

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

16CV006655

QUICK CHARGE KIOSK LLC
3035 Smith Lake Road
West Bend, WI 53090,

JEREMY HAHN
3035 Smith Lake Road
West Bend, WI 53090,

COMPLAINT

Plaintiffs,

-vs-

Case No.

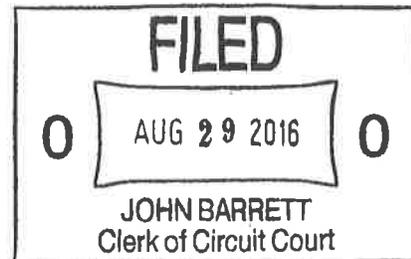
STATE OF WISCONSIN
c/o Office of the Attorney General
114 East State Capitol
Madison, WI 53702,

Declaratory Judgment - 30701

and

CITY OF GREENFIELD
7325 W, Forest Home Avenue
Greenfield, WI 53220,

Defendants.



Come now plaintiffs by their attorney, Daryl W. Laatsch, and as and for their Complaint allege, state, and show to the Court as follows:

1. Quick Charge Kiosk LLC and Jeremy Hahn have been and are engaged in the business of providing cell phone charging machines at various retail business locations frequented by the public in the State of Wisconsin. That it has done so under several trade names, including Pow'R Up and Quick Charge Kiosk.

2. That to charge a cell phone or other electronic device using Quick Charge Kiosk's charging machine, a customer inserts money into the machine to purchase a specific amount of time that the charging unit will be running.

3. That Quick Charge Kiosk is one of the first companies which has come to market with a cell phone charging machine, but that other companies have come into the market which also sell cell phone charging through the use of charging machines located in retail businesses frequented by the public. That as recently as six months ago, plaintiffs were aware of only one competitor, Veloxity, who was producing and marketing cell phone charging machines, and now they are aware of several others, including but not limited to KwikBoost and goCharge.

4. In today's market, particularly when marketing to millennials, it is important to be first into a market and to establish a company as being identified with its product. That although it is on a smaller scale at this time, it is important for Quick Charge to be the first company adopted on a mass basis for cell phone charging for the same reasons that it was important for Google to be the first company adopted for Internet searches, Kleenex to become the predominant producer of paper tissues, Windows to become the first company adopted for operating systems for computers.

5. That to attract attention to its cell phone charging machines and to induce people to use it, most of Quick Charge Kiosk's charging machines have a promotional game which is available to be played by customers who purchase the charging service. That the promotional game presents the possibility of the customer winning a prize in addition to receiving the charging of their cell phone or other electronic device, i.e., in addition to receiving the product being purchased.

6. That this promotional game costs nothing in addition to the price paid for using the charging unit, and can only be played while the charging unit is running. The promotional game cannot be played without the charging unit being in operation, with the exception of promotional games which can be played by customers who turn in a no purchase necessary coupon which is required pursuant to §100.16(2), Wis. Stats.

7. That plaintiffs have designed their promotion to be in compliance with §100.16(2), Wis. Stats., and that they have ensured that where the promotion is used, its actual use is in compliance with §100.16(2), Wis. Stats.

8. That plaintiffs and representatives of the State of Wisconsin have been engaged in an ongoing exchange of positions and opinions concerning plaintiffs' cell phone charging machine and the accompanying promotion.

9. That representatives of the State of Wisconsin have contended that the cell phone charging machine is a gambling machine and is per se illegal.

10. That representatives of the State of Wisconsin have continued to take this position despite having been presented with the holding in State v. Hahn, 203 Wis. 2d 450, 553 N.W.2d 392 (Ct. App. 1996) that whether a device is a gambling machine depends upon its use and that there is no such thing as a gambling machine per se, as well as the cases and Opinions of the

Attorney General found therein.

11. That representatives of the State of Wisconsin have also contended that the exception to §945.01, Wis. Stats., if there is compliance with §100.16(2), Wis. Stats., does not apply to promotional games such as that used by Quick Charge Kiosk because it only applies to lotteries, and the Quick Charge Kiosk is a machine, not a lottery. That this contention is in direct contradiction to Opinions of the Attorney General which have held that machines are lotteries if used for gambling.

12. That representatives of the State of Wisconsin have contended that the holding in Bohrer v. City of Milwaukee, 2001 WI App 237, 248 Wis. 2d 319, 635 N.W.2d 816 and of Coca Cola Bottling Co. v. LaFollette, 106 Wis. 2d 162, 316 N.W.2d 129 (Ct. App. 1982) do not apply in this case.

13. That as a result of the contentions of representatives of the State of Wisconsin, the City of Greenfield ordered that two cell phone charging machines placed by plaintiffs at a retail store in that city be removed.

14. That the City Attorney for the City of Greenfield cited the opinion of the State as the reason for the City's position that the machines had to be removed.

15. That representatives of the State of Wisconsin participated in obtaining a search warrant in Brown County, Wisconsin, contending that cell phone charging machines were gambling machines.

16. That law enforcement personnel, including officers of the Division of Criminal Investigation of the Wisconsin Department of Justice participated in execution of the aforementioned search warrant.

17. That copies of the letter from the City of Greenfield, which includes the opinion letter from a representative of the State; and of memos submitted to the State on behalf of plaintiffs are attached hereto and incorporated by reference as if set forth fully herein.

18. That the differing positions of the parties, together with actions taken by the City of Greenfield based on the State's position, and the actions by law enforcement personnel, also based on the State's position, have created a justiciable controversy such that a declaratory judgment pursuant to §806.04, Wis. Stats., is appropriate.

19. That the State of Wisconsin through its Department of Revenue has determined that Quick Charge Kiosk LLC and SR South LLC, an affiliated company engaged in the same business, are selling a product and has required that it pay sales taxes on the product it sells, the charging of cell phones and other electronic devices.

20. That the Wisconsin Department of Revenue has accepted sales tax payments from Quick Charge Kiosk LLC's affiliate, SR South LLC, on an ongoing basis in an amount in excess of \$95,000.00. That copies of sales tax returns are attached hereto and incorporated by reference as if set forth fully herein.

21. That the Wisconsin Department of Revenue has conducted at least one presentation to the Wisconsin Amusement Music Operators, Inc. on June 30, 2015 at which Department employees instructed machine owners to pay sales tax on the entire amount that was paid into a machine for purchase of a product, and that no deduction from gross sales could be made for payouts on a promotion related to the machine.

22. That the Wisconsin Department of Revenue has provided the same instructions in an Internet web page which addresses amusement machine operations and tax issues related thereto. That a copy of this web page is attached hereto and incorporated by reference as if set forth fully herein.

23. That plaintiff Jeremy Hahn has consulted with Wisconsin Department of Revenue employees to ensure that sales tax returns are prepared properly and that the proper amount of sales tax is being paid. That the advice he has received from Department of Revenue employees is that Quick Charge Kiosk LLC (and its affiliates) must pay sales taxes on the gross sales of electric charging services sold, i.e., on the sale of its product.

24. That it would be inequitable for the State of Wisconsin to contend through the Department of Revenue that plaintiffs are selling a product and require that they pay sales tax on the gross sales of that product, and to contend through the Department of Justice that plaintiffs are not selling a product.

WHEREFORE, plaintiffs request relief of the Court as follows:

1. For a declaratory judgment finding that the Quick Charge Kiosk and the promotional game available with it are in compliance with §100.16(2), Wis. Stats., and that when used in that manner are not in violation of any portion of Chapter 945, Wis. Stats.

2. For supplementary relief consistent with and pursuant to such declaratory judgment, including but not necessarily limited to injunctive relief barring the State of Wisconsin from a taking action against plaintiffs and any cell phone charging machines placed by them,

3. For such further relief as the Court deems just and equitable under the circumstances.

Dated this 29th day of August, 2016.

DARYL W. LAATSCH, S.C.

By: 

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