

IN THE _____ CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

2016 FEB -2 PM 1:40

RICHARD B. BOCKER, CLERK

RT

D.C.

STATE OF TENNESSEE, *ex rel.*
HERBERT H. SLATERY III,
Attorney General and Reporter,

Plaintiff,

v.

EDWARD J. POLCHLOPEK, III,
a/k/a ED NASH, both individually
and doing business as ALTIUS
MANAGEMENT, LLC,

and

ALTIUS MANAGEMENT, LLC, a
Tennessee limited liability company,

Defendants.

No. _____

JURY DEMAND

COMPLAINT FOR PERMANENT INJUNCTIVE AND OTHER RELIEF

This civil law enforcement action is brought in the name of the State of Tennessee, in its sovereign capacity, by and through Herbert H. Slatery III, Attorney General and Reporter ("State" or "Attorney General"), on behalf of Bill Giannini, the Acting Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance.

The Attorney General brings this action pursuant to Tenn. Code Ann. § 47-18-108 and 114 to obtain permanent injunctive relief, restitution, civil penalties, rescission or reformation of contracts, disgorgement of ill-gotten gains, and other equitable relief for Defendants' acts or practices in violation of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-

18-101 *et seq.* (“Consumer Act”), in connection with a crowdfunding campaign.

The State has reason to believe that the above-named Defendants have violated and continue to violate the Consumer Act by engaging in unfair and deceptive business practices as detailed herein and that this action is in the public interest.

Defendants have been previously provided with 10 days’ notice of contemplated legal action as set forth in Tenn. Code Ann. § 47-18-108(a)(2). A true and accurate representation of this letter to Defendants is attached as Exhibit A.

Upon information and belief, the State alleges the following:

PLAINTIFF

1. Plaintiff, State of Tennessee, *ex rel.* Herbert H. Slatery III, Attorney General and Reporter, is charged with enforcing the Consumer Act, which prohibits unfair or deceptive acts or practices affecting the conduct of any trade or commerce. The Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the Consumer Act, and to secure such equitable and other relief as may be appropriate in each case under broad grants of statutory and common law authority. Tenn. Code Ann. §§ 8-6-109 and 47-18-108(a)(1).

DEFENDANTS

2. Defendant Edward J. Polchlopek, III, also known as Ed Nash, is an individual and resided in the State of Tennessee during the time period of the practices at issue in this Complaint, and in connection with the matters alleged herein, transacts or has transacted business in this state and throughout the United States.

3. At all times relevant, Edward J. Polchlopek, III has been the sole owner and the primary operator, manager, officer, employee and agent of Defendant Altius Management, LLC, and has personally and actively participated in its day-to-day activities.

4. At all times relevant, Edward J. Polchlopek, III, has, acting alone or in concert with others, formulated, directed, controlled, or participated in the acts and practices of Defendant Altius Management, LLC, including all of the unlawful conduct alleged in the Complaint, and has had the authority to control and stop the violations of law.

5. Defendant Altius Management, LLC, also doing business as Altius Entertainment, is a Tennessee limited liability company with its principal office and mailing address at 5543 Edmonson Pike #107, Nashville, Tennessee 37211-5808. Defendant Altius Management, LLC also operates online at the website www.altiusmanagement.com.

6. Defendant Edward J. Polchlopek, III, at 5543 Edmonson Pike #107, Nashville, Tennessee 37211-5808 is currently the Registered Agent on file with the Tennessee Secretary of State for Defendant Altius Management, LLC.

7. For purposes of the remainder of this Complaint, the term "Defendants" shall mean and refer to both Altius Management, LLC and Edward J. Polchlopek, III.

JURISDICTION AND VENUE

8. The jurisdiction of this Court is invoked pursuant to the provisions of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County pursuant to Tenn. Code Ann. § 47-18-108(a)(3), because it is the county where the unfair and deceptive acts and practices alleged in the Complaint took place, or are about to take place, and is the county where Defendants conduct, transact, or have conducted or transacted business.

COMMERCE

9. At all times relevant, Defendants have engaged in trade or commerce within the meaning of Tenn. Code Ann. § 47-18-102(2) through the sale of playing cards and other accessories consisting of “goods” or “services,” as those terms are defined in Tenn. Code Ann. § 47-18-103(7) and (18), via the Kickstarter.com crowdfunding website to consumers in Tennessee and elsewhere, in or affecting the conduct of “trade” or “commerce” as those terms are defined in Tenn. Code Ann. § 47-18-103(19).

DEFENDANTS’ BUSINESS PRACTICES

10. On September 24, 2012, Defendants launched a crowdfunding campaign to raise money from consumers purportedly to produce decks of playing cards featuring custom artwork. In connection with the crowdfunding campaign, Defendants represented to consumers that they would receive certain “rewards,” such as decks of playing cards, poker chips, dice, artwork, a ceramic dealer button, and even a costume straitjacket, if the campaign reached its funding goal of \$15,000. Defendants far exceeded their original funding goal and raised over \$25,000. However, instead of producing the promised rewards and providing them to consumers, Defendants spent the money raised by the campaign producing an unrelated music video. Numerous consumers have complained about the campaign and none have received their promised rewards or refunds.

BACKGROUND ON CROWDFUNDING

11. Crowdfunding is the practice of funding a project or venture generally by raising small amounts of money from a large number of people, typically through the Internet.

12. Crowdfunding transactions typically involve consumers (sometimes known as “backers”) who provide money (known as a “pledge”) to a project “creator” in exchange for a

specific “reward.” Typically, the “reward” is the product, service, or content that will be manufactured or produced with the raised funds.

13. There are currently hundreds of platforms for crowdfunding projects. One of the most popular Internet platforms is Kickstarter.com.

14. To initiate a Kickstarter “campaign,” the project creator develops a “homepage” that provides information (usually including a video and multiple pictures) about the product, service, or content that will be created with the funds. This homepage serves as the launch point for the entire project. In addition to information about the final product, the homepage provides information about the total amount of money needed for the project and the number of days left to fund it. Project creators can choose the length of the fundraising period, but Kickstarter limits the maximum time period to 60 days.

15. Kickstarter is structured for “all or nothing” funding. If the creator does not raise the sufficient funds to meet the original fundraising goal within the time period selected, the creator does not receive any money and no consumer is charged.

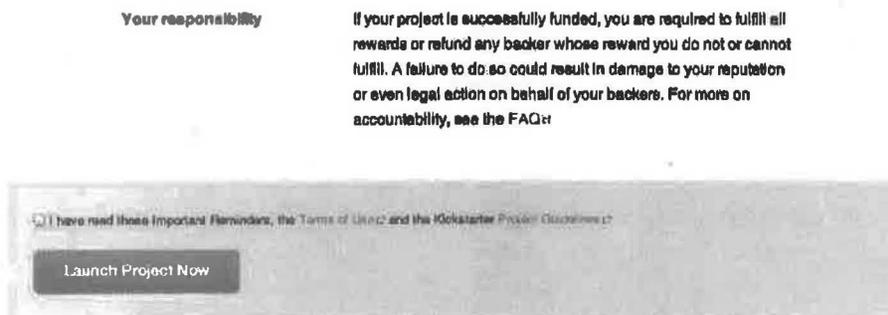
16. Every project’s homepage offers multiple “pledge” options. Each tier promises specific goods or, in Kickstarter parlance, “rewards.” Usually, the higher the amount pledged the greater the rewards promised to the consumer.

17. To become a project “backer” on Kickstarter, a consumer must first locate that project’s homepage by searching for the project by its name or by browsing the various categories and subcategories within Kickstarter’s main page. A consumer has the option of searching for a project category or location. Kickstarter’s main homepage also features “staff picks” or “popular”

projects that appear as soon as you arrive at the website. Clicking on the title of the project takes consumers to its homepage.

18. From the project homepage, consumers can select the amount they wish to pay. Kickstarter will prompt the consumer for his credit card information. The consumer will not be charged until the fundraising period is complete and the project reaches its funding goal. Once the project reaches its funding goal, Kickstarter charges the consumer's credit card and transmits the money to the project creator.

19. According to Kickstarter's Terms of Use, project creators are legally bound to fulfill consumer rewards if funding is successful. All project creators must legally agree to these Terms of Use before starting a Kickstarter campaign. The following screenshot is a true and accurate representation of the page on Kickstarter's website where project creators agree to Kickstarter's Terms of Use:



20. A true and accurate representation of the Terms of Use in effect at the time of the Asylum Playing Cards campaign is attached as Exhibit B.

21. Additionally, Kickstarter's Project FAQ suggests that project creators experiencing delays in the fulfillment of their project's pledges maintain contact with their consumers via

Kickstarter's update and comment system. The following screenshot is a true and accurate representation of this Kickstarter Project FAQ:

What do I do if I miss my Estimated Delivery Date?

The Estimated Delivery Date is intended to set expectations for backers on when they will receive rewards. Setbacks are possible with any project — creative ones especially. When the unforeseen occurs, creators are expected to post a project update explaining the situation. Sharing the story, speed bumps and all, is part of the Kickstarter experience.

Creators who are honest and transparent will find backers to be far more forgiving. We've all felt the urge to avoid things when we feel bad about them, but leaving backers in the dark makes them assume the worst. It not only reflects badly on the project, it's disrespectful to the support that community has given and to other Kickstarter creators. Regular communication is a must.

DEFENDANTS' ASYLUM PLAYING CARDS KICKSTARTER CAMPAIGN

22. Several months prior to September 24, 2012, an artist from Serbia named Milan Colovic approached the Defendants with the idea of creating a Kickstarter campaign to produce playing cards featuring his horror genre artwork. Mr. Colovic named the project Asylum Playing Cards. The following screenshot is a true and accurate representation of artwork featured on the Asylum Playing Cards campaign homepage:



23. The Defendants agreed and during September and October 2012 they created, marketed and managed a Kickstarter campaign to produce Asylum Playing Cards.

24. Defendants established the Asylum Playing Cards campaign on September 24, 2012, with a \$15,000 funding goal. This goal was reached prior to the October 31, 2012, campaign deadline.

25. To entice consumers to pledge more money to the project, Defendants created additional tiered rewards options to the Asylum Playing Cards campaign, such as custom poker chips, dice, sketches, a ceramic “dealer button,” and even a costume straitjacket. Many of these additional rewards were ideas posed by project consumers during the campaign itself, and were not included in the original Kickstarter campaign. The following screenshot is a true and accurate representation of the Asylum Dice reward featured on the Asylum Playing Cards campaign homepage:



26. Defendants represented on the Asylum Playing Cards campaign homepage that rewards would be delivered to all consumers in December 2012. The following screenshot is a true and accurate representation of a section of the Asylum Playing Cards campaign homepage where this representation was made:

Risks and challenges

The deck files are set to be delivered to the United States Playing Card Company upon completion of the project. During the manufacture and printing of the decks, Milan will create the custom artwork for those who have chosen those particular incentives. We have structured this project to encounter few, if any obstacles, and provide the participants with an amazing, one-time-only product / work of art.

We will rush to create, manufacture, and ship rewards as soon as possible, but most of the dates issues are not depending on us. If everything goes well and UPSCC print decks by agreed timelines, you can expect your decks in December, before Christmas and other holidays.

For backers outside the US, please read the rewards carefully to know what your shipping costs will be, and don't forget to apply additional costs to your order, for proper shipping.

27. Ultimately, Defendants induced 810 consumers from Tennessee and other states to fund the Asylum Playing Cards campaign and generated \$25,146 in consumer pledges.

28. At the conclusion of the Asylum Playing Cards campaign on October 31, 2012, Defendants withdrew the funds generated by the campaign from Kickstarter.

29. The next week, Defendants spent all of the funds generated by the Asylum Playing Cards campaign producing an unrelated music video.

30. In July 2013, Defendants ceased providing project updates or otherwise communicating with consumers.

31. As of April 2015, not a single consumer of the Asylum Playing Cards campaign had received the promised rewards from the Defendants or received money back from the Defendants.

VIOLATIONS OF THE TENNESSEE CONSUMER PROTECTION ACT

32. Through the means described in paragraphs 1 through 31, in connection with the promotion of the Asylum Playing Cards campaign, Defendants have committed numerous acts and practices in violation of the Consumer Act, including but not limited to:

- A. Unfair or deceptive acts or practices affecting the conduct of trade or commerce, in violation of Tenn. Code Ann. § 47-18-104 (a);
- B. Advertising goods or services with intent not to sell them as advertised, in violation of Tenn. Code Ann. § 47-18-104 (b)(9);
- C. Using any advertisement containing an offer to sell goods or services when the offer is not a bona fide effort to sell the advertised goods or services, in violation of Tenn. Code Ann. § 47-18-104 (b)(22);
- D. Engaging in other acts or practices which are deceptive to consumers or other persons, in violation of Tenn. Code Ann. § 47-18-104 (b)(27).

COUNT I

33. Through the means described in paragraphs 1 through 31, in connection with the promotion of the Asylum Playing Cards campaign, Defendants represented, directly or indirectly, expressly or by implication, that Defendants would use the money obtained from consumers through the Asylum Playing Cards campaign primarily for the development, production, completion, and distribution of the Asylum Playing Cards campaign rewards.

34. In numerous instances, Defendants did not use the money obtained from consumers through the Asylum Playing Cards campaign primarily for the development, production, completion, and distribution of the Asylum Playing Cards campaign rewards.

35. Therefore, the representations as set forth in paragraph 33 were and remain false, misleading, and constitute deceptive acts or practices in violation of Tenn. Code Ann. § 47-18-104(a), (b)(9), (b)(22) and (b)(27).

COUNT II

36. Through the means described in paragraphs 1 through 31, in connection with the promotion of the Asylum Playing Cards campaign, Defendants represented, directly or indirectly, expressly or by implication, that the completion and distribution of the Asylum Playing Cards

campaign rewards would be achieved in December 2012, or within a reasonable amount of time thereafter.

37. In numerous instances, Defendants did not deliver the Asylum Playing Cards campaign rewards in December 2012, or within a reasonable amount of time thereafter.

38. Therefore, the representations as set forth in paragraph 36 were and remain false, misleading, and constitute deceptive acts or practices in violation of Tenn. Code Ann. § 47-18-104(a), (b)(9), (b)(21), and (b)(27).

COUNT III

39. Through the means described in paragraphs 1 through 31, in connection with the promotion of the Asylum Playing Cards campaign, Defendants represented, directly or indirectly, expressly or by implication, that consumers would receive Asylum Playing Cards campaign rewards in exchange for their monetary pledges.

40. In numerous instances, Defendants neither delivered the promised Asylum Playing Cards campaign rewards to consumers nor offered or provided monetary refunds.

41. Therefore, the representations as set forth in paragraph 39 were and remain false, misleading, and constitute deceptive acts or practices in violation of Tenn. Code Ann. § 47-18-104(a), (b)(9) and (b)(27).

CONSUMER INJURY

42. Through the means described in paragraphs 1 through 31, in connection with the promotion of the Asylum Playing Cards campaign, Defendants' false, unfair and deceptive statements were published on a daily basis from September 24, 2012, to October 31, 2012.

43. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants violations of the Consumer Act. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

PRAYER FOR RELIEF

Therefore, Plaintiff, State of Tennessee prays that this Court:

1. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this Complaint;
2. Adjudge and decree that Defendants have engaged in the aforementioned acts or practices in violation of the Consumer Act, Tenn. Code Ann. § 47-18-101 *et seq.*, and other laws and regulations;
3. Grant permanent injunctive relief against Defendants to enjoin and ameliorate the foregoing acts or practices, and that such order be issued without cost bond, pursuant to Tenn. Code Ann. § 47-18-108(a)(4);
4. Make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses, including statutory and prejudgment interest, suffered by reason of the alleged violations of the Consumer Act, and requiring that Defendants be taxed with the cost of distributing and administering same including but not limited to the costs of a restitution administrator, pursuant to Tenn. Code Ann. § 47-18-108(b)(1);
5. Make such orders or render such judgments as may be necessary to achieve the rescission or reformation of all consumer contracts with Defendants that were entered into in connection with Defendants' unfair or deceptive acts or practices detailed herein;
6. Adjudge and decree that Defendants disgorge all ill-gotten gains acquired as a result

of Defendants' unfair or deceptive acts or practices detailed herein;

7. Adjudge and decree that Defendants pay civil penalties of not more than \$1,000.00 per violation of the Consumer Act, as provided by Tenn. Code Ann. § 47-18-108(b)(3);

8. Enter a judgment against Defendants and in favor of the State for its reasonable costs and expenses of investigation and prosecution of Defendants' actions, including attorneys' fees and costs, pursuant to Tenn. Code Ann. § 47-18-108(a)(5), (b)(4) and 47-18-116; and

9. Grant Plaintiff such other and further relief as it may deem appropriate to fully and effectively dissipate the effects of the conduct complained of herein, or which may otherwise seem proper to the Court.

Respectfully Submitted,


HERBERT H. SLATTERY III
Attorney General and Reporter
B.P.R. No. 009077

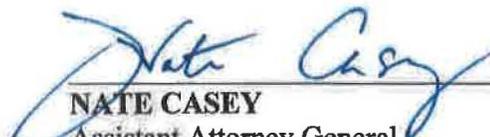

NATE CASEY
Assistant Attorney General
B.P.R. No. 031060
Office of the Tennessee Attorney General
Consumer Protection and Advocate Division
Post Office Box 20207
Nashville, Tennessee 37202-0207
Phone: (615) 741-2935
Facsimile: (615) 532-2910

EXHIBIT A

STATE OF TENNESSEE

Office of the Attorney General



HERBERT H. SLATERY III
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202
TELEPHONE (615)741-3491
FACSIMILE (615)741-2009

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RICHARD R. RODGER, CLERK
RET D.C.

November 25, 2015

**NOTIFICATION OF INTENTION TO
INITIATE LEGAL PROCEEDINGS**

VIA U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Edward J. Polchlopek, III
Owner / Registered Agent
Altius Management, LLC
5543 Edmondson Pike #107
Nashville, TN 37211-5808

RE: Notification of Intention to Initiate Legal Proceedings Against Edward J. Polchlopek, III, both individually and d/b/a Altius Management, LLC and Altius Management, LLC

Dear Mr. Polchlopek:

This Office has been investigating the business practices of Edward J. Polchlopek, III and Altius Management, LLC, located in Nashville, Tennessee and has determined that there is reason to believe that Edward J. Polchlopek, III, both individually and doing business as Altius Management, LLC and Altius Management, LLC have violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*

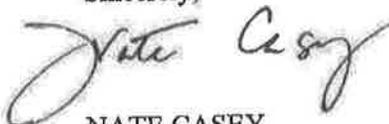
Specifically, this Office has determined that there is reason to believe that Edward J. Polchlopek, III and Altius Management, LLC created a crowdfunding campaign on Kickstarter.com and: (1) misrepresented what the money raised from consumers would fund; (2) misrepresented the timeframe for completion of the project; and (3) failed to provide consumers either what was promised or refunds, as required by Kickstarter's Terms of Use.

Pursuant to Tenn. Code Ann. § 47-18-108(2), all parties listed above are hereby given 10

days' notice of the State's intention to initiate legal proceedings against you pursuant to the Tennessee Consumer Protection Act. *If you wish to resolve the State's concerns short of litigation, you should contact this Office immediately to arrange a meeting.* If this Office does not hear from you before the expiration of the 10 days, *you will not be contacted again;* rather, this Office will merely proceed with appropriate action.

If you have any questions or comments, please contact me at the number listed below.

Sincerely,

A handwritten signature in cursive script that reads "Nate Casey". The signature is written in dark ink and is positioned above the printed name.

NATE CASEY
Assistant Attorney General
(615) 741-2935

EXHIBIT B

Discover

Start a project

Sign up

Log in



Search Projects

Terms of Use

2016 FEB -2 PM 1:40

D.C.

This page applies only to projects launched on or before October 18th, 2014 at 11:59pm ET. For the current version of these terms, please click here.

United States ▼

Please read these Terms of Use (the "Agreement" or "Terms of Use") carefully before using the services offered by Kickstarter, Inc. or Kickstarter London Limited (together "Kickstarter" or the "Company"). This Agreement sets forth the legally binding terms and conditions for your use of the website at www.kickstarter.com, all other sites owned and operated by Kickstarter that redirect to www.kickstarter.com, and all subdomains (collectively, the "Site"), and the service owned and operated by the Company (together with the Site, the "Service"). By using the Service in any manner, including, but not limited to, visiting or browsing the Site or contributing content, information, or other materials or services to the Site, you agree to be bound by this Agreement.

Summary of Service

Kickstarter is a platform where certain users ("Project Creators") run campaigns to fund creative projects by offering rewards to raise money from other users ("Backers"). Through the Site, email, websites, and other media, the Service makes accessible various content, including, but not limited to, videos, photographs, images, artwork, graphics, audio clips, comments, data, text, software, scripts, projects, other material and information, and associated trademarks and copyrightable works (collectively, "Content"). Project Creators, Backers, and other visitors to and users of the Service (collectively, "Users") may have the ability to contribute, add, create, upload, submit, distribute, facilitate the distribution of, collect,

post, or otherwise make accessible ("Submit") Content. "User Submissions" means any Content Submitted by Users.

Acceptance of Terms

The Service is offered subject to acceptance of all of the terms and conditions contained in these Terms of Use, including the Privacy Policy available at <https://www.kickstarter.com/privacy>, and all other operating rules, policies, and procedures that may be published on the Site by the Company, which are incorporated by reference. These Terms of Use apply to every user of the Service. In addition, some services offered through the Service may be subject to additional terms and conditions adopted by the Company. Your use of those services is subject to those additional terms and conditions, which are incorporated into these Terms of Use by this reference.

The Company reserves the right, at its sole discretion, to modify or replace these Terms of Use by posting the updated terms on the Site. It is your responsibility to check the Terms of Use periodically for changes. Your continued use of the Service following the posting of any changes to the Terms of Use constitutes acceptance of those changes.

The Company reserves the right to change, suspend, or discontinue the Service (including, but not limited to, the availability of any feature, database, or Content) at any time for any reason. The Company may also impose limits on certain features and services or restrict your access to parts or all of the Service without notice or liability.

The Service is available only to individuals who are at least 18 years old (and at least the legal age in your jurisdiction). You represent and warrant that if you are an individual, you are at least 18 years old and of legal age in your jurisdiction to form a binding contract, and that all registration information you submit is accurate and truthful. The Company reserves the right to ask for proof of age from you and your account may be suspended until satisfactory proof of age is provided. The Company may, in its sole discretion, refuse to offer the Service to any person or entity and change its eligibility criteria at any time. This provision is void where prohibited by law and the right to access the Service is revoked in those jurisdictions.

Rules and Conduct

As a condition of use, you promise not to use the Service for any purpose that is prohibited by the Terms of Use or law. The Service is provided only for your own personal, non-commercial use (except as allowed by the terms set forth in the section of these Terms of Use titled, "Projects: Fundraising and Commerce"). You are responsible for all of your activity in connection with the Service. You shall not, and shall not permit any third party using your account to, take any action, or Submit Content, that:

infringes any patent, trademark, trade secret, copyright, right of publicity, or other right of any other person or entity, or violates any law or contract;

you know is false, misleading, or inaccurate;

is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, tortious, obscene, offensive, profane, or invasive of another's privacy;

constitutes unsolicited or unauthorized advertising or promotional material or any junk mail, spam, or chain letters;

contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit, or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password, or other information of the Company or any third party;

is made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence; or

impersonates any person or entity, including any employee or representative of the Company. Additionally, you shall not: (i) take any action that imposes or may impose (as determined by the Company in its sole discretion) an unreasonable or disproportionately large load on the Company's or its third-party providers' infrastructure; (ii) interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service; (iii) bypass any measures the Company may use to prevent or restrict access to the Service (or other accounts, computer systems, or networks connected to the Service); (iv) run Maillist, Listserv, or any form of auto-responder or "spam" on the Service; or (v) use manual or automated software, devices, or other processes to "crawl" or "spider" any page of the Site.

You shall not directly or indirectly: (i) decipher, decompile, disassemble, reverse engineer, or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Service, except to the extent applicable laws specifically prohibit such restriction; (ii) modify, translate, or otherwise create derivative works of any part of the Service; or (iii) copy, rent, lease, distribute, or otherwise transfer any of the rights that you receive hereunder. You shall abide by all applicable local, state, national, and international laws and regulations.

Project Creators agree to not abuse other users' personal information. Abuse is defined as using personal information for any purpose other than those explicitly specified in the Project Creator's Project, or is not related to fulfilling delivery of a product or service explicitly specified in the Project Creator's Project.

Registration

You may view Content on the Site without registering, but as a condition of using certain aspects of the Service, you may be required to register with the Company and select a screen name ("User ID") and password. You shall provide accurate, complete, and updated registration information. Failure to do so shall constitute a breach of the Terms of Use, which may result in immediate termination of your account. You shall not use as a User ID, domain name, or project name any name or term that (i) is the name of another person, with the intent to impersonate that person; (ii) is subject to any rights of another person, without appropriate authorization; or (iii) is offensive, vulgar, or obscene. The Company reserves the right in its sole discretion to refuse registration of or cancel a User ID, domain name, and project name. You are solely responsible for activity that occurs on your account and shall be responsible for maintaining the confidentiality of your password for the Site. You shall never use another User account without the other User's express permission. You will immediately notify the Company in writing of any unauthorized use of your account, or other known account-related security breach.

Projects: Fundraising and Commerce

Kickstarter is a platform where Project Creators run campaigns to fund creative projects by offering rewards to raise money from Backers. By creating a fundraising campaign on Kickstarter, you as the Project Creator are offering the public the opportunity to enter into a contract with you. By backing a fundraising campaign on Kickstarter, you as the Backer accept that offer and the contract between Backer and Project Creator is formed. Kickstarter is not a party to that agreement between the Backer and Project Creator. All dealings are solely between Users.

By backing or creating a fundraising campaign on Kickstarter, you agree to be bound by this entire Agreement, including the following terms:

Backers agree to provide their payment information at the time they pledge to a campaign. The payment will be collected at or after the campaign deadline and only if the amount of money pledged as of the deadline is at least equal to the fundraising goal. The amount Backers pledge is the amount they will be charged.

Backers consent to Kickstarter and its payments partners authorizing or reserving a charge on their payment card or other payment method for any amount up to the full pledge at any time between the pledge and collection of the funds.

Backers agree to have sufficient funds or credit available at the campaign deadline to ensure that the pledge will be collectible.

Backers may increase, decrease, or cancel their pledge at any time during the fundraising campaign, except that they may not cancel or reduce their pledge if the campaign is in its final 24 hours and the cancellation or reduction would drop the campaign below its goal.

The Estimated Delivery Date listed on each reward is not a promise to fulfill by that date, but is merely an estimate of when the Project Creator hopes to fulfill by.

Project Creators agree to make a good faith attempt to fulfill each reward by its Estimated Delivery Date.

For all campaigns, Kickstarter gives to the Project Creator each Backer's User ID and pledge amount. For successful campaigns, Kickstarter additionally gives to the Project Creator each Backer's name and email.

For some rewards, the Project Creator needs further information from Backers, such as a mailing address or t-shirt size, to enable the Project Creator to deliver the rewards. The Project Creator shall request the information directly from Backers at some point after the fundraising campaign is successful. To receive the reward, Backers agree to provide the requested information to the Project Creator within a reasonable amount of time.

Kickstarter does not offer refunds. A Project Creator is not required to grant a Backer's request for a refund unless the Project Creator is unable or unwilling to fulfill the reward.

Project Creators are required to fulfill all rewards of their successful fundraising campaigns or refund any Backer whose reward they do not or cannot fulfill.

Project Creators may cancel or refund a Backer's pledge at any time and for any reason, and if they do so, are not required to fulfill the reward.

Because of occasional failures of payments from Backers, Kickstarter cannot guarantee the receipt by Project Creators of the amount pledged minus fees.

Kickstarter and its payments partners will remove their fees before transmitting proceeds of a campaign. Fees may vary depending on region and other factors.

Kickstarter reserves the right to cancel a pledge at any time and for any reason.

Kickstarter reserves the right to reject, cancel, interrupt, remove, or suspend a campaign at any time and for any reason. Kickstarter is not liable for any damages as a result of any of those actions. Kickstarter's policy is not to comment on the reasons for any of those actions. Project Creators should not take any action in reliance on having their project posted on the Site or having any of the money pledged until they have the ability to withdraw and spend the money. There may be a delay between the end of a successful fundraising campaign and access to the funds.

Kickstarter is not liable for any damages or loss incurred related to rewards or any other use of the Service. Kickstarter is under no obligation to become involved in disputes between any Users, or between Users and any third party arising in connection with the use of the Service. This includes, but is not limited to, delivery of goods and services, and any other terms, conditions, warranties, or representations associated with campaigns on the Site. Kickstarter does not oversee the performance or punctuality of projects. The Company does not endorse any User Submissions. You release Kickstarter, its officers, employees, agents, and successors in rights from claims, damages, and demands of every kind, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and the Service.

Fees and Payments

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The use or other exploitation of User Submissions by the Company and Users as contemplated by this Agreement will not infringe or violate the rights of any third party, including without limitation any privacy rights, publicity rights, copyrights, contract rights, or any other intellectual property or proprietary rights.

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an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;

a description of the copyrighted work that you claim has been infringed;

a description of where the material that you claim is infringing is located on the Site, sufficient for Kickstarter to locate the material;

your address, telephone number, and email address;

a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and

a statement by you that the information in your notice is accurate and, under penalty of perjury, that you are the copyright owner or authorized to act on the copyright owner's behalf.

If you believe that your work has been removed or disabled by mistake or misidentification, please notify Kickstarter's Copyright Agent in writing by emailing us at copyright@kickstarter.com. Your counter-notice must contain the following information (please confirm these requirements with your legal counsel or see the U.S. Copyright Act, 17 U.S.C. §512(g)(3), for more information):

a physical or electronic signature of the user of the Services;

identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled; a statement made under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material; and

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Under the Copyright Act, any person who knowingly materially misrepresents that material is infringing or was removed or disabled by mistake or misidentification may be subject to liability.

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Our designated copyright agent for notice of alleged copyright infringement can be reached at:

Kickstarter, Inc.
Attn: Copyright Agent
58 Kent Street
Brooklyn, NY 11222
Email: copyright@kickstarter.com

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The Company may terminate your access to the Service, without cause or notice, which may result in the forfeiture and destruction of all information associated with your account. If you wish to terminate your account, you may do so by following the instructions on the Site. Any fees paid to the Company are non-refundable. All provisions of the Terms of Use that by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

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Indemnification

You shall defend, indemnify, and hold harmless the Company, its affiliates, and each of its and its affiliates' employees, contractors, directors, suppliers, and representatives from all liabilities, claims, and expenses, including reasonable attorneys' fees and other legal costs, that arise from or relate to your use or misuse of, or access to, the Service and Content, or otherwise from your User Submissions, violation of the Terms of Use, or infringement by you, or any third party using your account, of any intellectual property or other right of any person or entity. The Company reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with the Company in asserting any available defenses.

Limitation of Liability

In no event shall the Company, nor its directors, employees, agents, partners, suppliers, or content providers, be liable under contract, tort, strict liability, negligence, or any other legal or equitable theory with respect to the service (i) for any lost profits, data loss, cost of procurement of substitute goods or services, or special, indirect, incidental, punitive, or consequential damages of any kind whatsoever, substitute goods or services (however arising), (ii) for any bugs, viruses, trojan horses, or the like (regardless of the source of origination), or (iii) for any direct damages in excess of (in the aggregate) one hundred U.S. dollars (\$100.00). some states or countries do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations and exclusions may not apply to you.

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Accessing the Service is prohibited from territories where the Content is illegal. If you access the Service from other locations, you do so at your own initiative and are responsible for compliance with local laws.

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By using the Services, you consent to receive from Kickstarter all communications including notices, agreements, legally required disclosures, or other information in connection with the Services (collectively, "Contract Notices") electronically. Kickstarter may provide the electronic Contract Notices by posting them on the Site. If you desire to withdraw your consent to receive Contract Notices electronically, you must discontinue your use of the Services.

Governing Law

These Terms of Service (and any further rules, policies, or guidelines incorporated by reference) shall be governed by and construed in accordance with the laws of the State of New York and the United States, without giving effect to any principles of conflicts of law, and without application of the Uniform Computer Information Transaction Act or the United Nations Convention of Controls for International Sale of Goods. You agree that the Company and its Services are deemed a passive website that does not give rise to personal jurisdiction over Kickstarter or its parents, subsidiaries, affiliates, successors, assigns, employees, agents, directors, officers or shareholders, either specific or general, in any jurisdiction other than the State of New York. You agree that any action at law or in equity arising out of or relating to these terms, or your use or non-use of the Services, shall be filed only in the state or federal courts located in New York County in the State of New York and you hereby consent and submit to the personal jurisdiction of such courts for the purposes of litigating any such action.

You hereby irrevocably waive any right you may have to trial by jury in any dispute, action, or proceeding.

Integration and Severability

These Terms of Use and other referenced material are the entire agreement between you and the Company with respect to the Service, and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and the Company with respect to the Service and govern the future relationship. If any provision of the Terms of Use is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Terms of Use will otherwise remain in full force and effect and enforceable. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

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About us

- What is Kickstarter?
- Year in Kickstarter 2014
- Who we are
- Jobs
- Press
- Stats
- Projects we love
- Spotlight

Help

- FAQ
- Our Rules
- Creator Handbook
- Trust & Safety
- Support
- Terms of Use
- Privacy Policy
- Cookie Policy

Discover

- Art
- Comics
- Crafts
- Dance
- Design
- Fashion
- Film &
- Video
- Food

- Games
- Journalism
- Music
- Photography
- Publishing
- Technology
- Theater

Hello

- Happening
- Company
- Blog
- Engineering
- Blog
- Twitter
- Facebook
- Tumblr
- Instagram
- Pinterest
- YouTube

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