020, Cobb County Business License Division Manager Ellisia Webb sent a letter to 1290 Clothing Co LLC asking, pursuant to Section 78-42 of the Code, for records and documents concerning the store’s sales tax reports, product sales, inventory, and product categories.
45. On August 11, 2020, Tomika Hugley emailed Webb and stated, “I requested to have the business license closed due to me no longer being affiliated with the company.”
46. On August 18, 2020, Hugley emailed Webb and stated:

I am requesting that the business license for 1290 Clothing be canceled. I have authority to do so because it is in my name. I was not involved in the ordering of inventory or products. I do not have access to financial records or reports. I have pleaded for my previous partners to make changes and they have refused to do so. I am no longer a managing member and want to cut all ties. The store that currently exists should apply for a proper

business license. Please let me know when this can be done and feel free to call me if you have any questions. I appreciate your help in this matter.

47. Tokyo's attorney provided inventory and sales information to the Business License Division on August 28, 2020.
48. According to inventory information that Tokyo provided to the County in late August 2020, the top three categories of inventory at its store are "lotions & lubes," "toys," and "smoke products." These three categories constitute 70% of the store's inventory and account for 78% of the cost of the store's inventory.
49. Tokyo's August 2020 inventory information revealed that Tokyo carries more than 10,000 sexual "toys," i.e., sexual devices, more than 12,000 lubricants and lotions, and more than 9,000 smoking products.
50. The description of 1290 Clothing Co LLC's business in its business license application did not mention toys, lotions and lubes, or smoke products.
51. On September 8, 2020, Business License Division Manager Webb suspended the occupation tax certificate for 1290 Clothing Co LLC.
52. The three-page, single-spaced suspension letter, which detailed several reasons under the Code for the suspension, was emailed to Tokyo's attorney at 9:05 a.m. and was posted on the door of Tokyo's store at 9:12 a.m. that morning.
53. Later on September 8, 2020, at a regular meeting, the Cobb County Board of Commissioners amended Chapter 134 and Chapter 78, Article III, Division 8 of the Code, adopting updated sexually oriented business regulations.
54. On October 27, 2020, the Cobb County Board of Commissioners held an evidentiary hearing to consider whether to affirm the decision of the Business

License Division Manager to suspend 1290 Clothing Co LLC's occupation tax certificate. After midnight, on October 28, 2020, the board voted unanimously to affirm the decision of the Business License Division Manager, thereby, permanently revoking the certificate.

55. Defendants' store, Tokyo Valentino, is a sexual device shop as defined in Code Section 78-321.
56. Defendants operate a "sexually oriented business"—specifically a "sexual device shop"—as those terms are defined in Code Section 78-321 because Tokyo Valentino regularly makes more than 100 sexual devices available for sale or rental at 1290 Johnson Ferry Road. Indeed, Tokyo Valentino regularly makes more than 1,000 sexual devices available for sale or rental at that location.
57. The sexual devices that Tokyo Valentino carries include dildos, vibrators, penis pumps, cock rings, anal beads, anal plugs, nipple clamps, artificial vaginas and artificial anuses designed for sexual penetration, and a variety of restraints and whips/paddles for sadomasochistic use or abuse.
58. Defendants have not applied for or obtained an OTC to operate a store doing business as Tokyo Valentino at 1290 Johnson Ferry Road.
59. Defendants have not applied for or obtained an OTC to operate a store with its dominant line of business being sexual toys, sexual lotions & lubes, or smoking-related products at 1290 Johnson Ferry Road.
60. Defendants have not applied for a sexually oriented business license for Tokyo Valentino at 1290 Johnson Ferry Road.

61. Defendants do not have a valid sexually oriented business license for Tokyo Valentino at 1290 Johnson Ferry Road.
62. Defendants keep Tokyo Valentino at 1290 Johnson Ferry Road open for business between 12:00 midnight and 6:00 a.m.
63. The building at 1290 Johnson Ferry Road that Tokyo Valentino occupies is within 750 feet of an R-15 residential zoning district.
64. The building at 1290 Johnson Ferry Road that Tokyo Valentino occupies is within 1,500 feet of ManorCare Rehab Center at 4360 Johnson Ferry Place, which is a hospital as defined in Code Section 78-321.
65. The building at 1290 Johnson Ferry Road that Tokyo Valentino occupies is within 500 feet of a Chipotle Mexican Grill at 1281 Johnson Ferry Road, which is an establishment licensed to sell alcoholic beverages for consumption on the premises.
66. Under Code Section 134-192 (Summary of uses chart), sexually oriented businesses are permitted uses only in the LI and HI zoning districts in Cobb County, subject to Code Section 78-338.
67. Tokyo Valentino, at 1290 Johnson Ferry Road, is not located in an LI or HI zoning district, but is located in a GC zoning district.
68. Under Code Section 134-227(3), sexually oriented businesses are not permitted uses in the GC zoning district.

**Count 1: Illegal Acts - Violations of Business License  
and Occupation Tax Code**

69. The County realleges each fact set forth in the previous paragraphs of this

complaint and incorporates them herein by reference.

70. Defendants are engaged in the business of selling goods and offering goods for sale for gain or profit at Tokyo Valentino in unincorporated Cobb County.
71. Defendants have not applied for and obtained an OTC for their Tokyo Valentino sexual device shop at 1290 Johnson Ferry Road. The OTC that was obtained for that location did not authorize the operation of Tokyo Valentino's sexual device shop, and that OTC has been revoked.
72. Defendants are violating Code Section 78-46(a).
73. The County is entitled to an interlocutory injunction and a permanent injunction enjoining Morrison, Nault, Coleman, and 1290 Clothing Co LLC—as well as its officers, agents, servants, employees, and those persons in active concert or participation with them—from operating a business in unincorporated Cobb County without first applying for and obtaining a proper business registration certificate / occupation tax certificate for Tokyo Valentino as required by Code Section 78-46(a).

**Count 2: Illegal Acts – Violations of Sexually Oriented Business Ordinance and Zoning Ordinance**

74. The County realleges each fact set forth in the previous paragraphs of this complaint and incorporates them herein by reference.
75. Defendants are operating Tokyo Valentino as a sexually oriented business, but they have not applied for and obtained a Cobb County sexually oriented business license for their sexual device shop.
76. Defendants violate Code Section 78-322(a) by operating a sexually oriented

business without a valid sexually oriented business license.

77. Defendants operate Tokyo Valentino between 12 midnight and 6:00 a.m., in violation of Code Section 78-331.
78. Defendants are operating Tokyo Valentino as a sexual device shop in a location where the operation of a sexually oriented business is prohibited by Code Section 78-338(a), as set forth above.
79. Defendants are operating Tokyo Valentino as a sexual device shop in a GC zoning district, in violation of Code Section 134-227(3).
80. The County is entitled to an interlocutory injunction and a permanent injunction enjoining Morrison, Nault, Coleman, and 1290 Clothing Co LLC—as well as its officers, agents, servants, employees, and those persons in active concert or participation with them—from engaging in illegal acts that violate Code Sections 78-322(a), 78-331, 78-338(a), and 134-227(3).

### **Relief Requested**

81. Therefore, the County respectfully requests this Court to issue an interlocutory injunction and a permanent injunction ordering Defendants Michael Scott Morrison, Alfred Jay Nault, Christopher Jon Coleman, and 1290 Clothing Co LLC d/b/a Tokyo Valentino—as well as their officers, agents, servants, employees, and those persons in active concert or participation with them—to immediately cease:
  - a. engaging in business in unincorporated Cobb County until they make application for, and obtain, a proper business registration certificate /

occupation tax certificate for the business actually being operated at 1290 Johnson Ferry Rd. (Count 1);

- b. operating a sexually oriented business in unincorporated Cobb County without applying for and obtaining a Cobb County sexually oriented business license (Count 2);
- c. operating a sexually oriented business at 1290 Johnson Ferry Road between midnight and 6:00 a.m. (Count 2);
- d. operating a sexually oriented business at 1290 Johnson Ferry Road within 750 feet of an R-15 residential zoning district (Count 2);
- e. operating a sexually oriented business at 1290 Johnson Ferry Road within 1,500 feet of a hospital (Count 2);
- f. operating a sexually oriented business at 1290 Johnson Ferry Road within 500 feet of an establishment licensed to sell alcoholic beverages for consumption on the premises (Count 2); and
- g. operating a sexually oriented business at 1290 Johnson Ferry Road in a GC zoning district (Count 2).

82. The County also respectfully requests that the Court issue an order taxing all costs to Defendants, and providing such other relief, including but not limited to ordinance fines, attorney fees, sanctions, damages, and all other monetary and equitable relief against Defendants, jointly and severally, as this Court deems just and proper.

Respectfully submitted,

/s/ Scott D. Bergthold

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