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September 20, 2019

By Certified & Regular Mail

Jane Mason
The Preserve Group, LLC
900 SE Central Ave., Suite 223
Seaside Park, NJ 08752

RE: PRESERVEkit

Dear Ms. Mason:

The Connecticut Attorney General's Office (the "Office") has learned that you are marketing or have marketed a self-administered evidence collection kit known as the "PRESERVEkit." You have represented that the PRESERVEkit will enable survivors of sexual assault to self-collect evidence of the crimes committed against them without resort to law enforcement or health care providers. You further represented that this self-collected evidence will be admissible in any subsequent criminal prosecutions or other legal proceedings against the survivor's assailant. In light of the PRESERVEkit's potential impact on sexual assault investigations, the health and welfare of Connecticut residents, as well as the State's interest in preventing deceptive and unfair marketing, we request that you substantiate these representations as well as others you have made in promoting this product.

Sexual assault is an extremely serious, damaging, and under-reported crime. As a result, the Connecticut General Assembly created the multi-disciplinary Commission of the Standardization of the Collection of Evidence in Sexual Assault Investigations (the "Commission"). *Conn. Gen. Stat. § 19a-112a(a)*. The Commission is charged with designing standardized sexual assault evidence collection kits and with recommending a technical protocol for assault evidence collection. *Conn. Gen. Stat. § 19a-112a(a)-(c)*.

First published in 2010 and updated periodically thereafter, the *State of Connecticut Technical Guidelines for Health Care Response to Survivors of Sexual Assault* (the "*Technical Guidelines*"), state that:

[i]t is the goal of the Connecticut General Assembly and this Commission that, to the extent possible, sexual assault examinations be standardized throughout the state. ... To accomplish that goal, it is necessary that health care personnel who encounter or treat sexual assault survivors have

knowledge of what constitutes a proper and sensitive response: best practices in medical treatment, evidence collection, and follow-up services.

Technical Guidelines, at 2 (2017). While they neither define a medical standard of care for treatment of sexual assault survivors nor establish a threshold for admissibility of evidence, the *Technical Guidelines* represent the uniform protocols the General Assembly tasked the Commission to create. *Id.*, at 3. The Commission has also designed two evidence collection kits, one for evidence of sexual assault and another for evidence of toxicology screening. *Id.*, at 5. These kits are distributed by the State to Connecticut health care facilities at no cost. *Conn. Gen. Stat. § 19a-112a (c)(1)*.

Thus, when survivors of sexual assault seek treatment at a Connecticut health care facility, they receive a medical forensic examination conducted by a trained treatment provider. With survivor consent, providers will, among other things, gather the necessary evidence and document the survivor's injuries *at no cost to the survivors and regardless of whether they elect to report the assault to the police*. *Conn. Gen. Stat. § 19a-112a (d)-(e)*. The evidence is then turned over to law enforcement for delivery either to the Division of Scientific Services within the Connecticut Department of Emergency Services and Public Protection or to the FBI laboratory, with each step of the process documented by a state-mandated electronic tracking system. *Conn. Gen. Stat. § 19a-112a (d)*.

Just as importantly, assault survivors who undergo the forensic medical exam also receive essential treatment for their physical injuries, emergency contraception if desired, testing for sexually transmitted diseases and referrals for appropriate health care and support services. All of these services are in addition to the examination and evidence collection and are provided *at no cost* to the survivor. *Conn. Gen. Stat. § 19a-112(e)*.

On your website, you have represented that the PRESERVEkit offers "survivors with the information and tools needed to collect their own evidence," thus creating the impression that it is somehow equivalent to the detailed policies, procedures and equipment developed by the Commission. You minimize the importance of expert collection and analysis, as well as an unbroken chain of custody by stating dismissively that "[c]rime survivors give evidence to law enforcement that is admissible in court every day." Moreover, you suggest that evidence derived from PRESERVEkit will withstand evidentiary challenge.

This Office is very concerned that the business practices associated with the PRESERVEkit may be unfair or deceptive and thus violate the Connecticut Unfair Trade Practices Act ("CUTPA"). *Conn. Gen. Stat. § 42-110a, et seq.* Inaccurate or misleading claims

concerning the reliability and usefulness of evidence in sexual assault cases is a very serious matter.

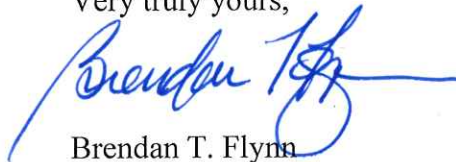
So that we may better understand your product and services and evaluate its compliance with Connecticut law, we ask that you provide the following information by the close of business, October 21, 2019:

1. State whether the PRESERVEkit conforms to the design developed by the Commission. If not, identify all instances where the PRESERVEkit does not conform, and set forth the reason for the discrepancies.
2. State whether the PRESERVEkit can be tracked electronically as it is transferred from the consumer, to third parties such as law enforcement, and then to a laboratory for analysis. If it can be tracked, please describe the method for doing so. If the PRESERVEkit cannot be tracked, identify any other method you use to document and preserve the chain of custody.
3. Provide exemplars of all packaging, instructions and package inserts used in connection with the PRESERVEkit.
4. Provide exemplars of all print or electronic advertisements relating to the PRESERVEkit published in or directed into Connecticut, or otherwise accessible to Connecticut consumers.
5. Set forth, by year, the number of PRESERVEkit purchased by Connecticut consumers or delivered to Connecticut addresses since the PRESERVEkit was first offered for sale.
6. Set forth the number of Connecticut consumers who are presently on a waiting list to purchase the PRESERVEkit.
7. Produce all analyses, opinions or other information upon which you rely to substantiate your representation that evidence collected using the PRESERVEkit is or will be admissible in any criminal prosecution or other civil or administrative proceeding arising from an alleged assault.
8. Identify all experts you have engaged to assess the accuracy of tests performed on evidence collected using the PRESERVEkit, and to compare PRESERVEkit test results with those performed on evidence collected as part of a forensic medical exam.

9. Identify all instances where evidence collected using the PRESERVEkit was offered as evidence in any criminal prosecution criminal prosecution or other civil or administrative proceeding arising from an alleged assault. Include in your response the case name and matter number, the court or other agency or body before which the matter was pending, the date(s) the evidence was offered, and whether the evidence was admitted. Provide copies of any written decisions or transcripts of oral ruling regarding admissibility.
10. State whether you, or a third party contracted by you, will analyze the PRESERVEkit for any consumer. If yes, identify the third party (if applicable), indicate whether consumers pay an additional fee for the analysis, and identify the names and professional qualifications of anyone who has performed such analyses.

You or your attorney may contact me with any questions regarding this inquiry. I can be reached at the address and telephone number listed above, at by email at Brendan.Flynn@ct.gov.

Very truly yours,



Brendan T. Flynn
Assistant Attorney General