

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

In The Matter Of:

File No 06-47-CZ

Walgreen Co ,

Hon. Beverly Nettles-Nickerson

Respondent.

AG File No. 200610555

ASSURANCE OF DISCONTINUANCE

MICHAEL A. COX
ATTORNEY GENERAL

Kathy Fitzgerald
Assistant Attorney General
Consumer Protection Division
P.O. Box 30213
Lansing, MI 48909
517-335-0855

Dated Filed: October 23, 2006

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

In The Matter Of

File No. 06-47-CZ

WALGREEN CO.,

Hon. Beverly Nettles-Nickerson

Respondent

AG No. 200610555

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 Walgreen Co., ("Walgreen").

This Assurance of Discontinuance ("Assurance") concerns the resolution of alleged violations of the Pricing and Advertising of Consumer Items Act (the "PACIA"), MCL 445.351, et seq. and the Michigan Consumer Protection Act (the "CPA"), MCL 445.901 et seq. Walgreen 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 Walgreen is not an admission of liability with respect to any issue dealt with in this Assurance nor is it an admission 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. PARTIES BOUND

2.1 This Assurance shall apply to and be binding upon Walgreen and its successors. Walgreen is responsible for compliance with the terms of this Assurance, and shall ensure that all of its Walgreen Michigan store locations are in compliance with the terms and conditions of this Assurance

2.2 The signatories to this Assurance certify that they are authorized to execute and legally bind the parties they represent.

III. DEFINITIONS

3.1 "Assurance" means this Assurance and any appendices.

3.2 "Class of Item" shall have the meaning provided in MCL 445.351(c).

3.3 "Complainant" means Michael A. Cox, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan.

3.4 "Covered Item" means items displayed or offered for sale at retail that must have the price of the item stamped upon or affixed to the item, as required by MCL 445.353 and applicable Administrative Rules promulgated pursuant to the PACIA

3.5 "Effective Date of this Assurance" means the date that this Assurance is filed with the Ingham County Circuit Court.

3.6 "Exemption List" means a list of items that Walgreen may elect not to individually price mark, pursuant to and in compliance with the PACIA, MCL 445 353 (3), (4), (5), and applicable Administrative Regulations

3.7 "Parties" means the Complainant and Respondent

3.8 "Respondent" means Walgreen Co.

3.9 "Walgreen Stores" means any and all Walgreen store locations presently open to the public in Michigan and any additional Walgreen store locations opened by Walgreen in Michigan in the future.

3.10 All other terms shall have the meaning specifically defined in the PACIA and the CPA.

IV. STATEMENT OF PURPOSE

In entering into the Assurance, the mutual objective of Complainant and Walgreen is to resolve, without litigation, the alleged violations of the PACIA and CPA set forth in the September 19, 2006 Notice of Intended Action (NIA), a copy of which is attached as Appendix 1 and incorporated by reference, the demand for payment of civil penalties, and the reimbursement of costs and expenses incurred by the Departments of Attorney General and Agriculture in investigating this matter and enforcing the PACIA.

V. IMPLEMENTATION OF COMPLIANCE MEASURES

5.1 All Walgreen Stores shall fully comply with the PACIA and in particular the item pricing requirements of Section 3, MCL 445.353

5.2 Walgreen shall develop and implement compliance procedures reasonably designed to ensure full compliance with the item pricing requirements of the PACIA and obligations contained in this Assurance which, at a minimum, shall include the following:

A. At all times Walgreen shall maintain adequate resources including, but not limited to, appropriate staffing levels, equipment, and signage to fully comply with the PACIA.

B. Walgreen shall institute and maintain compliance procedures to train managers and employees regarding the requirements of the PACIA as necessary to assure compliance therewith, and in particular with the item pricing requirements of Section 3 of the PACIA, MCL 445.353, and as necessary to assure compliance with this Assurance.

C. Walgreen shall require that associates not stock inventory on store shelves without first individually pricing Covered Items, or otherwise assuring that Covered Items are individually priced before stocking.

5.3 Any items that Walgreen elects not to individually price mark pursuant to MCL 445.353(3), shall be listed and posted in compliance with the requirements of the PACIA and applicable Administrative Regulations, including R 285.555.1. In addition, Walgreen must comply with the signage requirements of MCL 445.353(4).

A. Exemption Lists shall be placed in a location in which the greatest customer traffic normally occurs.

B. Exempted items shall be listed and posted on a clear, readable and conspicuous sign.

5.4 Walgreen will not misrepresent, directly or indirectly, the provisions of Section 10a of the PACIA, MCL 445.360a, to consumers who allege they were over-charged for a purchased item, by means including but not limited to representations that extra compensation (as provided by Section 10a (2) of the PACIA) is not afforded when the item is on sale

VI. PAYMENT OF CIVIL PENALTY

6.1 Walgreen shall pay to the State of Michigan the sum of \$550,000 as a civil penalty. Payment shall be made within 5 days of the Effective date of this Assurance

6.2 Payment shall be made by check payable to the "State of Michigan" and remitted to the Division Chief, Katharyn Barron, Consumer Protection Division, PO Box 30213, Lansing, MI 48909. The check shall reference *Walgreen, Assurance of Discontinuance, No 2006010555*.

6.3 Nothing herein shall be construed to exonerate any failure by Walgreen to fully comply with PACIA or any provision of this Assurance after the Effective Date, to compromise the authority of the Attorney General to initiate a proceeding for failure to comply with this Assurance, or to initiate a proceeding for any violation of the PACIA or CPA that occurs after the Effective Date of this Assurance.

VII. REIMBURSEMENT OF COSTS AND EXPENSES

Included in the civil penalty paid pursuant to paragraph 6.1 is the sum of \$45,000.00 to reimburse the State of Michigan for its legal, investigative, and administrative expenses relating to historical compliance efforts directed at Walgreen.

**VIII . COVENANT NOT TO SUE BY COMPLAINANT
AND RESERVATION OF RIGHTS**

8 1 The Subject Matter of this Assurance are the matters alleged in paragraphs 3 through 18 of the September 19, 2006, Notice of Intended Action (NIA). In consideration of the implementation of compliance measures, the payment of the civil penalty, and the reimbursement of the costs and expenses that will be made by Walgreen under the terms of this Assurance, and except as specifically provided in this Section, Complainant covenants not to sue or to take further administrative action against Walgreen for claims arising from the Subject Matter of this Assurance through the period ending on the Effective Date of this Assurance.

8 2 The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in paragraph 8.1 Complainant reserves and this Assurance is without prejudice to, all rights against Walgreen with respect to all other matters including, but not limited to, the following:

- A. Liability arising from a violation by Walgreen of a requirement of this Assurance;
- B. Liability for violations not related to the Subject Matter of this Assurance;
- C. Liability for violations of the PACIA that occur after the Effective Date of this Assurance

IX. NOTICES

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

A. If to Complainant:

Consumer Protection Division
PO Box 30213
Lansing MI 48909

B. If to Walgreen:

A Jimenez
Walgreens Corporate and Regulatory Law Department
104 Wilmot Road, M.S. #1447
Deerfield, IL 60015

X. GENERAL PROVISIONS

10.1 This Assurance shall be binding upon, inure to the benefit of, and apply to the parties and their successors-in-interest. This Assurance shall not be introduced in any other proceeding.

10.2 This Assurance does not constitute an approval by the State of Michigan of any of Walgreen's programs or practices, and Walgreen shall make no representation to the contrary.

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

10.4 Each of the Parties participated in the drafting of this Assurance, and therefore the terms hereof are not intended to be construed against either of the parties by virtue of draftsmanship.

10.5 Any failure by any Party to insist on strict or full performance by any other Party of any provision of this Assurance shall not be deemed a future waiver of any of the provisions of this Assurance, and such Party, notwithstanding such failure, shall have the right to insist upon the full and specific performance of any and all of the provisions of this Assurance

10.6 This Assurance may be executed in counterparts. The Assurance shall take effect on the date that the Assurance is filed with the Ingham County Circuit Court.

XI. APPLICABLE LAW

This Assurance shall be construed in accordance with and governed by the laws of the State of Michigan

MICHAEL A. COX
ATTORNEY GENERAL

Dated: 10-23-06

By: Katharyn A. Barron
Katharyn Barron (P45363)
Division Chief Consumer Protection
Division
PO Box 30213
Lansing MI 48909
Tel. 517-335-0855

Dated: Oct 20, 2006

WALGREEN Co
By: [Signature]
Chris Whelan
Vice-President
Store Operations

APPENDIX 1

**STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION**

In the Matter of:

AG File No. 2006010555

WALGREEN CO.

Respondent

NOTICE OF INTENDED ACTION

TO: **WALGREEN CO.**

Attn: The Prentice-Hall Corporation System, Inc, Resident Agent
610 Abbott Road
East Lansing, MI 48823, and

Law Department
MS# 1425
104 Wilmont Road
Deerfield, Illinois 60015
Fax: (847) 315-4826

MICHAEL A. COX, Attorney General of the State of Michigan, pursuant to the provisions of the Michigan Consumer Protection Act, MCL 445 901 et seq , (MCPA) and the Pricing and Advertising of Consumer Items Act, MCL 445 351 et seq , ("Item Pricing Act"), gives ten days notice as required by section 5(2) of the MCPA, MCL 445 905(2) prior to commencement of legal action.

Pursuant to section 9(2) of the Item Pricing Act, MCL 445 359(2), Walgreen Co is being placed on notice that it must cease and desist or take positive action to cease and desist from continuing to act in violation of section 3(1) of the Item Pricing Act, MCL 445 353(1) or the

State will file a lawsuit seeking to enjoin continuing and further violation of the Item Pricing Act, a substantial civil penalty, and reimbursement of all costs.

The Attorney General alleges that Walgreen Co. has engaged, is engaging, or may continue to engage in the following methods, acts or practices that the Consumer Protection Act and the Item Pricing Act prohibit

I. FACTUAL ALLEGATIONS

1 Walgreen Co. ("Walgreen") is an Illinois corporation that is engaged in trade or commerce in the State of Michigan

2 Walgreen is engaged in the business of selling items at retail to consumers, with 171 store locations in the State of Michigan as of April 30, 2006

3 The Department of Attorney General and the Department of Agriculture have received numerous citizen complaints concerning the failure of Walgreen to individually mark ("item price") the retail price of goods sold at its retail establishments

4 The Department of Attorney General has also received numerous citizen complaints concerning claims by Walgreen personnel that extra compensation (as provided by section 10a (2) of the Item Pricing Act, MCL 445.360a (2)) after being over-charged for purchased items through scanner error was not afforded when the item was on sale

5 Many of these citizen complaints were sent directly to Walgreen's corporate offices with a request that Walgreen respond to the allegations set forth in the complaints.

6 The Michigan Department of Agriculture has, on numerous occasions, provided notice to various Walgreen store locations of their noncompliance with the Item Pricing Act by failure to item price consumer items and lack of pricing exemption lists. On each such occasion, the store location was subject to inspection, provided notice of the inspection results, and

afforded an opportunity to bring the store into compliance. Store locations subject to notice of violation and opportunity for compliance from June 13, 2003 to June 27, 2006 include, but are not limited to, the following:

- 706 S. Main St, Adrian, on September 8, 2003 and October 21, 2003;**
- 416 S. Euclid, Bay City, on February 1, 2006;**
- 24140 Orchard Lake, Farmington Hills, on February 25, 2005;**
- 31415 Ford, Garden City, on May 11, 2006;**
- 2821 Highland Rd., Highland, on April 12, 2006;**
- 1314 N. West Ave, Jackson, on June 28, 2006;**
- 3040 E. Michigan Ave., Jackson, on June 28, 2006;**
- 17222 W. Main, Kalamazoo, on July 19, 2006;**
- 3915 W. Saginaw, Lansing, on March 29, 2005 and March 29, 2006;**
- 6421 W. Saginaw, Lansing, on October 13, 2005;**
- 8850 Newburgh, Livonia, on June 22, 2006;**
- 21828 23 Mile Rd., Macomb Twp., on July 10, 2006;**
- 1615 N. Saginaw, Midland, on February 1, 2006;**
- 484 Telegraph, Monroe, on July 18, 2005;**
- 1309 S. Mission St., Mt. Pleasant, on June 7, 2006;**
- 13350 W 9 Mile Rd., Oak Park, on June 22, 2004;**
- 2990 Bay Rd, Saginaw, on March 21, 2006;**
- 4989 State St., Saginaw, on March 21, 2006;**
- 4019 Metropolitan Pkwy., Sterling Heights, on April 10, 2006;**
- 950 S. Centerville, Sturgis, on April 5, 2006;**

2350 N. US 31 North, Traverse City, on October 9, 2003;

2932 Long Lake, Troy, on March 22, 2005;

4400 Lake Michigan Dr., Walker, on March 15, 2006;

4010 13 Mile Rd., Warren, on April 10, 2006;

1550 36th St., Wyoming, on June 13, 2003 and June 30, 2006.

7. Managerial personnel at one or more of the Walgreen store locations listed above have variously advised State inspectors that their respective store's item pricing practices conform to Walgreen policy that:

- a. Items other than those on clearance are not required to be individually priced;
- b. Specified departments are not required to be individually priced, including but not limited to office supplies, cologne, pop, cosmetics, batteries, film/disposable cameras, hair color, stationary, pens/mailers, and others

8. Between August 21, 2006 and August 29, 2006, agents from the Department of Attorney General surveyed five Michigan Walgreen store locations for compliance with the Michigan Item Pricing and Consumer Protection Acts

9. At each of the five stores surveyed, numerous items did not have the price stamped or affixed to the item, including:

3040 S. Martin Luther King Jr. Blvd, Lansing, where only 8 of 37 pre-selected sale items were item priced;

5073 S. Saginaw, Flint, where only 3 of 40 pre-selected sale items were item priced;

2321 E. Grand River, Howell, where only 8 of 36 pre-selected sale items were item priced;

2450 S. State Rd., Ionia, where only 6 of 39 pre-selected sale items were item priced;

3040 E. Michigan, Jackson, where only 12 of 41 pre-selected sale items were item priced.

10. At four of the five stores surveyed, the majority of individually priced items were marked by pre-priced package label.

11. At three of the stores surveyed, several of the items that were item priced had individual prices that differed from the price of the item indicated by the shelf tag

12. At one of the stores surveyed, numerous items not individually priced had none-the-less been affixed with stickers stating that the subject store location was open 24 hours.

13. On September 5, 2006, several agents from the Department of Agriculture and Department of the Attorney General conducted more extensive investigative audits of six additional Walgreen store locations for purposes of determining compliance with the Item Pricing Act. These stores were located at:

3915 W. Saginaw, Lansing;

1309 S. Mission St., Mt. Pleasant;

21828 23 Mile Rd, Macomb Township;

8850 Newburg, Livonia;

950 S. Centerville Rd., Sturgis; and

1550 36th Street, Wyoming.

14. At each store, multiple investigators reviewed thousands of items

15. At each of the additional six stores investigated, vast numbers of items did not have the price stamped or affixed to the item, in violation of section 3 of the Item Pricing Act

16. Inspectors were unable to locate an exemption list at five of the stores audited.

17. The list of exempted pricing items posted at the remaining (sixth) Walgreen store location failed to comply with sections 3(3) and 3(5) of the Item Pricing Act, for reasons including but not limited to use of broad product categories, (i.e., "cough drops"), categories identified by manufacturer, (i.e., "Kodak film"), or categories of dissimilar products, (i.e., "Revlon nail polish and lipstick"), that include items that vary in price and size other than weight or volume, and do not satisfy the definition of "class of item" provided by section 1(c) of the Item Pricing Act; MCL 445 351(c)

18. Investigation revealed that approximately 60 to 90 percent of stock at ten of the Walgreen store locations listed in paragraphs nine and 13 were not properly priced as required by section 3(1) of the Item Pricing Act. Approximately 25 percent of stock surveyed at the remaining Walgreen store location (Wyoming) was not properly priced as required by section 3(1) of the Item Pricing Act.

II. VIOLATIONS OF MICHIGAN LAW

19. The conduct described above violates section 3 the Pricing and Advertising of Consumer Items Act, MCL 445 353 which provides, in pertinent part:

(1) The total price of a consumer item displayed or offered for sale at retail shall be clearly and conspicuously indicated in Arabic numerals, so as to be readable and understandable by visual inspection, and shall be stamped upon or affixed to the consumer item. If the consumer item is in a package or container, the total price shall be stamped upon or affixed to the outside surface of the package or container and need not be placed directly upon the consumer item.

* * *

(3) In addition to the exemptions allowed in subsection (2), a retailer may choose to not individually price mark not more than 25 classes of items or individual items which classes or items shall be listed and posted in a conspicuous place in the retail store, and may choose to not individually price mark not more than 25 additional classes or items or individual items which are advertised or featured at a reduced price.

(4) The price and the name or description of a class of items or individual items not marked pursuant to subsection (3) shall be indicated by a clear, readable, and conspicuous sign in immediate conjunction with the area in which the unmarked item or class of items is displayed.

Subsection 9(5) of the Item Pricing Act, MCL 445 359(5) provides:

A person who knowingly violates this act or the terms of an injunction, order, decree, or judgment issued pursuant to this section shall forfeit and pay to the state a civil penalty of not more than \$1,000 00 for the first violation and not more than \$5,000 00 for the second and any subsequent violation. For purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain jurisdiction, the cause shall be continued, and the attorney general may petition for recovery of a civil penalty as provided by this section

20 Walgreen was repeatedly put on notice of violations of the Item Pricing Act and thus had knowledge that its retail outlets were in persistent violation of the Item Pricing Act. Accordingly, Walgreen is liable for and should be assessed the maximum allowable civil penalty for each violation and subsequent violations at each of its Michigan retail outlets pursuant to subsection 9(5) of the Item Pricing Act.

21. The conduct described above also violates Section 3 (1) of the Michigan Consumer Protection Act, MCL 445.903 (1), which defines unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce as follows:

(n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

22. Walgreen was repeatedly put on notice and thus had knowledge that its retail outlets were in persistent violation of the MCPA. Accordingly, Walgreen is liable for and should be assessed the maximum allowable civil penalties for violations at each of its Michigan retail outlets pursuant to section 5 of the MCPA.

III AUTHORITY OF THE ATTORNEY GENERAL

The Attorney General proceeds under section 9 of the Pricing and Advertising of Consumer Items Act, MCL 445 359, which provides, in part:

Sec. 9(1) The attorney general may maintain an action to enjoin a continuing violation of the act. If the court finds that the defendant is violating or has violated this act, it shall enjoin him from a continuance of that violation. It shall not be necessary that actual damages to a person be alleged or proved.

The Attorney General also proceeds under section 5 of the Michigan Consumer Protection Act, MCL 445 905, which provides, in part:

(1) When the attorney general has probable cause to believe that a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful pursuant to section 3, and upon notice given in accordance with this section, the attorney general may bring an action in accordance with principles of equity to restrain the defendant by temporary or permanent injunction from engaging in the method, act, or practice. The action may be brought in the circuit court of the county where the defendant is established or conducts business or, if the defendant is not established in this state, in the circuit court of Ingham county. The court may award costs to the prevailing party. For persistent and knowing violation of section 3 the court may assess the defendant a civil penalty of not more than \$ 25,000.00

* * *

IV. RESPONDENT'S OPPORTUNITY TO COMPLY WITH MICHIGAN LAW

Within ten days after receiving this notice, Walgreen has the opportunity to cease and desist the conduct described above and to inform the Attorney General of Respondent's decision. If Walgreen elects to cease and desist, that fact will be taken into consideration by this office in determining whether to file a lawsuit against Walgreen.

Walgreen may, within 10 days after receiving this notice, request an opportunity to confer with a representative of the Attorney General in person, by counsel or by other representative.

Instead of filing a lawsuit against Walgreen, the Attorney General may accept a formal Assurance of Discontinuance in accordance with section 9(3) of the Pricing and Advertising of Consumer Items Act and/or section 6 of the Michigan Consumer Protection Act that the alleged unlawful practice will be discontinued and that corrective action will be taken. That Assurance of Discontinuance must include, among other things, a provision for payment of a substantial civil penalty and reimbursement of the costs of the investigation.

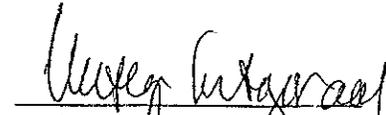
V. CONSEQUENCES OF RESPONDENT'S VIOLATIONS

After Walgreen has been provided with an opportunity to confer, and unless an Assurance of Discontinuance is accepted, or it is determined that there is no cause for action, the Attorney General will be authorized to file a lawsuit against Walgreen in Circuit Court.

If Walgreen decides to exercise its opportunity to confer before the lawsuit is filed, Walgreen must contact the undersigned Assistant Attorney General within ten days after receipt of this Notice to avoid the institution of legal action in Circuit Court.

MICHAEL A. COX
ATTORNEY GENERAL


Katharyn Barron (P45363)
Division Chief


Kathy Fitzgerald (P34454)
Assistant Attorney General
Consumer Protection Division
P O Box 30213
Lansing, MI 48909
(517) 335-0855

Dated: 9/19/06

S:\Consumer Protection\Assignment Control\Cases\Open\FitzgeraldK\2006\Walgreens\Walgreen NIA 9-14-06.doc