

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 26-2705

MAYDAY HEALTH and NANCY TURBAK BERRY,

Plaintiffs-Appellees,

v.

LARRY R. RHODEN, Governor of the State of South Dakota and
MARTY J. JACKLEY, Attorney General for the State of South Dakota,
in their official capacities,

Defendants-Appellants.

APPELLANTS' REPLY IN SUPPORT OF MOTION TO STAY PRELIMINARY INJUNCTION

So long as the injunction is in effect, Mayday can freely advertise its website in South Dakota, such as by flying banners over large crowd gatherings like it did on August 28 and 29, 2026, at the state fair in Louisville, Kentucky. KENTUCKY COMPLAINT at ¶ 11, Exhibit 1. Or on billboards, trucks, blimps, gas station placards, or any other surface it can commandeer. R.DOC. 46 at Exhibits C, O, AA, BB-0002. Mayday's website is an advertisement for and a direct link to abortion pill merchants who are ready and willing to violate South Dakota's abortion pill ban. And so long as the injunction is in effect, the state is without authority to do anything about it. Because Mayday is the principal vector for abortion pill traffic in South

Dakota, the injunction effectively legalizes abortion pill sales in South Dakota for as long as it is in place.

Like the district court's order denying defendants'/appellants' motion to stay, Mayday's response to the motion to stay here mainly reiterates the district court's injunction order's findings (R.DOC. 51) and conclusorily declares them correct without engaging and refuting the deficiencies in the court's reasoning identified in the motion to stay.¹ This is understandable because the district court's methodology is difficult to defend. To the extent Mayday's response does engage the deficiencies identified in the appellants' motion, it raises red herring arguments that are easily refuted.² Accordingly, this court should stay the injunction pending disposition of the appeal in this matter on the merits.

¹ Mayday complains that appellants' motion to stay does not cite the hearing transcript. That is because the district court's order (R.DOC. 51) does not cite the hearing transcript so appellants' motion cited to the challenged credibility and other findings where they are found in the district court's order.

² Even though appellants have sought a stay only as to Mayday, Mayday's response devotes significant real estate to the Turbak sweatshirt claim in order, it would seem, to pepper its response with dramatic assertions like the state "condemns [Turbak's wearing of the sweatshirt] as criminal" and "felonious." MAYDAY RESPONSE at 3, 5, 7, 24. It has been the state's position since the start of this litigation that the subject statutes do not even reach let alone criminalize Turbak's wearing of her Mayday sweatshirt. R.DOC.14. Mayday's distortion of the state's position respecting Turbak's sweatshirt, and injection of their frivolous Turbak claim into a stay motion that pertains only to Mayday, confirms the state's suspicion that the Turbak claim is "just a tactic to discredit the statute and sensationalize plaintiffs' complaint by arguing that it applies in some trivial or 'fanciful' way that it plainly does not." R.DOC. 14 at 5.

1. Speech Integral

Mayday argues that the speech integral exception does not apply here because the exception “demands a separate underlying offense” that “does not involve protected speech.” MAYDAY RESPONSE at 15, 16. First, Mayday is advertising an illegal product which is unprotected under *Pittsburgh Press* and *Bigelow* even if Mayday’s website did not also solicit and facilitate illegal drug sales. Second, the subject statutes’ very terms criminalize only speech (“advertis[ing]”) in connection with the separate underlying offenses of “procur[ing]” abortion “drug[s]” for a woman “for purposes of an unlawful abortion” or “for producing an abortion” in South Dakota. SDCL 22-17-5.1, -5.3. Thus, Mayday’s argument that the subject statutes circularly prosecute speech as integral to the speech criminalized by the statutes and the cases Mayday cites in support (*Chiles*, *Sryniawski*, *Planned Parenthood Great Northwest*) are a big red herring. The subject statutes plainly proscribe only advertising integral to the separate illegal acts of procuring abortion pills for the purpose of an abortion in South Dakota.

Anticipating the weakness of their argument, Mayday doubles back to the district court’s finding that it does not “sell, dispense, or distribute abortion pills.” R.DOC. 51 at 33. But this itself is one of the most conspicuous failings of the district court’s ruling. The *Jackson/Hernandez/Anziano* standards do not require that Mayday do any of these things to solicit and facilitate drug sales. A court must apply

proper standards. *Olin Water Services v. Midland Research Laboratories*, 774 F.2d 303, 307 (8th Cir. 1985); *Beber v. NavSav Holdings, LLC*, 140 F.4th 453, 459, 462 (8th Cir. 2025). The district court did not merely misapply the *Jackson/Hernandez/Anziano* standards, it failed to apply them at all. R.DOC. 63. Per the *Jackson/Hernandez/Anziano* standards, “[c]onnect[ing]” buyers of illegal pills with “trustworthy pill providers” willing to engage in an illegal transaction – as Mayday admittedly does – is the very definition of aiding and abetting an illegal drug transaction, regardless of the fact that Mayday does not personally handle money or distribute pills. R.DOC. 62 at 73/25-74/2, 77/14, 77/21-78/11, 102/15-22. Had the district court applied the *Jackson/Hernandez/Anziano* standards, the conclusion that Mayday’s “speech” is integral to aiding and abetting illegal abortion pill transactions is inescapable.

Remarkably, even though the subject statute does not fit into the “circular” speech prohibition line of cases represented by *Chiles*, *Sryniawski*, and *Planned Parenthood Great Northwest*, Mayday continues to cite to *Matsumoto v. Labrador*, 122 F.4th 787 (9th Cir. 2024). *Matsumoto* strips Mayday’s advertising of any pretense of legality. *Matsumoto* enjoined an Idaho statute against “recruiting” a minor to obtain an abortion. *Matsumoto*, 122 F.4th at 808. *Matsumoto* entered the injunction because Idaho’s statute, in addition to in-state abortions, prohibited “procurement of abortions that are legal [in states] where they are performed.” *Matsumoto*, 122 F.4th

at 813. Idaho’s statute proscribed recruiting a minor to obtain an abortion from an “abortion provider . . . located in another state,” which was intended to prevent Idaho minors from obtaining an abortion in neighboring Oregon where abortion is legal. *Matsumoto*, 122 F.4th at 813. In other words, Idaho’s statute broadly criminalized speech which *Bigelow* (and *Planned Parenthood Great Northwest*) expressly protects, *i.e.* speech concerning legal abortions in other states.

But for a statute like South Dakota’s, which is limited to advertisements for procuring or producing an abortion in South Dakota, *Matsumoto* endorsed Idaho’s argument that “recruiting an Idaho minor to get an illegal abortion in Idaho qualifies as speech integral to criminal conduct” and that “‘recruiting’ under [Idaho’s statute], to the extent that it induces a minor to violate [that statute] via the adult’s procurement of abortion for that minor, would be speech integral to criminal conduct.” *Matsumoto*, 122 F.4th at 813. As in *Matsumoto*, Mayday’s advertising instructing and facilitating a South Dakota woman on how “to get an illegal abortion in [South Dakota] qualifies as speech integral to criminal conduct.” *Matsumoto*, 122 F.4th at 813.

2. Pittsburgh Press/Bigelow/James

Appellants’ brief analyzes in detail why *Pittsburgh Press* and *Bigelow* control and should have been applied here instead of being arbitrarily “distinguished” away, but Mayday’s response does not even attempt to defend the district court’s failure to

apply these cases. In one sentence per case, Mayday simply reiterates the district court findings “distinguishing” *Pittsburgh Press* and *Bigelow* and conclusorily declares the court right. MAYDAY RESPONSE at 22-23. Mayday’s response devotes three sentences to defending the district court’s effort to “distinguish” *James* but, again, this defense is nothing more than repeating the district court’s findings and conclusorily declaring them right. MAYDAY RESPONSE at 23.

Mayday’s response does not defend the district court’s method of “distinguishing” *James* by *sua sponte* questioning whether abortion reversal pills are legal in New York even though Mayday itself made no such argument. It is not the function of courts to go “looking for wrongs to right” but rather to “decide only questions presented by the parties.” *United States v. Sineneng-Smith*, 590 U.S. 317, 376 (2020). Mayday did not place the legality of abortion reversal pills in New York in question. But Mayday’s response does not engage or defend the state’s arguments (1) that it was wrong to make such an argument for Mayday when Mayday itself did not, (2) that there is nothing in *James* that gives any reason to believe abortion reversal pills are not legal in New York, and (3) that before the district court “distinguished” *James* away on an argument Mayday did not raise, it should have performed a basic Westlaw search that would have informed the court that abortion reversal pills are *not* illegal in New York. In short, Mayday’s response does not engage, much less refute, the state’s position that the district court clearly erred in

not applying the controlling authorities and standards of *Pittsburgh Press* and *Bigelow* or the on-point, persuasive authority of *James*.

3. Chatbot Charley/Mail Forwarding

Again, Mayday's response does not engage, much less refute, the state's argument that the district court clearly erred in refusing to consider the Chatbot Charley and "mail forwarding" evidence in reference to Mayday's intent to solicit and facilitate. Again, Mayday's response just restates the district court's findings and conclusorily declares them right. Destroying evidence does not render it irrelevant. *United States v. Walker*, 60 Fed.Appx 637, 638 (8th Cir. 2003)(destroyed letter in which defendant expressed a hatred of intended murder victim relevant to intent). Per *Jackson*, *Hernandez* and *Anziano*, evidence of intent to solicit or facilitate is not strictly "forward looking" as the district court incorrectly held. R.DOC. 51 at 14.

Mayday has vociferously denied any intent to induce or encourage women to acquire abortion pills. R.DOC. 62 at 58/21, 59/4, 85/11, 86/ 2. When, except for removing the Charley chatbot and "mail forwarding" instructions, Mayday's website's current core function of directly linking women to sellers ready, willing and able to illegally ship abortion pills into South Dakota is unchanged, the district court arbitrarily refused to consider Mayday's "past speech" as evidence of its present intent to solicit and facilitate illegal abortion pill transactions.

4. Mayday's Credibility

Again, Mayday's response makes no effort to engage, much less refute, appellants' argument that the district court clearly erred in finding Mayday's testimony credible. Mayday only cites some boilerplate to the effect that credibility findings "are entitled to 'special deference'" and are "virtually never" overturned.

That might be true if it were a matter of Mayday's word against someone else's, but the credibility comparison here involves the disparity between Mayday's claim to just "provide information" and the hard evidence of its own website. Compare R.DOC 51 at 3, 27, 32, 34, 36 with R.DOC. 46 at Exhibits D-Q. This court need not defer to the district court's credibility determination when it can view and read Mayday's website for itself.

It is self-evident that Mayday's website "does more" than "provide information." R.DOC. 62 at 78/11, 79/2, 95/5. According to Mayday's press statements, its website "connects" site users to "abortion pills in states where clinics are banned." R.DOC. 46 at Exhibit B-0004; R.DOC. 62 at 77/21-78/11. The "accurate information about abortion" that Mayday's website "provides [is] direct links" to "five abortion pill providers" who "provide these pills [to Mayday.Health site users in all 50 states] via telemedicine." R.DOC. 62 at 73/25-74/2, 77/14, 85/11-15, 87/4, 93/25-94/3, 96/2. These direct links are on Mayday's website for the stated purpose of initiating a transaction with one of Mayday's "trusted partners" to

illegally export abortion pills to states where they are “banned.” R.DOC. 62 at 81/19.

“Connect[ing]” buyers of illegal pills with “trustworthy pill providers” (R.DOC. 62 at 102/15-22) willing to engage in an illegal transaction is the very definition of aiding and abetting an illegal drug transaction. Which means that Mayday actually *is* what its own counsel described facetiously as “a big fake-out, where, actually, [it is] trying to promote women to have abortions, and [it] just decided to say, ‘Well, we just want them to have information.’” R.DOC. 62 at 98/21. Thus, the district court *clearly* erred in finding Mayday’s denials of any intent to encourage, induce or initiate illegal abortion pills transactions credible when the “information” its website “provides” about illegal abortion pills is accompanied by the means to acquire them in states where they are “banned.” *Williams*, 552 U.S. at 295; *Conant*, 309 F.3d at 635.

5. Mayday’s Speech Is Commercial

Mayday argues that its “speech” is non-commercial because it merely “expresses a moral belief.” Mayday did not come to the attention of state law enforcement because of some thoughtcrime stemming from its moral convictions. Mayday incorrectly asserts that “the triggering conduct [here] is [its] communicative message;” the triggering conduct here is the direct links to abortion pill providers that accompany Mayday’s message that are self-evidently provided to site users for

the purpose of enabling, inducing and initiating the shipment of illegal abortion pills into the state of South Dakota and other states where they are “banned.” R.DOC. 46 at Exhibit B-0004. Wrapping a scheme to push an illegal drug in South Dakota in its “moral belief[s]” about abortion does not protect Mayday’s speech any more than a “moral belief” that narcotics should be legal would protect a website delivering methamphetamine to states where it is illegal. *NIFLA v. Becerra*, 585 U.S. 755, 769 (2018). There is “no doubt that a newspaper constitutionally could be forbidden to publish a want ad proposing a sale of narcotics.” *Pittsburgh Press*, 413 U.S. at 388.

When Mayday says it acts “regardless of harmful state restrictions,” it is a euphemism for *in violation of state laws*. R.DOC. 46 at Exhibit BB-0002. What Mayday characterizes as its “dissident” and “bold guerilla approach” is just its euphemism for *illegal* activity. R.DOC. 4 at 32; R.DOC. 46 at Exhibit C-0002. This militant rhetoric attracts a site user base, attracts “trusted partners” – a.k.a. abortion pill merchants – to affiliate with Mayday, and attracts donors that pay for Mayday’s operating and fundraising expenses . . . which enables Mayday “to buy more advertisements.” *First Resort*, 860 F.3d at 1273; *James*, 160 F.4th at 377. Though the district court disregards this evidence of economic motivation, under a proper application of the law Mayday’s “speech” in furtherance of a “guerilla” business model to advertise on behalf of “dissident” merchants ready and willing to deliver abortion pills to states where they are “banned” is entirely commercial.

CONCLUSION

Mayday is nothing more than an online vector to advertise and broker abortion pill sales on behalf of pill merchants who are prohibited by law from advertising on their own behalf. These actions are not speech but conduct in furtherance of illegal drug transactions. Consequently, the district court's preliminary injunction methodology clearly erred and abused its discretion by:

- Failing to apply the controlling authorities and standards of *Pittsburgh Press* and *Bigelow* to the questions of whether Mayday's "speech" is unprotected advertising of an illegal product or integral to criminal conduct.
- Failing to apply the on-point, persuasive authorities of *James*, *Matsumoto* and *Welty* to the questions of whether Mayday's "speech" is integral to criminal conduct or commercial.
- Failing to apply the controlling authorities and standards of *Bolger* and *Central Hudson* to the question of whether Mayday's "speech" is commercial.
- Failing to apply the controlling authorities and standards of *Jackson*, *Hernandez* and *Anziano* to the questions of Mayday's intent and whether Mayday's website solicits and facilitates illegal drug transactions.
- Refusing to consider the highly probative Chatbot Charley/"mail forwarding" evidence of Mayday's intent to solicit and facilitate taken from Mayday's own website.

- Finding Mayday's denials of any intent to solicit and facilitate credible in comparison to the hard evidence of such intent on its website and press statements.

Olin Water Services, 774 F.2d at 307; *Beber*, 140 F.4th at 459, 462. Appellants accordingly request that this court immediately stay the district court's order preliminarily enjoining SDCL 22-17-5.1 and -5.3.

Dated this 28th day of September 2026.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The State of South Dakota, by and through its counsel, Paul S. Swedlund, hereby certifies that this document complies with the type/volume limits of Fed.R.App.P. 32(a)(7)(b) and Fed.R.App.P. 27(d)(2)(A). It contains 2,570 words and complies with the typeface and type style requirements of Fed.R.App.P. 32(a)(5)/(a)(6). It has been printed in a proportionally spaced typeface in 14-point Times New Roman font and scanned for viruses using Symantic Endpoint Protection.

Paul S. Swedlund

Paul S. Swedlund
Solicitor General

CERTIFICATE OF SERVICE

The State of South Dakota, by and through its counsel, Paul S. Swedlund, hereby certifies that the foregoing appellants' motion to stay preliminary injunction was served on appellees' counsel via CM/ECF by electronic filing of the foregoing brief with the clerk of this court this 28th day of September 2026.

Paul S. Swedlund

Paul S. Swedlund
Solicitor General

COMMONWEALTH OF KENTUCKY
LOGAN CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. 26-CI-_____
Electronically Filed

COMMONWEALTH OF KENTUCKY,
***ex rel.* RUSSELL COLEMAN,**
ATTORNEY GENERAL,

Plaintiff,

vs.

MAYDAY MEDICINES, INC. D/B/A
MAYDAY HEALTH (MAYDAY HEALTH)

Defendant.

COMPLAINT

Plaintiff, Commonwealth of Kentucky, by and through its Attorney General, Russell Coleman (the “Commonwealth” or “the Attorney General”), brings this civil enforcement action against Mayday Medicines, Inc. d/b/a Mayday Health (“Mayday”) for engaging in unfair, false, misleading, or deceptive business practices in violation of the Kentucky Consumer Protection Act (“KCPA”).

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, the Commonwealth of Kentucky ex rel. Russell Coleman, Attorney General is responsible for the enforcement and administration of Kentucky law, including the consumer protection laws set forth in Kentucky Revised Statutes Chapter 367. Specifically, KRS 367.190 authorizes him to bring this action in the name of the Commonwealth, and he has determined it to be in the public interest to do so.



2. Mayday is a non-profit organization organized under the laws of Delaware. Its principal place of business is 767 Broadway #1555 New York, New York 10003.

3. This Court has subject matter jurisdiction over the Commonwealth's claims pursuant to KRS 23A.010 and KRS 367.190. The Commonwealth's claims are in excess of any minimum dollar amount necessary to establish the jurisdiction of this Court.

4. This Court has personal jurisdiction over all parties pursuant to KRS 454.210 because Mayday has regularly transacted or solicited business in the Commonwealth; or derived substantial revenue from goods used or consumed or services rendered in the Commonwealth; or contracted to supply goods or services in the Commonwealth; or caused injury by an act or omission in the Commonwealth.

5. Venue is proper in Logan County pursuant to KRS 367.190.

BACKGROUND FACTUAL ALLEGATIONS

6. Mayday is a pro-abortion non-profit organization that connects the public with distributors of abortion-inducing drugs. It advertises through various means, including physical media that directs consumers to its website.

7. In October 2025, Mayday placed certain advertisements at a number of Kentucky gas stations. These ads read: "Pregnant? Don't Want to Be? Learn more at Mayday.Health." Copies of the advertisements displayed at the Kentucky locations are shown below and attached as **Exhibit 1** (affidavits of Angie Crawford), **Exhibit 2** (affidavit of Melanie Manley), and **Exhibit 7** (Shree Mahallaxmi, Inc. d/b/a Family Market's response to the Office of the Attorney General's Civil Investigative Demand and Subpoena). One or more such ads was placed in Logan County.







8. These advertisements provided a link to a website (<https://Mayday.health>) that facilitates, aids, and/or helps Kentuckians to obtain abortion-inducing drugs in an illegal manner, namely, by mail. Mayday's website does more than simply provide information—it facilitates, encourages, and is even integral to the distribution of abortion-inducing drugs into Kentucky through the mail, a criminal act and class D felony under KRS 311.7733 and KRS 311.990(39).

These advertisements and the Mayday.health website furthers and is integral to the criminal conduct of distributing these drugs in an illegal manner at least in part because it connects, directs, and funnels consumers to distributors who ship these drugs illegally. These distributors would not have shipped those drugs to the consumer but for Mayday.health's website and advertisements directing the consumer to them. Indeed, here, Mayday.health links users to the abortion pill providers directly. Simply put, Mayday's website and its advertisements constitute speech that is integral to criminal conduct.

9. The same or similar advertisements were reported as being displayed at numerous other gas stations within the Commonwealth.¹

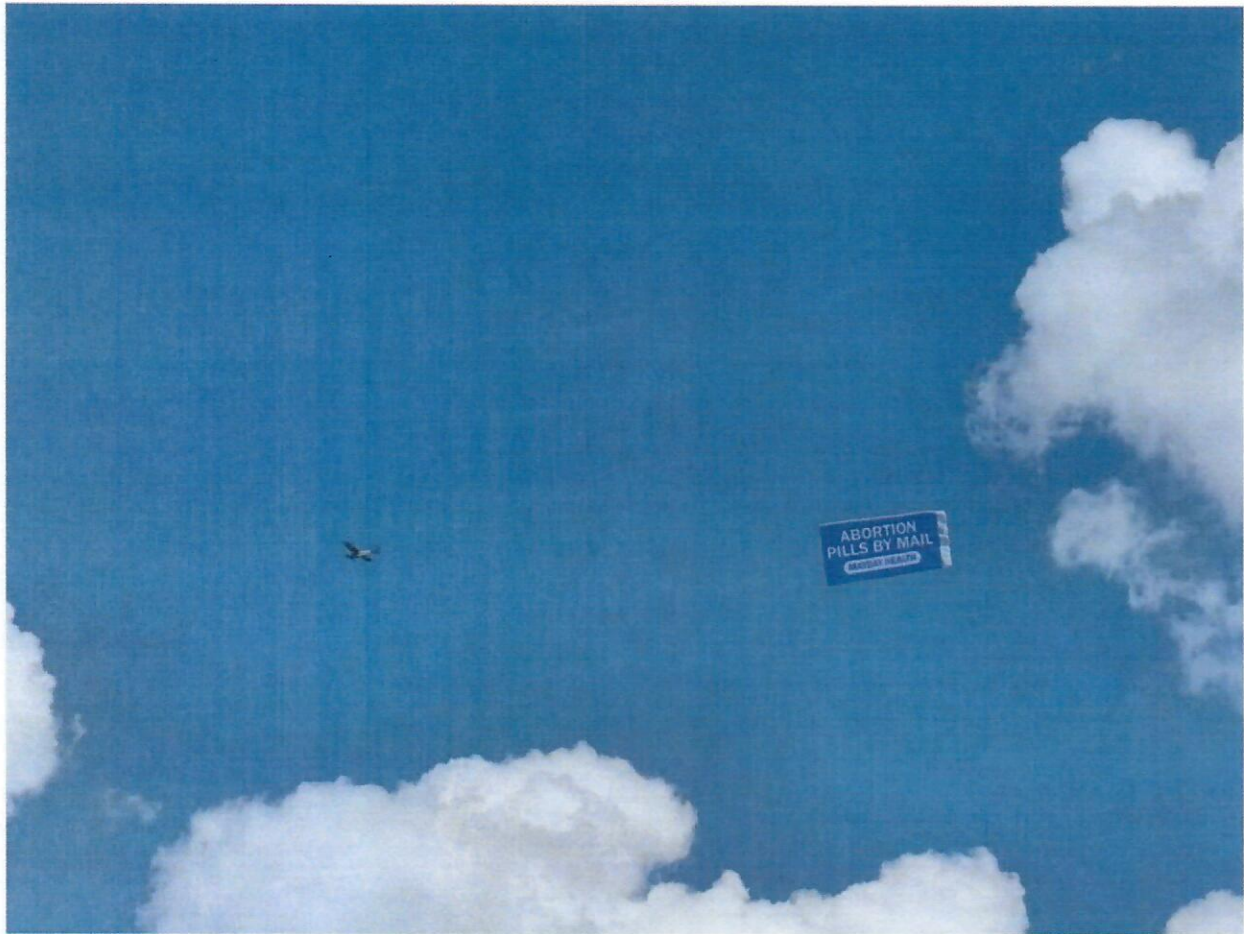
10. In January 2026, after learning of the advertisements, the Kentucky Office of the Attorney General began an investigation, sending Civil Investigative Demands to a number of Kentucky gas stations that ran the ads.

11. On or about August 28 and 29, 2026, Mayday displayed an advertisement using an airplane over the City of Louisville and the Kentucky State Fair. The advertisement read "ABORTION PILLS BY MAIL. Mayday.Health."² Mayday Executive Director Leo Raisner acknowledged targeting the Kentucky State Fair because of the large crowd it brings.³ This advertisement is integral to criminal conduct for the same reasons as described above.

¹ https://www.kentuckytoday.com/baptist_life/kentucky-pregnancy-centers-push-back-on-gas-station-abortion-pill-ads/article_27486712-f058-47fc-8f29-fb18ef02d9fe.html. A copy of this article is attached as **Exhibit 3**.

² See image below from [Abortion pill advocacy soars over Kentucky State Fair advertising 'illegal drugs' | News | kentuckytoday.com](#); see also [Kentucky AG says activists 'advertising illegal drugs' after pro-abortion banner flies over State Fair | whas11.com](#). Copies of these articles are attached as **Exhibit 4** and **Exhibit 5**, respectively.

³ See *id.*



12. Mayday's advertisements in Kentucky are a clear attempt to help women terminate their pregnancies by facilitating the distribution of abortion-inducing drugs through the mail.

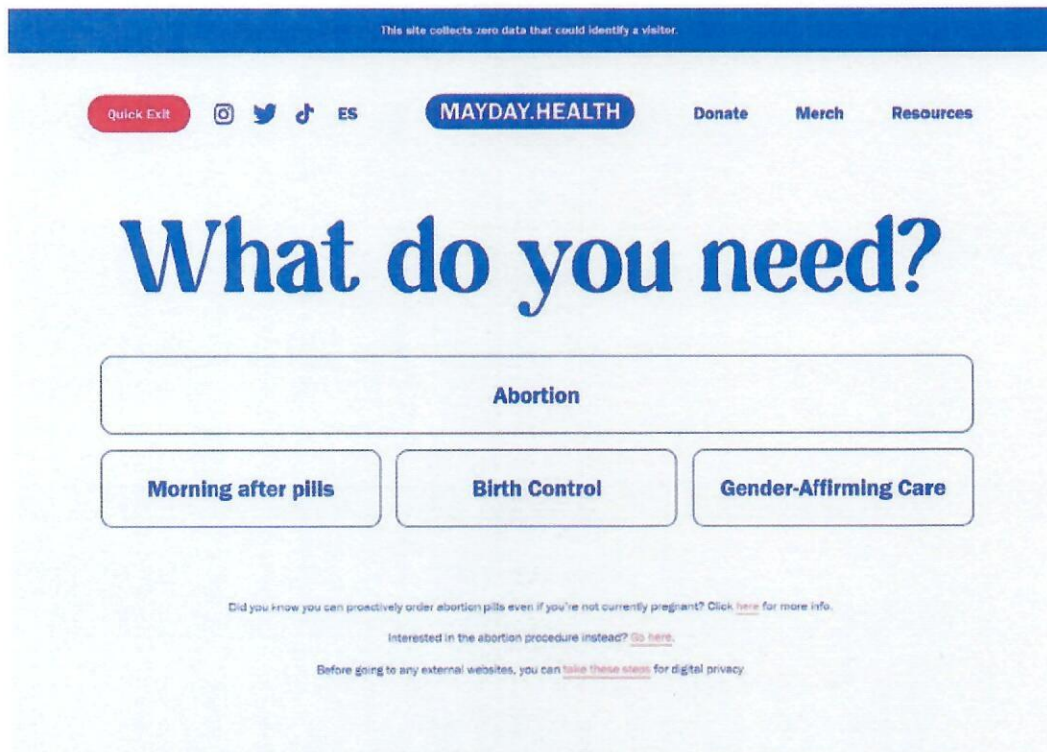
13. Under Kentucky law, the distribution of abortion-inducing drugs by mail is illegal. KRS 311.7733 ("It shall be unlawful for any manufacturer, distributor, physician, qualified physician, pharmacy, or any other person to intentionally, knowingly, or recklessly dispense, prescribe, or distribute any abortion-inducing drug as defined in KRS 311.7731 to a pregnant person via courier, delivery, or mail service.").

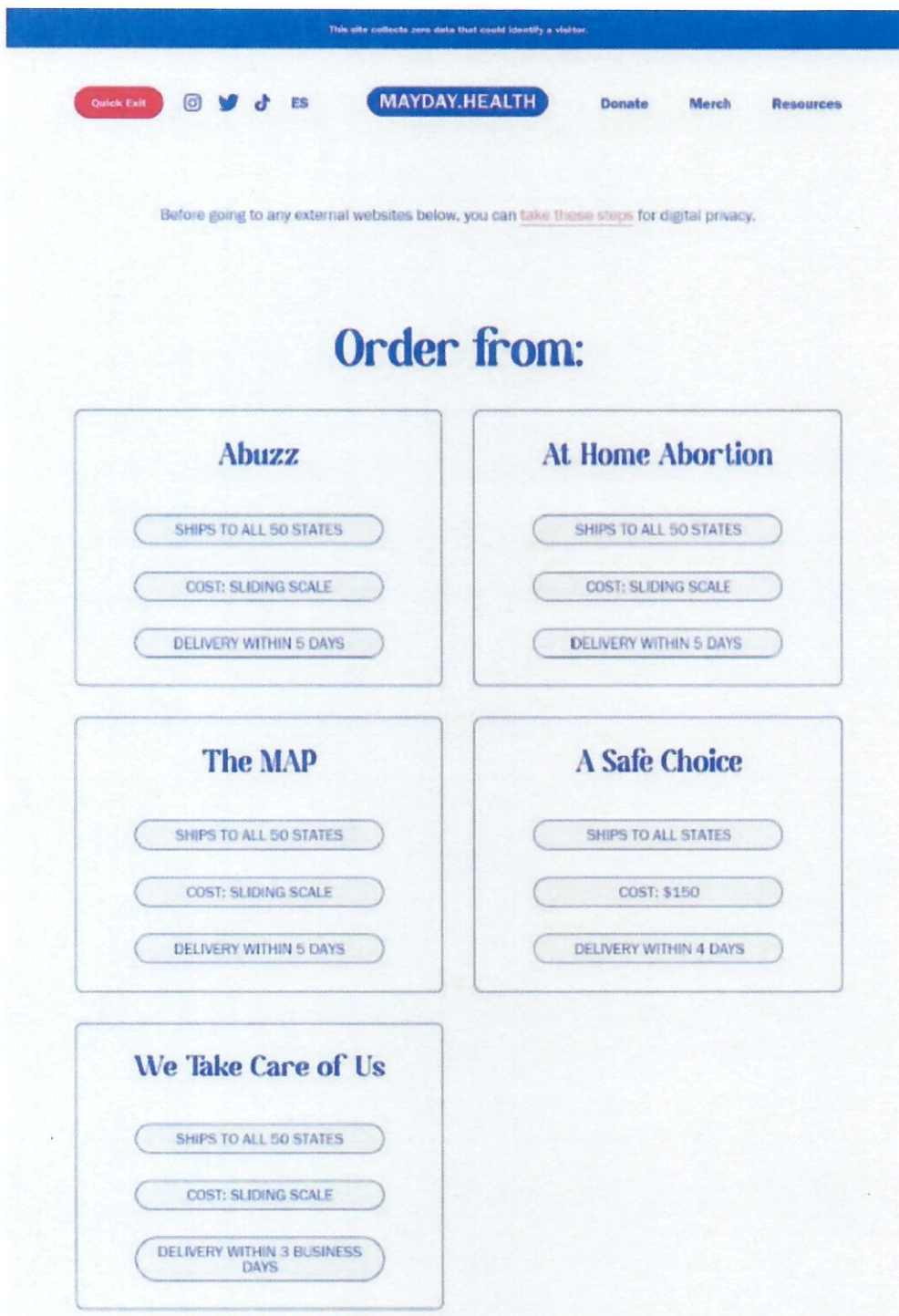
14. The term "abortion-inducing drug" includes "drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such

as mifepristone (mifeprex), misoprostol (cytotec), and methotrexate, or any generic or therapeutic equivalents thereof.” KRS 311.7731.

15. In addition, Kentucky law requires that a “physician performing or inducing an abortion shall be present in person and in the same room with the patient. The use of telehealth as defined in [KRS] 304.17A.-005 shall not be allowed in the performance of an abortion.” KRS 311.728. The homepage of Mayday’s website (www.mayday.health) displays a question to visitors (“What do you need?”) and then lists “Abortion” as the first option. *See Exhibit 6*, Affidavit of Scott Whitaker, and images reproduced below.

16. A Kentucky user clicking through Mayday’s website and selecting an option to “just take me to the abortion pills” will be shown third-party providers who ship abortion pills to all 50 states, including States like Kentucky, where distributing abortion-inducing drugs through the mail is illegal. *See id.*





17. Mayday represents on its website that the links contained on the site that direct users to the websites of providers of abortion-inducing drugs (such as “Abuzz,” “At Home Abortion,” “The MAP,” “A safe Choice,” and “We Take Care of Us”) are “trusted websites and

partners” of Mayday. See FAQ on www.mayday.health entitled “Why do other buttons send me to other websites? Can I trust them?” Mayday’s response to that FAQ is: “Some of our links go to other websites because they have the best content for a certain aspect of abortion care. We only link to other trusted websites and partners. You can go [here](#) to see how best to protect your digital privacy before leaving Mayday.”

Frequently Asked Questions

What if I’m concerned about the cost?



What is my legal risk?



Are abortion pills safe?



Why do other buttons send me to other websites? Can I trust them?



Some of our links go to other websites because they have the best content for a certain aspect of abortion care. We only link to other trusted websites and partners. You can go [here](#) to see how to best protect your digital privacy before leaving Mayday.

18. Advertising, distributing, or facilitating the distribution of abortion-inducing drugs through the mail to consumers in Kentucky constitutes “trade or commerce” for purposes of KRS 367.170. KRS 367.110(2) (defining “trade” and “commerce” to mean “the advertising, offering for sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value, and shall include any trade or commerce directly or indirectly affecting the people of this Commonwealth”). Here, Mayday’s website and advertisements directly “advertise” other abortion pill providers and their goods and services, namely, abortion pills. Indeed, Mayday’s intent is to help women terminate their pregnancies if they want to. They do this by funneling them to abortion pill providers. Mayday acts within traditional advertisement channels, including by utilizing gas station ads, airplane

banners, and social media posts in order to achieve this end. All of this activity fits squarely within commercial speech.

19. As a result, advertising, distributing, or facilitating the distribution of an abortion-inducing drug through the mail to consumers in Kentucky constitutes a violation of KRS 367.170, which outlaws “unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.”

20. This enforcement action pursuant to the KCPA, KRS 311.7731, KRS 311.7733, and KRS 311.990(39) furthers the Commonwealth’s compelling interest in protecting unborn life. They all seek to make it harder for more innocent and vulnerable children from being killed via abortion.⁴ Preventing abortion pills from being sent via the mail certainly furthers that purpose.

VIOLATIONS OF LAW

COUNT 1 THE KENTUCKY CONSUMER PROTECTION ACT KRS 367.170

21. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

22. Pursuant to KRS 367.170, “[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful.”

23. Pursuant to KRS 367.190, “[w]henever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by KRS 367.170 to be unlawful, and that proceedings would be in the public interest, he may immediately move in the name of the Commonwealth in a Circuit Court for a restraining order or temporary or permanent injunction to prohibit the use of such method, act or practice.”

⁴ KRS 311.772(1)(b) defines unborn children as human beings.

24. Pursuant to KRS 367.990(26), if the court finds a person is willfully violating or has willfully violated the KCPA, the Attorney General may recover a civil penalty on behalf of the Commonwealth of “not more than two thousand dollars (\$2,000.00) per violation.”

25. Under KRS 446.080, statutes must be “liberally construed with a view to promote their objects and carry out the intent of the legislature....”

26. Under KRS 367.120(1), the “General Assembly finds that the public health, welfare and interest require a strong and effective consumer protection program to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services; toward this end, a Consumers' Advisory Council and the Office of Consumer Protection in the Office of the Attorney General are hereby created for the purpose of aiding in the development of preventive and remedial consumer protection programs and enforcing consumer protection statutes.” Per KRS 367.120(2), KRS 367.110 to 367.200 may be cited as the “Consumer Protection Act.”

27. As the Kentucky Supreme Court has explained, the KCPA should be interpreted, consistent with the General Assembly’s intent, as broadly as possible to provide the maximum level of protection to Kentuckians. *Stevens v. Motorists Mut. Ins. Co.*, 759 S.W.2d 819, 821 (Ky. 1988) (“Our examination and analysis of the various cases indicates clearly that the Kentucky legislature created a statute which has the broadest application in order to give Kentucky consumers the broadest possible protection for allegedly illegal acts. In addition, KRS 446.080 requires that the statutes of this Commonwealth are to be liberally construed.”); *Craig & Bishop, Inc. v. Piles*, 247 S.W.3d 897, 904, n. 11 (Ky. 2008) (citing *Stevens* to find that “liability under the KCPA was established in light of the broad protection the KCPA provides to consumers according to its stated purposes and our case law”).

28. Under Kentucky law, liability for violations of the KCPA extends to those persons who “actively participated in the fraudulent scheme, or [were] aware of its existence and did nothing about it.” *See Commonwealth ex rel. Beshear v. ABAC Pest Control, Inc.*, 621 S.W.2d 705, 708 (Ky. App. 1981); *Dare To Be Great, Inc. v. Commonwealth ex rel. Hancock*, 511 S.W.2d 224, 225 (Ky. 1974) (affirming a judgment that permanently enjoined defendants and all persons in active participation with them from engaging in violations of the KCPA).

29. Mayday actively assists distributors of abortion-inducing drugs by mail by helping those distributors find customers. Mayday directs potential Kentucky customers to those distributors through Mayday’s website, which provides links to firms and organizations such as “Abuzz,” “At Home Abortion,” “The MAP,” “A Safe Choice,” and “We Take Care of Us,” that Kentucky customers can “order from.” In addition to identifying distributors by name, and directly linking to the abortion procurement service, Mayday also includes information on the “cost” of each distributor, as well as “delivery” schedules. *See Exhibit 6*, showing for instance that distributor “A Safe Choice” “SHIPS TO ALL STATES” with a “COST: \$150” and “DELIVERY WITHIN 4 DAYS.” Mayday identifies all of these distributors as its “partners” that maintain websites that Mayday “trust[s].” *Id.*

30. Mayday’s advertisements in Kentucky are unfair, false, misleading, or deceptive because they give the impression that abortion-inducing drugs are available to be delivered to Kentuckians by mail when, in fact, it is illegal under Kentucky law to distribute abortion-inducing drugs by mail.

31. By engaging in the conduct described above, including, but not limited to, falsely advertising the availability of receiving abortion-inducing drugs through the mail into Kentucky and facilitating the illegal distribution of an abortion-inducing drug through the mail to consumers

in Kentucky, something prohibited under KRS 311.7733, Mayday has committed violations of KRS 367.170.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Commonwealth of Kentucky, by counsel, Attorney General Russell Coleman, requests that this Court:

1. Enter judgment against Mayday in favor of Plaintiff for each violation alleged in this Complaint;
2. Enter a permanent injunction to prevent Mayday's future violations of law;
3. Award such equitable relief as the Court finds necessary to redress consumer injury resulting from Mayday's violations of the law;
4. For each and every violation of KRS 367.170, order Mayday to separately pay civil penalties to the Commonwealth of Kentucky of not more than \$2,000 per violation of the KCPA, as provided by KRS 367.990(26);
5. Award the Commonwealth of Kentucky its costs and attorneys' fees;
6. Award the Commonwealth of Kentucky prejudgment interest as permitted by law; and
7. Award any and all such further relief as the Court deems just and proper.

Respectfully submitted,

RUSSELL COLEMAN
ATTORNEY GENERAL

/s/ Philip R. Heleringer

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