

STATE OF MICHIGAN
IN THE 22ND JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

DANA NESSEL, ATTORNEY GENERAL OF
THE STATE OF MICHIGAN, *ex rel*
The People of the State of Michigan,

Petitioner,

v

A.M. CLEANING & SUPPLIES, L.L.C.,

Respondent.

No. 20-338-CZ

HON. DAVID S. SWARTZ

Andrea Moua (P83126)
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ASSURANCE OF VOLUNTARY COMPLIANCE

Dana Nessel, Attorney General of the State of Michigan, on behalf of the State of Michigan and A.M. Cleaning & Supplies, L.L.C. (A.M. Cleaning), hereby execute and agree to be bound by this Assurance of Voluntary Compliance (Assurance).

This Assurance concerns the resolution of alleged violations of the Michigan Consumer Protection Act (MCPA), 1976 PA 331, as amended, MCL 445.901 *et seq.* A.M. Cleaning agrees not to contest any terms of this Assurance.

The parties agree that the entry into this Assurance by A.M. Cleaning is not an admission or agreement with respect to any legal or factual issues dealt with in this Agreement.

THEREFORE, the parties agree as follows:

I. Jurisdiction

1.1 The Department of Attorney General (the Department) has jurisdiction over the subject matter of this Assurance pursuant to MCL 445.905 and 445.910. A.M. Cleaning waives all objections and defenses that it may have as to the jurisdiction of the Department over the matters covered by this Assurance.

II. Parties Bound

2.1 This Assurance binds A.M. Cleaning, whether acting through associates, principals, officers, directors, employees, representatives, successors or assigns, or through any other subsidiary, corporation, assumed name or business entity. A.M. Cleaning is responsible for compliance with the terms of this Assurance, and must ensure that all employees, contractors, subcontractors, agents and representatives comply with the terms of this Assurance.

III. Definitions

3.1 “A.M. Cleaning” refers to A.M. Cleaning & Supplies, L.L.C., and all employees; agents; representatives; and contractors for A.M. Cleaning.

3.2 “Assurance” means this Assurance of Voluntary Compliance.

3.3 “COD” means the Michigan Department of Attorney General, Corporate Oversight Division.

3.4 “Ex Parte Petition” means the Ex Parte Petition for Civil Investigative Subpoenas filed with the Washtenaw County Circuit Court on March 27, 2020.

3.5 “Parties” means COD and A.M. Cleaning, collectively.

3.6 All other terms shall have the meaning specifically defined in the MCPA.

IV. COD’s informal inquiry related to A.M. Cleaning.

4.1 The Attorney General has received eleven consumer complaints against A.M. Cleaning. These complaints began after A.M. Cleaning posted a tweet on its store’s Twitter page advertising hand sanitizer at \$5.00 per gram on or about March 7, 2020, along with the hashtag #Coronavirus. Specifically, the Twitter advertisement showed different sized bottles of Purell hand sanitizer priced at \$60.00, \$40.00, and \$20.00, respectively. One complainant, Elizabeth B. of Ypsilanti, did purchase hand sanitizer at A.M. Cleaning and filed a complaint about the high prices with the Attorney General. Elizabeth B. purchased one 12 ounce bottle of Purell hand sanitizer for \$36.00 and two 8 ounce bottles of Lucky brand hand sanitizer for \$14.00 each. Elizabeth B. provided the Attorney General a receipt from the transaction and an affidavit detailing her experience at the store. Meanwhile, A.M. Cleaning posted several different hand sanitizer prices and responded to Google reviews with a variety of explanations as to what the true prices were and why the prices changed, including that the photo it posted was a “false advertisement” or that the photos represented the “wrong prices”.

4.2 On March 11, 2020, the Attorney General sent A.M. Cleaning a Notice of Intended Action citing violations of the Michigan Consumer Protection Act. Anthony Marshall, the owner of A.M. Cleaning, responded to the Attorney General's Notice of Intended Action via email on March 22, 2020. In his response, Mr. Marshall stated that the high prices shown on Twitter were actually the prices of eight packs of Purell hand sanitizer, and that he "broke apart" the eight packs and sold the bottles individually for much less than advertised, or \$7.50, \$5.00, and \$2.50 each, respectively. This explanation is contradicted by the prices paid by Elizabeth B. from Ypsilanti as evidenced by the receipt from the transaction.

4.3 This complaint and resulting information implicate the Michigan Consumer Protection Act. In relevant part, section 1 of the Michigan Consumer Protection Act prohibits:

- (g) Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented.
- (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.

Due to Mr. Marshall's conflicting statements and pricing explanations, the Attorney General filed an Ex Parte Petition for Civil Investigative Subpoenas with Washtenaw County Circuit Court on March 27, 2020. This Court issued an Order Authorizing Civil Investigative Subpoenas on March 27, 2020, and subpoenas were issued to A.M. Cleaning. Mr. Marshall, by and through his attorney, provided the

Attorney General's Office with documents demonstrating where A.M. Cleaning typically purchases the items sold at its store. However, additional documents provided showed A.M. Cleaning purchased hand sanitizer in early March 2020 from a man named Abdul in Dearborn and not through its typical supplier. In response to a request for further explanation by the Attorney General, Mr. Marshall provided a self-authored document explaining the profits received by A.M. Cleaning through its sales of hand sanitizer. A.M. Cleaning admitted to the Attorney General that it sold hand sanitizer at a 50% markup during the early days of the coronavirus pandemic.

4.4 In entering into the Assurance, the mutual objective of the parties is to resolve, without litigation, COD's potential claims under the MCPA for preliminary and permanent injunctive relief, as well as the potential claims for payment of damages and reimbursement of the Department's costs and expenses related to the informal inquiry. The entry into this Agreement by A.M. Cleaning is not an admission of liability with respect to the particular claims of any individual consumer. A.M. Cleaning is offering this Assurance to avoid the time and expense of litigating this matter.

V. Implementation of Compliance Measures

5.1 Through the investigation, COD asserts A.M. Cleaning has committed MCPA violations. COD concluded that A.M. Cleaning has sold hand sanitizer at prices that were grossly inflated during the Coronavirus pandemic.

5.2 COD asserts the price markup documentation provided by A.M. Cleaning showed a significant markup for 5 products. The products are as follows: 12oz Purell

hand sanitizer, 8oz Purell hand sanitizer, 4oz Purell hand sanitizer, 8oz generic brand hand sanitizer, and 2 packs of generic hand sanitizer. More specifically:

1. 12oz bottles of Purell hand sanitizer sold for \$24.00 per bottle and \$36.00 per bottle and the distributor cost was \$12.00 and \$18.00, respectively (50% markup).
2. 8oz bottles of Purell hand sanitizer sold for \$16.00 and \$24.00 per bottle and the distributor cost was \$8.00 and \$12.00, respectively (50% markup).
3. 4oz bottles of Purell hand sanitizer sold for \$8.00 per bottle and the distributor cost was \$4.00 (50% markup).
4. 8oz generic hand sanitizer sold for \$9.50 and \$8.00 per bottle and the distributor cost was \$4.75 and \$4.00, respectively (50% markup).
5. 2 packs of generic hand sanitizer sold for \$6.00 and \$4.00 and the distributor cost was \$3.00 and \$2.00, respectively (50% markup).

5.3 A.M. Cleaning hereby provides assurance it will not sell goods at grossly excessive prices in the future. Further, A.M. Cleaning gives assurance to the Attorney General that it will comply with the requirements of the Michigan Consumer Protection Act, MCL 445.901 *et seq.*

5.4 A.M. Cleaning understands that by accepting these assurances, the Attorney General and COD are making no representation as to its adequacy in selling products, or compliance with the MCPA. In other words, if the Attorney General receives consumer complaints or other information in the future suggesting that A.M. Cleaning has violated, or is violating, the MCPA, A.M. Cleaning's implementation of

these assurances shall not deprive COD from taking any appropriate action described in these laws.

5.5 Pursuant to MCL 445.906(1), this Assurance shall not constitute an admission of guilt, and shall not be introduced in any other proceeding, unless it is in regard to a violation of this Assurance.

VI. Financial obligations

6.1 A.M. Cleaning agrees to resolve this matter, and avoid the need for litigation, through making a one-time payment to the Attorney General's COD in the amount of \$4,500.00. This payment will be accomplished through a check or money order made payable to the State of Michigan. The payment will be due to the Attorney General within 21 days of the effective date of this Assurance. This sum is to both compensate affected consumers, and the citizens of Michigan for costs associated with the investigation giving rise to this Assurance. From the \$4,500.00 payment, the Attorney General will make a \$100.00 onetime payment to the consumer who supplied the affidavit attached to the Ex Parte Petition.

It is the mutual desire of the parties to ensure compensation to all consumers that purchased the products listed in paragraph 5.2 above. The Attorney General will make \$3,500.00 from the sum stated in this section available to consumers through distribution in a claims process. To be eligible for a distribution under this subsection, a consumer must be able to substantiate that he or she had purchased one of the five items listed in paragraph 5.2. The amount of any distribution will be at COD's discretion, and A.M. Cleaning waives any right to challenge such amounts. COD

reserves the right to adjust the amounts of distributions based on the number of claims received and amount of such claims.

6.2 Should the payment anticipated under this agreement not be timely made, an additional \$5 per day shall be added for each calendar day of delinquency. COD will give notice of the delinquency and resultant costs to A.M. Cleaning by email and first-class mail. A.M. Cleaning understands the COD reserves the right to commence a lawsuit for collection of the obligations under this agreement should any payment be more than fourteen days late.

6.3 The payments to the State of Michigan anticipated by Section 6.1 shall be sent to the attention of Andrea Moua Assistant Attorney General, Corporate Oversight Division, P.O. Box 30736, Lansing, MI 48909.

VII. Release

7.1 Upon the Effective Date, the COD hereby releases and discharges A.M. Cleaning and any of its entities, affiliates, subsidiaries, predecessors, successors or assigns, and each and all of its past or present officers, directors, associates, shareholders, controlling persons, representatives, employees, attorneys, counselors, advisors, or agents, from any and all civil or administrative claims, demands, rights, actions, causes of action, and liabilities, of any kind or nature whatsoever, that are related to sale of hand sanitizer prior to the filing of the Ex Parte Petition. This release does not apply to the sale of hand sanitizer beyond what the Attorney General has identified through the Ex Parte Petition and accompanying Subpoena *Duces Tecum*, including the alleged acts, failures to act, omissions, misrepresentations, facts,

events, transactions, statement, occurrences or other subject matter which were or could have been set forth, alleged, complained of or otherwise referred to in the Ex Parte Petition. This release does not apply to A.M. Cleaning's sale of any other products. Nothing herein shall be construed as a waiver or release of claims asserted or that may be asserted by individual consumers.

VIII. General Provisions

8.1 This Assurance is binding upon, inures to the benefit of, and applies to the parties and their successors-in-interest. This Assurance does not bind any Division of the Michigan Department of the Attorney General other than COD. Nor does this Assurance bind the Public Service Commission or any other agencies, boards, commissions or offices of the State of Michigan.

8.2 This Assurance does not affect, expand or limit the rights of any private party to pursue any available remedy or remedies pursuant to applicable law, except that any common law right of set off would still be applicable. Further, this Assurance does not create any private right or cause of action to any third party.

8.3 This Assurance does not constitute an approval by the Attorney General of any of A.M. Cleaning's business practices and A.M. Cleaning must not make any representation to the contrary.

8.4 No change or modification of this Assurance is valid unless in writing and signed by all parties.

8.5 Within three business days of the Effective Date of this Assurance, COD will file a copy of this Assurance with the Washtenaw County Circuit Court in the above-captioned matter, as well as with the Ingham County Circuit Court as anticipated by MCL 445.905.

8.6 Unless a temporary restraining order is sought, COD will make reasonable efforts to provide written notice in the event that COD believes A.M. Cleaning to be in noncompliance with any provision of this Assurance, setting forth the basis for such belief.

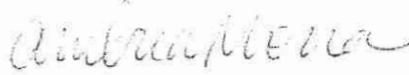
IX. Signatories

9.1 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 legally bind such party to the terms and conditions of this Assurance. If this Assurance is signed by a corporate officer or representative, by signing you acknowledge that you have had the opportunity to consult with an attorney acting on behalf of the corporation before executing this document.

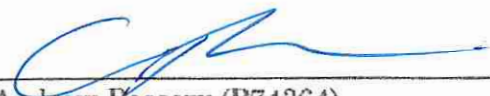
X. Effective Date

10.1 The effective date of this Assurance is the date upon which the COD representative signs this Assurance. Electronic signatures, as confirmed through electronic mail messages, shall be deemed sufficient and binding for purposes of this Assurance.


Dated: October 14, 2020

By: 
Andrea Moua (P83126)
Assistant Attorney General
Michigan Dep't of Attorney General
Corporate Oversight Division

Dated: 10-20-2020

By: 
Andrew Bossory (P74364)
Attorney for Respondent

Dated: 10-20-2020

By: 
Anthony Marshall (owner)
A.M. Cleaning & Supplies L.L.C.