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STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

In The Matter Of:

No. 03-47-CP

OfficeMax, Inc.

Hon. James R. Giddings
AG No. 200300947

Respondent

_____ /

ASSURANCE OF DISCONTINUANCE

The Complainant is Michael A. Cox, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan. The Respondent is OfficeMax, Inc., (hereinafter, where not otherwise indicated, "Office Max" or "Respondent").

This Assurance of Discontinuance ("Assurance") concerns and operates to resolve alleged violations of the Pricing and Advertising of Consumer Items Act (the "PAA"), MCL 445.351, et seq; and the Michigan Consumer Protection Act (the "MCPA"), MCL 445.901 et seq. OfficeMax, Inc. agrees not to contest (a) the authority of the Department of Attorney General to execute this Assurance; or, (b) any terms or conditions set forth herein.

The entry of this Assurance by OfficeMax, Inc. is neither an admission of liability with respect to any issue dealt with in this Assurance nor is it an admission or denial of any factual allegations or legal conclusions stated or implied herein.

The Parties agree that the terms and conditions of the Assurance are fair, reasonable and consistent with the public interest and the doctrines of applicable law.

I. JURISDICTION

The Ingham County Circuit Court has jurisdiction over the subject matter of this action pursuant to MCL 445.359(1) and MCL 445.905(1). The Court also has personal jurisdiction over the Respondent for the enforcement of this Assurance. Respondent waives all objections and defenses that it may have as to the jurisdiction of the Court or to venue in this Court.

II. DEFINITIONS

2.1 "Assurance" means this assurance of discontinuance and any appendix hereto.

2.2 "CPD" means the Michigan Department of Attorney General, Consumer Protection Division.

2.3 "OfficeMax" and "Respondent" means OfficeMax, Inc.

2.4 "OfficeMax, Inc. retail outlets" means any and all OfficeMax, Inc. store locations presently open to the public in Michigan and any additional store opened by OfficeMax, Inc. in Michigan in the future.

2.5 "Parties" means CPD and OfficeMax, Inc., collectively.

2.6 "Rain check" means a written guarantee to deliver under the advertised conditions a consumer item at a future date stated in the guarantee in the event that an item of merchandise cannot be sold at the advertised price throughout the advertised period of sale.

2.7 All other terms shall have the meaning specifically defined in the Pricing and Advertising of Consumer Items Act, MCL 445.351 et seq. (PAA), and Michigan Consumer Protection Act, MCL 445.901 et seq. (MCPA).



III. STATEMENT OF PURPOSE

In entering into the Assurance, the mutual objective of the parties is to resolve, without litigation, the alleged violations of the PAA and MCPA set forth in the May 20, 2002 Notice of Intended Action (attached as Appendix A) and attendant demand for payment of civil penalties and reimbursement of costs and expenses incurred by the Department of Attorney General in investigating this matter and enforcing the PAA pursuant to Section 9 of the PAA, MCL 445.359.

IV. IMPLEMENTATION OF COMPLIANCE MEASURES

4.1 OfficeMax shall comply with rain check provisions and advertising disclosures required by Michigan law, and in particular Section 5 of the PAA, MCL 445.355, Section 6 of the PAA, MCL 445.356, and the Administrative Rules promulgated to implement and administer Sections 5 to 12 of the PAA, including but not limited to R14.202, R14.203, R14.206 and R14.208, inclusive of all subparagraphs thereof.

4.2 In particular, with respect to OfficeMax advertisements in Michigan only, the company shall disclose the numerical quantity of advertised items available for sale, should OfficeMax elect not to provide rainchecks if the advertised item is not available for sale (as provided by R 14.206), or to provide a similar item of equal or greater monetary value in substitute. Numerical quantity may be expressed as a numerical minimum of quantities available at each store, such as "only ten items available at each store." In the event numeric quantities are advertised but are unavailable in each store, OfficeMax will provide a raincheck, or a similar consumer item of equal or greater monetary value, up to the numeric minimum quantity so

advertised. Advertising of “close out” sales, as defined by R 14.201(c), shall be in accordance with rules of specific application to such sales.

4.3 OfficeMax shall not, by advertisement or otherwise, utilize or rely on general disclaimers regarding product availability (including but not limited to disclaimers such as “while supplies last”) as a basis for failing to provide rain checks as required by Section 5(3) of the PAA, MCL 445.355, nor advertise that rain checks will not be provided in conjunction with general disclaimers regarding product availability, by language such as “No rainchecks. While supplies last.”

4.4 OfficeMax shall insure that present and future employees receive training and notice of the rain check requirements of the PAA and Administrative Rules implementing the PAA.

4.5 To the extent that it has previously failed to do so, OfficeMax shall not advertise goods with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity in immediate conjunction with the advertised goods.

V. REIMBURSEMENT OF COSTS AND EXPENSES

5.1 Upon execution of this Assurance, OfficeMax shall pay enforcement costs in the amount of \$2,500.00; payable to the State of Michigan and remitted to the attention of Kathy Fitzgerald, Assistant Attorney General, Department of Attorney General, Consumer Protection Division.

VI. CONSUMER COMPLAINTS

6.1 Respondent shall promptly resolve consumer complaints filed with CPD concerning alleged violations of the PAA, consistent with the terms of the PAA or as otherwise agreed by Respondent and the consumer complainant.

- A. Resolution that is not completed within 30 days of notice shall be considered untimely for purposes of this section.
- B. Written confirmation of the fact and manner of complaint resolution shall be provided to the CPD upon completion.

VII. DISPUTE RESOLUTION

7.1 Prior to seeking enforcement of this Assurance, the parties shall attempt to resolve disputes pursuant to these procedures. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Assurance and shall apply to all provisions hereof. Any dispute that arises under this Assurance shall in the first instance be the subject of informal negotiations between the parties. The period of negotiations shall not exceed ten (10) days from the date of written notice by any party that a dispute has arisen, but may be extended by agreement between the parties. The period for informal negotiations shall end when CPD provides a written statement setting forth its proposed resolution of the dispute to OfficeMax, Inc..

7.2 If the parties fail to resolve a dispute by informal negotiations, then the dispute shall be resolved in accordance with the resolution proposed by CPD unless, within ten (10) days after receipt of the CPD's proposed resolution, OfficeMax, Inc. files a motion for resolution with the Ingham County Circuit Court setting forth the matters in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Assurance.

VIII. NOTICES

8.1 All notices or other communications required or permitted shall be in writing and shall be deemed given when sent by facsimile transmission, transmission confirmed, or when sent and confirmed by certified or registered mail (unless otherwise specified) addressed as follows:

If to CPD:

Consumer Protection Division
Department of Attorney General
AT: Assistant Attorney General in Charge
P.O. Box 30213
Lansing, MI 48909
Facsimile: (517) 335-1935

If to OfficeMax:

Office of General Counsel
OfficeMax, Inc.
3605 Warrensville Center Rd.
Shaker Heights, OH 44122
Facsimile: (216) 471-3407

With a Copy to:

Richard Knoth, Esq.
Bricker & Eckler, LLP
1375 East 9th Street, Ste. 1500
Cleveland, OH 44114
Facsimile: (216) 523-7071

8.2 OfficeMax, Inc. shall promptly notify CPD, in writing, of any change of address or person to whom notice hereunder is to be sent.

IX. GENERAL PROVISIONS

9.1 This Assurance shall apply to and be binding upon OfficeMax, Inc., whether acting through officers, directors, employees or representatives. OfficeMax, Inc. is responsible for and shall ensure that all of its Michigan retail outlets are in compliance with the terms of this Assurance.

9.2 This Assurance operates to resolve disputed issues of compliance with Sections 5 and 6 of the PAA, MCL 445.355, 445.356 set forth in the May 20, 2002 Notice of Intended Action issued by the Attorney General pursuant to Section 9 of the PAA, MCL 445.359.

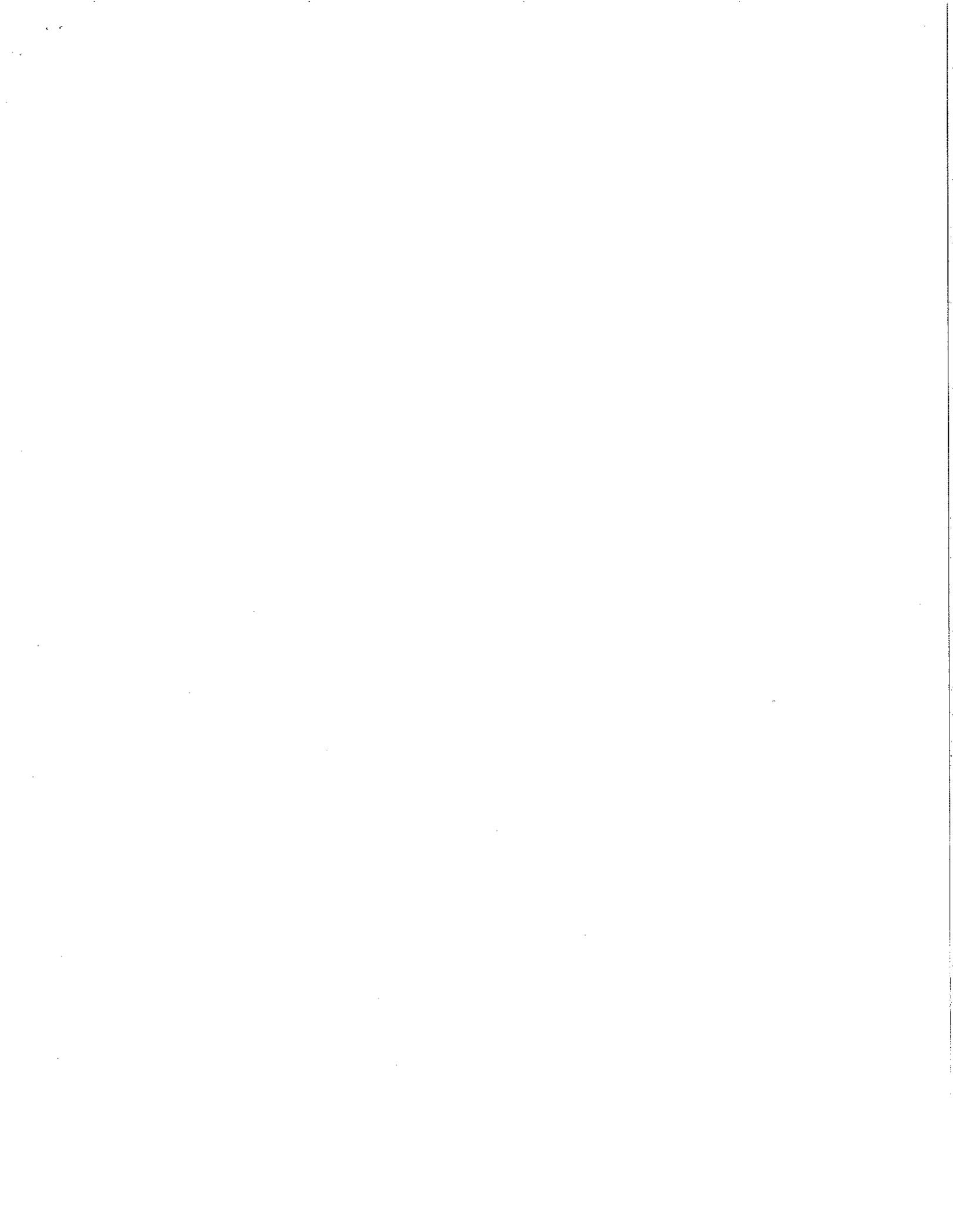
9.3 This Assurance shall not create any private rights or causes of action in any third-parties, nor shall it affect the rights of any third-party to pursue any remedies allowed by law.

9.4 No change or modification of this Assurance shall be valid unless in writing and signed by both parties.

9.5 This Assurance does not constitute an approval by the Attorney General of any of Respondent's sales or advertising practices and OfficeMax, Inc. shall make no representation to the contrary.

9.6 Nothing in this Assurance shall be construed as relieving Respondent of its obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed to be permission to engage in any acts or practices prohibited by such law, regulation or rule.

9.7 Any party to this Assurance may apply to the Ingham County Circuit Court, which shall retain jurisdiction, for such further orders as may be necessary or appropriate for the construction or modification of any of the provisions hereof, or to enforce compliance herewith.



9.8 Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Assurance and to bind such party to the terms and conditions of this Assurance.

X. EFFECTIVE DATE

The effective date of this Assurance is the date it is filed with the Ingham County Circuit Court.

Michael A. Cox
Attorney General of the State of Michigan

Dated: 2/19/03

By: 
Kathy Fitzgerald (PS1454)
Assistant Attorney General
Consumer Protection Division
PO Box 300213
Lansing, MI 48909

OFFICEMAX, INC.

Dated: 2-12-03

By: 

Ross H. Pollock
Secretary