

Public FTC DOCKET NO. D09417**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES****In the Matter of Jeffrey Poole, Appellant, Docket No. D09417
Administrative Law Judge: Honorable D. Michael Chappell****HISA'S RESPONSE TO APPELLANT'S MOTION TO DECLARE THAT THE CIVIL
SANCTIONS IMPOSED BY THE HORSE RACING INTEGRITY AND SAFETY
AUTHORITY, INC. ("HISA") ARE NOT ENFORCEABLE**

HISA files this Response to Appellant Jeffrey Poole's Motion to Declare that the Civil Sanctions imposed by HISA are not enforceable. Appellant argues that civil sanctions cannot be imposed against him on the grounds that the notice that HISA is required to file with the Federal Trade Commission (the "Commission") within two days of the imposition of civil sanctions, pursuant to 16 C.F.R. 1.145(a) (the "HISA Notice"), was, in this matter, deficient because it: (1) was not received by the Appellant; (2) was not received by Appellant's counsel; and (3) did not include a proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Appellant's conclusion is that these alleged deficiencies should result in HISA being barred from enforcing any sanctions against him. HISA will address each of these claims in turn.

First, Appellant asserts that he did not receive the email copy of the HISA Notice sent by John L. Forgy of HISA on August 12, 2023. A copy of that email from Mr. Forgy's Sent folder is attached as Exhibit A to his affidavit. This email was sent to the email address provided by Mr. Poole to HISA, which is the same email address that was used to send (i) the August 11, 2023 Notice of Sanctions from the Horseracing Integrity & Welfare Unit (the "HIWU Sanctions Notice") and (ii) the original copy of the Arbitral Body's decision, which was sent by Arbitrator Jeffrey Benz. Mr. Poole has acknowledged that he received the other two documents by email but claims he did not receive Mr. Forgy's email. (Mr. Poole did not state whether or not he had

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checked his Spam folder for this email.) Mr. Forgy did not receive any “bounce message” of the email stating it had not been delivered to Mr. Poole. In addition, Mr. Forgy has a practice of sending a copy of such notices by U.S. Mail on the same day if a “bounce message” is received and, in this matter, checked again on September 25, 2023 to confirm that he did not receive a “bounce message” for the HISA Notice sent to Mr. Poole. (See Attached Affidavit of John L. Forgy, dated September 26, 2023).

Second, 16 C.F.R. 4.4(c) states: “When counsel has appeared in a proceeding on behalf of a party, service upon such counsel of any document, other than a complaint, shall be deemed service upon the party.” This language does not, as Appellant claims, require service of notice on counsel. It merely makes it clear that service on a party’s counsel is service on that party. In addition, these regulations apply to adjudicative proceedings before the Commission. Mr. Beilly did not appear on Appellant’s behalf in these proceedings until he filed his notice of appeal on September 8, 2023. In fact, in late July of 2023, after the conclusion of the hearing before the Arbitral Body, Mr. Beilly represented to Horseracing Integrity & Welfare Unit (“HIWU”) legal staff that he would not be representing Mr. Poole in any appeal in this matter.

Third, HISA acknowledges that proof of service was not included with the HISA Notice. However, as is the case with the other two allegedly deficiencies, the failure to provide this proof of service did not prejudice Appellant in any way. Mr. Poole acknowledged that he received the HIWU Notice, which contained more information than the HISA Notice, including the date by which he had to file an appeal to the Commission. (The HIWU Notice was also sent to Mr. Beilly by email.) Therefore, Appellant actually received all pertinent information needed to exercise his right to appeal, and, as a result, he, in fact, filed that appeal on a timely basis. In addition, Appellant did not raise any of these issues with HISA, HIWU or the Commission until more than a month after he received the HIWU Notice and more than two weeks after he filed his appeal to the

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Commission. Appellant has exercised his right to appeal here, and he should not be able to escape the imposition of sanctions for his violations due to these alleged administrative filings errors.

Lastly, if it is determined that the service of the HISA Notice was in fact deficient in any respect, HIWU can immediately serve an Amended Notice of Sanctions upon Mr. Poole. HISA would then file another notice with the Commission within two days, served upon both Mr. Poole and his counsel and including a proof of service. Mr. Poole would then have thirty days from the Amended Notice to re-file his appeal. HISA believes that this step will unnecessarily delay the proceedings in a case where the Appellant's rights have clearly not been comprised in any way.

HISA requests that the Appellant's Motion be denied and a briefing schedule on the merits of Mr. Poole's appeal of the civil sanctions imposed by HISA be set.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 26th day of September, 2023.

**HORSERACING INTEGRITY &
SAFETY AUTHORITY**

/s/Bryan H. Beauman
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 MOLONEY, PLLC**
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**HORSERACING INTEGRITY &
 WELFARE UNIT, A DIVISION OF
 DRUG FREE SPORT LLC**

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Response is being served on September 26, 2023, via Administrative E-File System and by emailing a copy to:

Hon. D. Michael Chappell
Chief Administrative Law Judge
Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington DC 20580
via e-mail to Oalj@ftc.gov

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20580
Via email to electronicfilings@ftc.gov

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Attorney for Appellant

/s/Bryan H. Beauman
**COUNSEL FOR HORSERACING
INTEGRITY & SAFETY AUTHORITY**

**UNITED STATES OF AMERICA BEFORE
THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

-----X
IN THE MATTER OF JEFFFREY POOLE,
APPELLANT

DOCKET NO. D09417

AFFIDAVIT

-----X
STATE OF KENTUCKY)

) s.s.:

COUNTY OF FAYETTE)

JOHN L. FORGY, being first duly sworn, deposes and says:

1. I am currently Counsel to the Horseracing Integrity and Safety Authority, Inc. (“HISA”). I have held that position since October 21, 2021.

2. On August 12, 2023, I sent a HISA Civil Sanction Notice to the Federal Trade Commission in connection with civil sanctions imposed against Appellant Jeffrey Poole. In a separate email on the same date, I sent a copy of the HISA Civil Sanction Notice to Mr. Poole. (See Exhibit A to this Affidavit, which is a copy of that email from my Sent folder.) The email address I used [REDACTED] is the email address submitted by Mr. Poole to the HISA Portal and used by the Horseracing Integrity & Welfare Unit (“HIWU”) and the Arbitral Body when serving notices and other documents on Mr. Poole during the underlying proceedings that resulted in the sanctions at issue being imposed by HISA. After I sent the HISA Civil Sanction Notice to Mr. Poole, I did not receive a “bounce message” from the email to Mr. Poole stating that the email was undeliverable or had not been received.

3. If I receive a “bounce message” stating that the email was undeliverable or had not been received when serving a HISA Civil Sanction Notice upon a person to whom the sanctions are to be imposed, it has been my practice to a send a copy of the HISA Civil Sanction

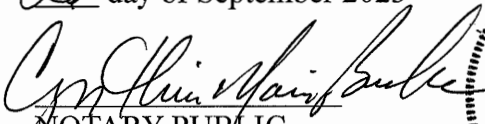
Notice to that person by U.S. Mail on the same date that email service was unsuccessfully attempted.

4. On September 25, 2023, I reviewed my email account to confirm that I had not received a "bounce message" from the email I sent to Mr. Poole on August 12, 2023. I did not receive a "bounce message" on August 12, 2023, or at any time since that date.

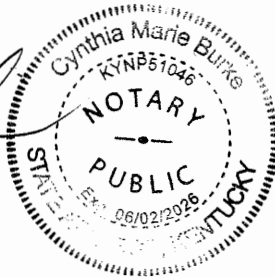


JOHN L. FORGY

Sworn to before me this
26 day of September 2023



NOTARY PUBLIC



Public
FTC DOCKET NO. D09417

Exhibit A



John Forgy <johnforgy1@gmail.com>

HISA Notice to FTC of Final Civil Sanctions

1 message

John Forgy <johnforgy1@gmail.com>

Sat, Aug 12, 2023 at 4:16 PM

To: [REDACTED], Michelle Pujals <mpujals@hiwu.org>, Kyle Kremers <kkremers@hiwu.org>

Mr. Poole,

Please see the attached "HISA Notice to FTC of Final Civil Sanctions - Jeffrey Poole" filed with the Federal Trade Commission (FTC) by HISA today.

With best regards,

John L. Forgy
Counsel to HISA
830 Vermillion Peak Pass
Lexington, KY 40515
(859)-940-1215
Email: johnforgy1@gmail.com

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 **HISA Notice to FTC of Final Civil Sanctions - Jeffrey Poole.pdf**
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John Forgy <johnforgy1@gmail.com>

HISA Notice to FTC of Final Civil Sanctions

1 message

John Forgy <johnforgy1@gmail.com>

Sat, Aug 12, 2023 at 4:16 PM

To: [REDACTED], Michelle Pujals <mpujals@hiwu.org>, Kyle Kremers <kkremers@hiwu.org>

Mr. Poole,

Please see the attached "HISA Notice to FTC of Final Civil Sanctions - Jeffrey Poole" filed with the Federal Trade Commission (FTC) by HISA today.

With best regards,

John L. Forgy
Counsel to HISA
830 Vermillion Peak Pass
Lexington, KY 40515
(859)-940-1215
Email: johnforgy1@gmail.com

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