

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)
Plaintiff,)
) CIVIL ACTION NO. 05-C-1358
v.)
)
CANDY II, INC., d/b/a/ Eve,)
Defendant.)
_____)

CONSENT DECREE

1. On December 29, 2005, the United States filed its complaint in this action alleging that the Defendant violated Title II of the Civil Rights Act of 1964, 42 U.S. C. §§ 2000a et seq., by discriminating against African-Americans.

2. Defendant Candy II, Inc. is doing business as "Eve," a nightclub located at 718 North Milwaukee Street in Milwaukee, Wisconsin.

3. In the Complaint, the United States alleges that the Defendant has engaged in a pattern and practice of denying to African-American persons, on the basis of race, the full use and enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of Eve on the same basis as such are provided to white members of the general public.

4. If this case went to trial, the United States would present testimony proving that, on numerous occasions, African American patrons were denied entry to Eve for pre-textual reasons. The testimony would show, for example, that African-Americans were denied entry after being told that they were not dressed appropriately, that there was a private party, or that Eve was already full, while similarly-situated white persons were admitted to Eve.

5. Candy II denies the allegations and would, at trial, present evidence that it contends would show that it has operated Eve in a nondiscriminatory manner, including evidence

that numerous African-American patrons have been admitted into Eve in the past. That testimony would show, for example, that from time to time Eve has denied access to patrons of all races for various reasons. The parties stipulate that at all times relevant to the allegations of the United States, Eve is a "place of public accommodation" within the meaning of 42 U.S. C. § 2000a (b) (3), and that its operations "affect commerce" within the meaning of 42 U.S. C. § 2000a (c).

6. The United States and Candy II have agreed that, in order to avoid protracted and costly litigation, this case should be resolved without further litigation, through the terms of this Consent Decree. Therefore, without a trial or adjudication on the merits, the United States and Candy II have consented to the entry of this Decree.

It is hereby, **ORDERED, ADJUDGED, and DECREED** that:

I.

7. All provisions of this Decree shall apply to Candy II, its employees and agents, and to Candy II's successors, to the extent that their cooperation is required in implementing this Decree, and to anyone acting in whole or in part under the direction of Candy II in connection with the treatment of and/or service to Eve's patrons.

II.

8. Candy II, its agents, employees, successors, and all other persons in active concert or participation with it in the ownership and operation of Eve are enjoined from denying to any person, because of race or color, the full and equal enjoyment of all of the goods, services, facilities, privileges, advantages and accommodations of such establishment. Such conduct includes: (a) failing or refusing on account of race or color, to admit any person to the premises of such establishment; (b) discriminating on the basis of race or color in the terms, conditions, or

privileges of admission to such establishment, or, because of race or color, providing different information about the terms, conditions, or privileges of admission; and (c) denying or deterring admission to such establishment to any person because of race or color, by adopting any practices or procedures in the management of such establishment designed to discourage persons on the basis of race or color from patronizing such establishment.

III.

9. Within sixty (60) days of the date of entry of this Decree, Candy II and its employees or agents with responsibility for the management and provision of services at Eve shall attend a program of educational training concerning the substantive provisions of Title II and their responsibilities under the law. This training, which shall be no less than 2 hours in duration, shall be conducted by an organization, approved by the United States, with experience in providing training on civil rights issues. The costs of this program shall be borne by Candy II. All persons attending such a program shall have their attendance certified in writing by the person conducting the educational program.

10. Candy II shall, no later than ten days after entry of this Decree, apprise each of its employees, agents, partners, or any other person who provides services in any capacity with regard to Eve of the contents of this Decree, of their obligations under Title II of the Civil Rights Act of 1964. The Defendant shall require each such employee, agent, partner, or other person covered by this paragraph to review and read a copy of this Decree. Each employee, agent, partner, or other person covered by this paragraph shall sign a statement in the form of Attachment B, acknowledging that he or she has read and understands this Decree, and declaring that he or she will perform his or her duties in accordance with this Decree. New employees shall be apprised of the contents of this Decree and their obligations under Title II of the Civil

Rights Act of 1964 when their employment commences, shall be required to review and read a copy of this Decree and shall sign a statement in the form of Attachment B no later than five days following their first day of employment.

11. Candy II shall, when it places advertisements in any advertising media (e.g., television, newspaper, radio, telephone book, internet), include information in the advertisements indicating that Eve is open to all members of the public on an equal basis, without regard to race, color, religion, or national origin.

IV.

12. To the extent that Candy II adopts, enforces, or otherwise uses a dress code with respect to admission to Eve, such code must be in writing, must clearly convey what manner of dress is required and what specific types of apparel are prohibited, and must be posted and prominently displayed outside all entrances to Eve so that prospective patrons can view it. A copy of Candy II's revised dress code has been provided to the United States, which does not object to its implementation. Any proposed changes in this code must be provided by facsimile and next-day delivery to the United States for its review and comment fifteen days before being implemented. The proposed changes shall be considered approved upon the expiration of the fifteenth business day unless Candy II receives a written objection from the United States within the fifteen-day notice period. To the extent the United States objects to any changes to the dress code proposed in accordance with this paragraph, and the parties cannot resolve the dispute among themselves, such dispute shall be submitted to the Court in accordance with the dispute resolution provisions of paragraphs 30-31. If Candy II adopts written separate dress codes for special theme nights, those written codes shall also be subject to prior approval and/or approval of any material changes from the United States, in the manner called for in this paragraph. If a

separate dress code is used on any given night, Candy II shall post a sign to that effect during the event outside each entrance, and shall post the applicable dress code. Candy II shall also maintain a record of the day(s) and time(s) when those separate dress codes were in effect.

13. To the extent there are private parties or other special events at Eve such that members of the general public have limited or no access to Eve, Candy II shall post a sign to that effect during such event outside each entrance and shall maintain records and information of the date and hours of such event, the nature of the event, name and contact information for at least one representative of the persons or entities hosting the event, and the way that access to the event was controlled, *e.g.*, guest list, invitation etc.

14. Nothing in this Decree shall prevent Candy II from refusing entry to anyone who engages in violent, indecent, profane, boisterous or unreasonably loud or otherwise disorderly conduct, provided that Candy does so in a manner that does not discriminate on the basis of race.

V.

15. Within 15 days of the date of entry of this Decree, Defendant shall erect and maintain at each public entrance to Eve a printed sign stating that the establishment is open to all members of the public without regard to race or color. Such sign shall be printed in dark letters on a contrasting background and shall be located and maintained in a place that is well-lit and clearly visible to all patrons as they enter the premises. Such sign shall include a statement that any person who believes he or she has been discriminated against on the basis of race or color may speak immediately with a manager, and that if he or she disagrees with the manager's decision, he or she may file a written complaint and/or may call the United States Department of Justice at (800) 896-7743 or Candy II's complaint department at (800) xxx-xxxx. The text for

such sign, and the size of the text, is specified in Attachment A.

16. Candy II shall institute policies that ensure that a manager is available at all times to speak promptly with any patron who was denied access. The manager shall have the right to permit the patron to enter. If the manager still denies access to the patron, the manager shall offer the patron a complaint form, similar to that in Attachment C. All managers on duty shall have at all times a supply of the complaint forms in the form of Attachment C. The manager may ask to take a picture of the patron who is complaining, but the manager may not require the patron to allow the picture.

17. Candy II shall establish and maintain for the duration of this Consent Decree a system of accepting, processing and investigating any subsequent complaints (i.e., those received after a patron has been denied access and has left the premises) that a patron was denied access because of his or her race or color.

18. On receipt of an oral or written subsequent complaint, Candy II shall interview the complainant and relevant employees and shall take other actions (including but not limited to a good faith effort to identify the patron on its closed circuit television system, which shall be maintained for the duration of this Consent Decree) to determine within 30 days of receipt of the complaint the reason(s) why the patron was denied access. If Candy II determines that the patron was denied access for reasons that violate this Consent Decree, Candy II shall institute appropriate disciplinary measures and policies to ensure that the problem is not repeated. Within 30 days of any determination, whether affirmative or negative, Candy II shall notify the Department of Justice of its findings and actions and, if requested by the Department of Justice, shall provide the Department of Justice with all documents, videos and other information relied upon by Candy II. If the Department of Justice disagrees with the determination of Candy II

regarding whether the employee's conduct was in violation of the Decree, or regarding what corrective measures are appropriate to redress the violation of the Decree, the parties shall attempt to settle the dispute using the dispute resolution procedures described in paragraphs 30-31. Also, Candy II shall notify each patron who files a subsequent complaint of the results of its investigation process.

VI.

19. Candy II, in consultation with the United States, shall develop and implement a testing program to audit and monitor Eve's compliance with federal public accommodations laws and this Decree. The testing program will consist of ten paired tests of Eve in each year of this Decree, for a total of 30 paired tests. Candy II shall bear all costs, fees, and expenses associated with the development and implementation of this testing program. The tests shall be designed to determine whether Eve is providing equal treatment to black and non-black patrons.

20. The test procedures shall be developed, and the tests conducted, by an independent company or organization ("Testing Contractor"), approved by the United States, that has expertise in conducting paired testing for potential civil rights violations, including public accommodations, and is wholly independent of Candy II.

21. Candy II shall enter into a contract with the Testing Contractor that is consistent with the terms of this Decree within ninety (90) days after the entry of this Decree. The contract shall oblige the Testing Contractor to provide an adequate number of trained individuals to serve as testers and to conduct the tests described in paragraph 19.

22. Test procedures developed by the Testing Contractor shall be submitted to the United States for approval prior to the beginning of the testing program.

23. At no time shall any employee, agent or officer of Candy II and/or Eve be

provided with any information concerning the location, procedure or test plan prior to the completion of the test. At no time shall the Testing Contractor disclose to any employee, agent, or officer of Candy II and/or Eve the identities of individual testers, or any information that would reveal the identities of individual testers; this provision ensures that testers can continue to be used on compliance tests without compromising the integrity of the testing process.

24. The results of all tests conducted by the Testing Contractor pursuant to this section, along with supporting documentation, shall be reported to Candy II and to the United States simultaneously within thirty (30) days of the conclusion of completed tests. The Testing Contractor, however, need not report its results within thirty days if follow-up tests are required to verify a testing result and premature reporting of earlier results would compromise the testing process. Where testing results indicate a possible violation of this Decree, Candy II shall conduct an investigation of the facts and circumstances underlying such conduct within thirty (30) days of receipt of the testing evidence. Within fifteen (15) days of the completion of Candy II's investigation, Candy II shall provide the United States with a report containing the investigation results and Candy II's conclusions, recommendations and timetable for implementation of appropriate actions. Candy II shall implement these recommendations within fifteen (15) days, unless the United States objects, in which case the parties shall use the dispute resolution procedures described in paragraphs 30-31.

25. The United States may provide the Testing Contractor with any information received about customer complaints with the exception of information that would specifically identify the individuals making complaints.

26. The United States may conduct testing at Eve or at any other place of public accommodation owned and/or managed by the Defendant for the purpose of determining whether

Candy II is violating the provisions of Title II of the Civil Rights Act of 1964.

VII.

27. The Defendant shall, no later than 75 days after the date of entry of this Decree, serve a report on the United States evidencing its compliance with this Decree.¹ This report shall include the following:

- a. A photograph of each public entrance to Eve clearly showing the signs required under paragraphs 12, 13 and 15 of this Decree;
- b. A list of all advertisements covered by paragraph 11 of this Decree, made public in any manner since the entry of this Decree, together with representative samples of such advertisements;
- c. The statements signed by any and all employees pursuant to paragraph 10 of this Decree.
- d. Written certification by the person conducting the educational program referred to in paragraph 9.
- e. A list of any private parties, theme nights or other special events as described in paragraphs 12 or 13 that were held at Eve along with the records and information required to be maintained by paragraphs 12 and 13.

28. Six months after the date of entry of this Decree, and every six months thereafter for three years from the date of entry of this Decree,² the Defendant shall serve upon the Housing

¹ All documents or other communications required by this Order to be sent to counsel for the United States shall be sent to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, N.W., G Street Building, Washington, D.C. 20530.

² Except that the last report shall be submitted one month before the three year anniversary of the Decree.

and Civil Enforcement Section a written report evidencing continuing compliance with this Decree. This report shall contain the following information:

- a. Representative samples of all advertising for the previous one-year period, as required by paragraph 11 above;
- b. Sworn employee statements of new employees as required by paragraph 10;
- c. Information regarding any change in name or the location of the Defendant's operation of Eve, including the address of any new location and the dates of operation at that address;
- d. Notification of any new ownership or management interest Candy II has acquired or developed in any place of public accommodation, as defined in Title II of the Civil Rights Act of 1964, during the preceding one-year period. Such notification shall include the name of the establishment in which Candy II has acquired or developed such interest, the address of such establishment, the goods and/or services provided by such establishment, and the dates of operation of such establishment;
- e. A copy of any changes to the dress code adopted during the reporting period pursuant to paragraph 12.
- f. A list of any private parties, theme nights or other special events as described in paragraphs 12 or 13 that were held at Eve during the reporting period along with the records and information required to be maintained by paragraphs 12 and 13; and
- g. Notification of whether, during the preceding six-month period, the Defendant has either ceased operating, or has licensed his name to others for the purpose of

operating Eve.

29. Defendant shall maintain all records relating to implementation of and compliance with all provisions of this Order. Upon request, the Defendant shall provide the United States with copies of any records maintained as required by this Order.

VIII.

30. If differences arise between the parties regarding Candy II's compliance with, interpretation of, or implementation of the terms of this Decree, the parties shall endeavor to resolve such differences among themselves before seeking the intervention of the Court.

31. In the event of a failure by Candy II to perform in a timely manner any act required by this Decree or otherwise to act in conformance with any provision thereof, and if the voluntary dispute resolution procedure described in paragraph 30 is unsuccessful, the United States may move this Court to impose any remedy authorized by law or equity, including but not limited to an order requiring performance of such act or deeming such act to have been performed, an award of any damages, costs, and attorney's fees that may have been occasioned by the Defendant's violation or failure to perform.

IX.

32. This Court shall retain jurisdiction of this case for purposes of enforcing this Consent Decree, which shall be effective for a period of 36 months following the date of entry

by the Court, after which time the case shall be dismissed with prejudice. The United States may move the Court to extend the duration of the Order in the interests of justice.

It is so ORDERED this 28th day of December, 2006.

/s/ JAMES T. MOODY

For the United States:

STEVEN M. BISKUPIC
United States Attorney

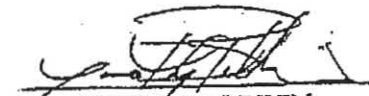
MATTHEW RICHMOND
Federal Building
517 E. Wisconsin Avenue
Room 530
Milwaukee, Wisconsin 53202
(414) 297-1700
(414) 297-4394 (fax)

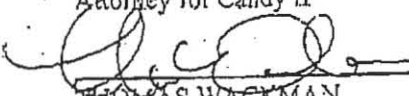
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ATTACHMENT A

N O T I C E

**EVE IS OPEN TO ALL MEMBERS OF THE PUBLIC
ABOVE THE AGE OF 21 WITHOUT REGARD TO RACE OR COLOR**

IF YOU FEEL YOU HAVE BEEN UNLAWFULLY DENIED ACCESS

YOU MAY TALK TO A MANAGER NOW,

AND/OR YOU MAY FILE A WRITTEN COMPLAINT OR CALL:

**Eve's Complaint Dept.
(800) - XXX-XXXX**

OR

**Housing and Civil Enforcement Section
Civil Rights Division
U.S. Justice Department
950 Pennsylvania Avenue
Washington, DC 20530
(800) 896-7743
(Option 6)**

ATTACHMENT B

I have reviewed and read a copy of the Consent Decree entered in United States of America v. Candy II, Inc., d/b/a Eve, Eastern District of Wisconsin, Civil Action No. 05-C-1358. I understand the terms of that Decree, and I further understand that Federal law guarantees that no person may be denied, on account of their race or color, the full use and enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place such as Eve nightclub. With that understanding, I agree that, as a condition of my providing goods and/or services on behalf of Eve or any other place of public accommodation owned or managed by Candy II, Inc., I shall not discriminate in any manner on account of race or color in the provision of such goods and/or services. If I violate the terms of the Consent Decree, I understand that I may be fired or subject to other disciplinary action.

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Signature

Home Address

Home Telephone Number

Attachment C
COMPLAINT FORM

Name:

Address:

Telephone No.:

E-mail address:

Date that you were refused admission to Eve:

Time of day that you were refused admission to Eve:

Reason(s) that the manager and/or doorman gave for refusing to admit you:

Name of the Eve manager you talked with:

NOTE: The manager may request your permission to take your picture for purposes of evaluating your complaint. However, you are not required to have your picture taken in order to make a complaint.

To be filled out by Eve

Name of manager:

Reason(s) for refusing entrance: