

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30736
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

March 17, 2020

UPS Overnight Delivery

Menards
Registered Agent: United States
Corporation
601 Abbott Rd.
East Lansing, MI 48823

Menards
5101 Menard Dr.
Eau Claire, WI 54703

Dear Menards:

Re: Notice of Intended Action - Menards

This letter gives you notice of intended action in accordance with MCL 445.905(2) and directs you to immediately cease and desist from engaging in the unlawful business practices described below.

As background, this Office is responsible for enforcement of the Michigan Consumer Protection Act, MCL 445.901 *et seq.* Under this Act, the Attorney General may bring injunctive actions to protect the interests of consumers.

The Attorney General has probable cause to believe Menards has violated the Michigan Consumer Protection Act through a systemic effort to exploit the public fear about Coronavirus. This Office's concern exists on two levels. First, it appears Menards has essentially doubled the price on some cleaning products such as bleach. And Menards has elevated the price of 3M n95 and p95 face masks and tied their purchase to a rebate.

The Attorney General's Office began receiving price-gouging complaints against Menards early last week. To this point, we have received 18 written complaints against your business operations in Michigan. Among these complaints was one from a consumer who visited your store in South Haven, Michigan to buy bleach last week. This consumer explains in the affidavit enclosed with this Notice that, after he put the bleach in his cart, a store employee told him to take the shelf tag to the register with him. He was told to do this because the employee had been directed to double the price on all cleaning products.

Because of the number of recent complaints, we have received against Menards, and their troubling nature, Attorney General investigators have visited multiple Menards locations over the past week. One such visit took place at the location on Page Road in Jackson. This visit resulted in an observation consistent with the experience explained by the consumer in his affidavit.

For a 121oz container of Clorox brand bleach, Jackson Menards listed a shelf price of \$4.47. The shelf was bare. Menards had a gallon bleach display. On the display, the Clorox 121 oz container was listed at \$8.99. A purchase was made of the 121oz Clorox bleach. The checkout price at the register was \$8.99. Here, it appears Menards took affirmative steps to not only grossly elevate the price of the bleach product, but also to give special attention to it at that elevated price.

Our other concern relates to the 3M face masks of a standard that consumers now recognize as useful protection against Coronavirus. Through screenshots of an online page Menards has since removed, we see Menards priced two-packs of these masks at \$39.95, with a \$20 rebate. As Menards is popularly known for its 11-percent rebate program, we are highly skeptical that the normal, pre-Coronavirus rebate on these masks was set at the recent level exceeding 50%. And, regardless of whether a rebate is cash-back or in the form of a store credit voucher, we also anticipate not all consumers successfully complete the rebate process. Further, since Menards' rebates generally come in the form of a store voucher, it appears these masks have been used to drive additional purchases at Menards by tying their purchase to a voucher that commits consumers to more purchases at Menards.

These facts implicate the following unfair trade practices, as identified in Michigan's Consumer Protection Act:

(z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.

(aa) Causing coercion and duress as the result of the time and nature of a sales presentation.

[MCL 445.903(1).]

Menards appears to have grossly elevated prices. Items like bleach that were sold at one price were apparently sold minutes later at prices approximately twice which others had paid. The price consumers were charged for the face masks, whether with or without the rebate, appear grossly in excess of the prices for comparable masks our investigators found for sale at competitors like Lowes and Home Depot. Using the availability of those masks to pressure consumers into additional purchases at Menards through a rebate voucher is unconscionable. As is essentially doubling the prices on cleaning products already on store shelves for which Menards had no greater inventory costs than existed when other consumers

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purchased identical products in the minutes, hours and days preceding the price hike.

In the context of the media stories about the mounting public health threat caused by Coronavirus, Menards' pricing actions this past week serve only to fuel anxiety and promote hoarding. Given its size and the number of store locations it has in Michigan, Menards' misconduct carries with it the additional threat of encouraging other businesses to artificially inflate their prices to keep pace with your company.

This Office is taking steps to either file a civil lawsuit pursuant to MCL 445.905 or commence a formal investigation under MCL 445.907. Your response to this Notice is expected within ten days and will help us determine which of these paths will be necessary. We are also opened to exploring an assurance of voluntary compliance with you, as anticipated by the MCPA.

In short, the actions of Menards this past week are unacceptable. In this very unique moment, we are hopeful that Menards will immediately change course and renew its commitment to the jingle it has worked so hard to brand into the consciousness of Michigan consumers.

Sincerely,



Darrin F. Fowler
Andrea Moua
Assistant Attorneys General
Corporate Oversight Division
(517) 335-7632

DFP/cms

AFFIDAVIT OF JAMES [REDACTED]

James [REDACTED], being first duly sworn, deposes and says as follows:

1. My wife and I are residents of South Haven, Michigan. Before retiring, I worked in the retail industry for well over 40 years. I was a regional manager for F&G Merchandising / Kmart Automotive Department and then owned and operated a small retail business here in Michigan.
2. I recently went to Menards located at 125 73rd Street in South Haven, Michigan. Menards is the only big box home improvement store in the area, so I frequently shop there.
3. This particular trip to Menards was very disturbing. While I was putting two gallons of bleach in my cart an employee approached me and warned that I needed to take the display price sign to the cashier with me or else I would be charged double the amount as they had already changed the price in the check out registers. She further explained that she had been ordered to double any product that had anything to do with sanitation due to the current Coronavirus outbreak.
4. The gallon of bleach are normally \$2.54. That day, when I went to the cashier, I asked her to ring it up for a price check. She informed me that the price per gallon was \$4.99 as per attached receipt. I was amazed and commented that I couldn't believe Menards would take advantage of consumers during an outbreak.
5. I then spoke with a worker named Sue [REDACTED] and 2 other clerks at the register. I told them that I was upset that Menards would price gouge consumers and stated that I didn't think Wal-Mart would do such a thing and she responded, "Oh yes they would!"
6. When I went to the cashier to check out, I was initially charged \$4.99 per gallon of bleach. I complained to the cashier that the price was incorrect and handed

her the price sticker indicating a gallon of bleach was \$2.54. The cashier corrected the price charged to me. I recall that my receipt indicates the change made. I complained that the store was clearly price gouging by about doubling the price.

7. After I checked out, I spoke with a man that I believe is either the manager or assistant manager. He has dark hair, is about 5'10 or 5'11 and is frequently working at the store when I am there. When I spoke with him about the price gouging, he shrugged his shoulders and he didn't offer any sort of explanation.

8. I am very disappointed with Menards' choice of actions during this uneasy time.

9. I was so disgusted that, as soon as I walked out the front door, I called the Attorney General's office to report their bad practices.

10. I have personal knowledge of the facts stated in this affidavit and will testify about them if called upon to do so.

FURTHER, AFFIANT SAYTH NOT.

James [REDACTED]

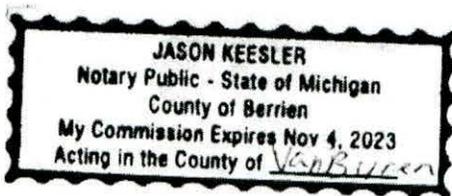
Subscribed and sworn to before me

this 11th day of March, 2020.

[Signature]
Notary Public

Berrien County, Michigan

Commission Expires:



MENARDS

SOUTH HAVEN
125 73RD ST
SOUTH HAVEN, MI 49090



Not valid for rebate submissions

Allowable returns for items on this receipt
will be in the form of an in-store credit
voucher if the return is done after
06/04/2020

MENARDS

SOUTH HAVEN
125 73RD ST
SOUTH HAVEN, MI 49090



Not valid for rebate submissions

Allowable returns for items on this receipt
will be in the form of an in-store credit
voucher if the return is done after
06/04/2020

121OZ BLEACH 14010 6471603 2@2.54	5.08
121OZ BLEACH 14010 6471603 1@4.99	4.99
121OZ BLEACH 14010 6471603 -1@4.99	-4.99
GOOD & PLENTY 6 OZ 08813 2737228 2@.98	1.96
Subtotal	7.04
Taxes and Fees	.30
Total	7.34

Payment Method(s) Used:
[REDACTED] 7.34



121OZ BLEACH 14010
6471603 2@2.54

121OZ BLEACH 14010
6471603 1@4.99

121OZ BLEACH 14010
6471603 -1@4.99

GOOD & PLENTY 6 OZ 08813
2737228 2@.98

Subtotal	7.04
Taxes and Fees	.30
Total	7.34

Payment Method(s) Used
[REDACTED] 7.34

[REDACTED] 05/06/20 12:05 PM 03215

5.08 ORIGINAL Price

4.99 RAISED Price

4.99 Credit for
The Above
Refused to
Pay Elevated
Price Scan