

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 25-1290

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

ASX,

Defendant.

RECEIVED

MAY 19 2025

SUPERIOR COURT - CIVIL
JOHN E. POWERS, III
CLERK MAGISTRATE

COMMONWEALTH'S MEMORANDUM IN SUPPORT
OF ITS ORDER FOR PRELIMINARY INJUNCTION

The Commonwealth, by and through the Office of the Attorney General ("AGO"), submits this memorandum in support of its order for preliminary injunction ("PI") to enjoin ASX a/k/a "Renderbitget" ("ASX") from: (1) further violations of G.L. c. 93A, § 2 as alleged in the Complaint; (2) making further transactions in assets or cryptocurrency through the following wallets: wallet address ending in -396a and wallet address ending in -3fe3 containing stablecoin USDT issued by Tether Limited ("Tether"),¹ collectively "Unhosted Wallets," and wallet address ending in -7067, hosted by Binance.com ("Binance Wallet") ("Unhosted Wallets" together with "Binance Wallet" collectively referred to as "Wallets"). An order for preliminary injunction is necessary to ensure that victims' funds are not absconded with before the AGO can collect disgorgement or any penalties obtained through a final judgement, and to prevent Defendant from participating in further fraudulent activity.

¹ Tether Limited ("Tether") is the company that manages the smart contracts and treasury (i.e., reserve assets) for USDT, a type of cryptocurrency tethered to the US dollar. TETHER, <https://tether.to> (last visited May 14, 2025).

Defendant represents itself as a cryptocurrency trading platform that offers crypto trading opportunities. Complaint ¶ 7. ASX claims that these investment opportunities generate profits ranging from 10% to 30%. Complaint ¶ 8. In reality, ASX is just an investment scam, and all of its representations about investing and earning profits through its platform are false. Complaint ¶ 9. This conduct violates Massachusetts consumer protection law, G.L. ch. 93A. Complaint ¶ 40.

Without a freeze on Defendant's assets, victims' funds are likely to be laundered through decentralized peer-to-peer exchanges where U.S. law enforcement cannot access them. Additionally, ASX's operation is ongoing, therefore, absent an injunction, Defendant will continue to solicit victims and defraud additional Massachusetts consumers.

FACTS AND PROCEDURAL HISTORY

1. The Complaint and the Allegations

The AGO's complaint arises out of the following facts, which are set forth in detail in the accompanying documents: (1) the Affidavit of Barry Perla (the "**Perla Aff.**"); (2) the Affidavit of Benjamin Potter, together with the exhibits attached thereto (the "**Potter Aff.**"); and (3) the Affidavit of Lilia DuBois, along with the exhibits attached thereto (the "**DuBois Aff.**").

Since at least October 2024, ASX has been representing itself as a trading platform that offers cryptocurrency trading opportunities. Complaint ¶ 7. It operates through a website and a dApp,² which is accessible via dApp browser feature on legitimate third-party cryptocurrency wallets, for example, Trust Wallet.³ *Id.* ASX representatives seek out potential victims using various manipulative techniques, for example, by contacting them via text messages and then developing a friendship with them. Perla Aff. ¶ 2. Once ASX representatives successfully

² A dApp, or Decentralized Application, is a digital application that runs on a blockchain network of computers instead of relying on a single computer. Cryptocurrency wallet users can access various dApps using dApp browsers embedded in the cryptocurrency wallet provider's applications.

³ Trust Wallet is a multi-chain self-custody cryptocurrency wallet, which provides access to thousands of Web3 decentralized applications, available at https://trustwallet.com/?utm_source=cryptwerk (last visited May 15, 2025).

connect with potential victims, they transfer the conversation to WhatsApp,⁴ a messaging application. Perla Aff. ¶ 2. To gain the potential victims' trust, the ASX representatives engage in frequent and personal conversations that display heightened interest in the daily and work lives of the victims. Complaint ¶ 13. During these conversations, ASX representatives also mention that they trade cryptocurrency and claim it to be a profitable enterprise. Perla Aff. ¶ 3, Complaint ¶ 14. They tell potential victims that they are highly knowledgeable about buying and selling crypto to get the victims excited about the idea of investing in crypto. *Id.*; Perla Aff. ¶ 3.

Once the victims become interested in trading cryptocurrency, ASX's representatives instruct them to purchase cryptocurrency using a legitimate cryptocurrency exchange. Complaint ¶¶ 15-16. The victims are then instructed to send crypto from the exchange to ASX's platform accessible via Trust Wallet's dApp browser.⁵ Complaint ¶ 16. Victims believe that the funds are safely in their accounts as deposits are reflected when they login. To give a guise of credibility to its dApp, ASX designed its platform to mimic Trust Wallet. *Id.* Once the victims fund their ASX accounts with cryptocurrency, they are provided with instructions on when to execute a crypto trade, for how much, and whether to "buy long" or "buy short," where the former predicts that the price of a certain cryptocurrency will fall and the latter predicts that it will go up. Complaint ¶ 18. The purported profits from this trading activity are reflected in the victims' accounts with ASX. Complaint ¶¶ 20-21. These trades and the profits are a sham and are merely a manipulative technique used by ASX to extract more money from the victims. Complaint ¶ 22. To further encourage the victims to continue investing, the victims are allowed to make an initial, small withdrawal, which convinces them further that ASX is a legitimate trading platform. Perla Aff. ¶ 5; Complaint ¶ 24.

⁴ WHATSAPP, <https://whatsapp.com> (last visited May 15, 2025).

⁵ A dApp, or Decentralized Application, is a digital application that runs on a blockchain network of computers instead of relying on a single computer. Cryptocurrency wallet users can access various dApps using dApp browsers embedded in the cryptocurrency wallet provider's applications.

With the victims encouraged by their investment returns and feeling secure in their ability to safely withdraw their earnings, the representatives try to convince them to invest increasingly greater sums by promising that larger investments will allow them to participate in bets that lead to greater profits. Complaint ¶ 25. However, eventually, ASX representatives end communications with victims and drain their ASX accounts of any purported balance. Complaint ¶ 27; Perla Aff. ¶ 8.

2. *The Reasons for the Need to Preserve the Status Quo During the Pendency of this Litigation*

This case involves cryptocurrency that is volatile in nature and could easily be made inaccessible to law enforcement by Defendant, leaving the AGO without any recourse to enforce the likely monetary judgment it will obtain, unless the freezes of the assets held in the wallets used in the operation of ASX's fraud are maintained throughout the pendency of this litigation.

The Commonwealth traced ASX's ill-gained assets to two unhosted wallets with virtual currency addresses that exist on the Ethereum network,⁶ the Unhosted Wallets, and one wallet hosted by Binance.com, the Binance Wallet. Potter Aff. ¶¶ 17-18. The Unhosted Wallets contain Tether coins, also known as "USDT." Tether is the company that manages the smart contracts and treasury (*i.e.*, reserve assets) for USDT. Because Tether manages the smart contracts for USDT, it can blacklist or freeze some virtual cryptocurrency addresses containing USDT.

The AGO requested that Tether and Binance freeze the assets in the Wallets. DuBois Aff. ¶¶ 3-6. Tether and Binance each agreed to a temporary courtesy freeze of the Wallets. *Id.* On May 13, 2025, this Court granted the Commonwealth's request for a Temporary Restraining Order ("TRO"). However, upon the expiration of the TRO and absent a PI Order, Tether and

⁶ Ethereum is a blockchain-based platform that, among other things, "enables secure digital ledgers to be publicly created and maintained," acting as a blockchain platform for a variety of cryptocurrency tokens. WHAT IS ETHEREUM?, available at <https://www.investopedia.com/terms/e/ethereum.asp> (last accessed May 15, 2025).

Binance will be able to lift the freezes, which will allow ASX to abscond with its victims' funds by moving them recovery.⁷

The materials submitted in support of the AGO's motion provides ample evidence, not only of ASX's wrongdoing as alleged in the Complaint, but also the need for a PI that would prevent further violations of Mass. Gen. Laws Ann. ch. 93A and protect consumers from any additional harm arising out of ASX's ongoing attempts to solicit and defraud consumers. And, to preserve the *status quo* and ensure that ASX does not further dissipate the assets necessary to pay the likely monetary judgment the AGO will obtain, the AGO seeks an order freezing the assets held in the Wallets for the duration of this litigation.

ARGUMENT

I. Legal Standard

Under G.L. ch. 93A, § 4, "Whenever the attorney general has reason to believe that any person is using or is about to use any method, act, or practice declared by section two to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the commonwealth against such person to restrain by temporary restraining order or preliminary or permanent injunction the use of such method, act or practice."

When the Attorney General brings suit to enforce Massachusetts laws, she does so as part of her general mandate to protect the public interest. *See Com. v. Mass. CRINC*, 392 Mass. 79, 88 (1984) ("Thus, the Attorney General has a general statutory mandate, in addition to any specific statutory mandate, to protect the public interest. He also has a common law duty to represent the public interest and enforce public rights." (citation omitted)). For a preliminary injunction, the Attorney General must show: (1) a likelihood of statutory violations and (2) that

⁷ According to Elliptic Connect, a blockchain analytics tool, some \$1.2 billion worth of stolen crypto assets have been swapped using decentralized exchanges. ELLIPTIC CONNECT, <https://www.elliptic.co/blog/analysis/around-1-2-billion-from-crypto-hacks-funneled-through-decentralized-exchanges>.

the proposed injunctive relief is in the public interest. *See Mass. CRINC*, 392 Mass. at 89 (stating, regarding an injunction sought by the attorney general, that “the judge who decides whether an injunction should issue needs to consider specifically whether there is a likelihood of statutory violation and how such statutory violations affect the public interest”). Unlike a private litigant, the Attorney General is not required to show irreparable harm. *See Mass. CRINC*, 392 Mass. At 89-90 (“The Attorney General is not required to demonstrate irreparable harm concerning activities of the defendants which probably resulted in violations of our General Laws and which may adversely affect the public interest.” (citation omitted)). “By definition, a preliminary injunction must be granted or denied after an abbreviated presentation of the facts and the law.” *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 616 (1980).

II. There is Sufficient Evidence that Defendant’s Acts Violated M.G.L. ch. 93A, § 2

The AGO makes a substantial showing that ASX violated M.G.L. ch. 93A, § 2 by obtaining investor funds through its fraudulent trading platform intended to defraud U.S. customers, including those in the Commonwealth, and by making untrue statements of material fact in its communications with potential investors. Chapter 93A § 2(a) prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” A practice is unfair under ch. 93A if “it is (1) within the penumbra of a common law, statutory, or other established concept of unfairness; [or] (2) immoral, unethical, oppressive, or unscrupulous....” *Morrison v. Toys “R” Us, Inc.*, 806 N.E.2d 388, 392 (Mass. 2004), *quoting Heller Fin. v. Insurance Co. of N. Am.*, 573 N.E.2d 8, 12-13 (Mass. 1991). Making an untrue statement of a material fact in relation to investments may constitute a violation of M.G.L. ch. 93A, § 2. *See Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 2002 WL 31875204 at *32 (Mass. Super. Ct. Dec. 16,

2002), *aff'd*, 445 Mass. 411 (2005); *Marram v. Kobrick Offshore Fund, Ltd.*, 809 N.E.2d 1017, 1030 (Mass. 2004).

The AGO makes a substantial showing that ASX violated Mass. Gen. Laws ch. 93A, § 2(a) by obtaining investor funds through its investment scheme intended to defraud U.S. customers, including those in the Commonwealth, and by making untrue statements of material fact in its communications with potential investors. *See generally* Perla Aff.

There is also ample evidence that the statements made by ASX are material because they tend to induce potential investors to invest their funds through a promise of a high rate of return. A reasonable investor would want to know that their funds will not generate the promised returns from trading through ASX, but instead, will simply be stolen. *See Marram v. Kobrick Offshore Fund, Ltd.*, 809 N.E.2d 1017, 1030 (Mass. 2004) (“The test whether a statement or omission is material is objective: there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.”) (citation omitted).

Victims entangled in ASX’s scheme are unable to retrieve their investments, let alone the promised returns. Perla Aff. ¶ 8, Complaint ¶ 29. ASX representatives simply drain victim wallets and then just stop any contact with the victims. Complaint ¶¶ 27-28.

Defendant’s repeated and ongoing false statements regarding returns on trades made through ASX and its failure to return the victims’ investments constitute an unfair practice in violation of M.G.L. ch. 93A § 2(a). Chapter 93A § 2(a) prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” A practice is unfair under ch. 93A if “it is (1) within the penumbra of a common law, statutory, or other established concept of unfairness; [or] (2) immoral, unethical, oppressive, or unscrupulous....” *Morrison v. Toys “R” Us, Inc.*, 806

N.E.2d 388, 392 (Mass. 2004), *quoting Heller Fin. v. Insurance Co. of N. Am.*, 573 N.E.2d 8, 12-13 (Mass. 1991).

III. The Attorney General's Requested Relief Is in the Public Interest.

The Attorney General has a statutory mandate to protect the public interest. G.L. ch. 93A § 4 (1978); *Commonwealth v. Mass. CRINC*, 466 N.E.2d. 792, 797-98 (Mass. 1984). An injunction sought by the Attorney General should be granted if there is a likelihood of a statutory violation and the injunction is in the public interest. *Id.* at 798.

The proposed preliminary injunction would enjoin ASX from further violations of G.L. ch. 93A as alleged in the complaint. It will also prevent ASX from dissipating victims' funds by transferring them to a peer-to-peer exchange where they would be inaccessible to U.S. law enforcement, rendering the AGO unable to collect disgorgement or any penalties obtained through a final judgment. This relief is in the public interest. *See, e.g., id.* (prevention of price escalation is in the public interest).

CONCLUSION

For all the foregoing reasons, the Commonwealth respectfully requests that the Court allow the Commonwealth's Motion for Order for Preliminary Injunction, filed herewith.

Respectfully Submitted,

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