

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

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

Petitioner,

No. 20- -MS

HON.

v

████████████████████

Respondent.

Rebecca Berels (P81977)
Darrin Fowler (P53464)
Attorneys for Petitioner
Michigan Department of Attorney General
Corporate Oversight Division
P.O. Box 30736
Lansing, MI 48909
(517) 335-7632

ASSURANCE OF VOLUNTARY COMPLIANCE

Dana Nessel, Attorney General of the State of Michigan, on behalf of the State of Michigan, and ██████████ 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.*

██████████ agrees not to contest any terms of this Assurance.

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

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.

██████████ waives all objections and defenses that he may have as to the jurisdiction of the Department over the matters covered by this Assurance.

II. Parties Bound

2.1 This Assurance binds ██████████ whether acting through associates, principals, officers, directors, employees, representatives, successors or assigns, or through any other subsidiary, corporation, assumed name or business entity. ██████████ 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 “██████████” refers to ██████████ or Dealz-N-KY on Amazon, and all employees; agents; representatives; and contractors for ██████████

3.2 “Assurance” means this Assurance of Voluntary Compliance.

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

3.4 “Parties” means COD and ██████████ collectively.

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

IV. COD's Informal Inquiry Related to [REDACTED]

4.1 On March 13, 2020, the Attorney General received a complaint from a consumer in Franklin, Michigan (the "Franklin Consumer"). In the complaint, the consumer stated that, on March 3, 2020, she purchased two 2-packs of 8 oz. pump bottles of Purell hand sanitizer from Amazon third-party seller "Dealz-N-KY" for approximately \$200. The consumer also indicated that, when she attempted to contact the seller and request a return after discovering that she had paid a high price for the hand sanitizer, she was unsatisfied by the response. The Attorney General requested further information from the consumer, and learned that she had paid \$89.00 per pack plus \$5.19 shipping—a grand total of \$183.19—for the product. Upon investigation, the Attorney General found that the same product sold for just \$8.95 per pack on Walmart.com.

The Attorney General forwarded this complaint and supporting documentation to Amazon, requesting identifying information for the seller behind the Dealz-N-KY profile, as well as the sales data pertaining to any other sales between Dealz-N-KY and Michigan consumers. On March 23, 2020, Amazon provided the Attorney General with the contact information for [REDACTED] the person behind the Dealz-N-KY storefront. Using this information, the information provided by the Franklin Consumer, and the information that the Attorney General learned upon further investigation, on April 6, 2020, the Attorney General issued a Notice of Intended Action to [REDACTED] responded via email that same day.

Amazon subsequently forwarded additional sales data for the Dealz-N-KY storefront to the Attorney General. Upon review of the data, the Attorney General discovered that, in addition to the sale to the Franklin Consumer, ██████████ sold the same product—a 2-pack of 8 oz. pump bottles of Purell hand sanitizer—to four other Michigan consumers. Specifically, on March 3, 2020, ██████████ sold the product for \$99.99 plus \$3.09 shipping—a grand total of \$103.08—to a consumer in Lansing, Michigan (the “Lansing Consumer”) and to a consumer in Utica, Michigan (the “Utica Consumer”). The next day, ██████████ sold the product for \$89.00 plus \$3.09 shipping—a grand total of \$92.09—to a consumer in East Lansing, Michigan (the “East Lansing Consumer”) and to a consumer in Ann Arbor, Michigan (the “Ann Arbor Consumer”). The average price for that product as of January 19, 2020, calculated by taking the trailing 30-day average sales price for all Amazon sales of that product, was just \$12.51.

This activity implicates the Michigan Consumer Protection Act. In relevant part, section 1 of the Michigan Consumer Protection Act prohibits:

(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.

4.2 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 Assurance by [REDACTED] is not an admission of liability with respect to the particular claims of any individual consumer. [REDACTED] is offering this Assurance to avoid the time and expense of litigating this matter.

V. Implementation of Compliance Measures

5.1 To the extent that [REDACTED] may have engaged in any unfair or deceptive business practices in the State of Michigan, including any violations of the MCPA, [REDACTED] shall immediately cease and desist such practices. While [REDACTED] may continue to sell goods online, he gives assurance he will not sell hand sanitizer, surface sanitizer, N95 respirators, or any other consumer goods associated with protection from the Coronavirus pandemic to any Michigan residents.

5.2 [REDACTED] understands that by accepting these assurances, the Attorney General and COD are making no representation as to his adequacy in selling products on Amazon, or on other online marketplaces; nor is any representation being made about his compliance with the MCPA beyond what has been stated in Section 4.1. In other words, if the Attorney General receives consumer complaints or other information in the future suggesting that [REDACTED] has violated, or is violating, the MCPA, [REDACTED] implementation of these assurances shall not deprive COD from taking any appropriate action described in these laws.

VI. Financial Obligations

6.1 [REDACTED] will make a payment to the Attorney General's COD in

the amount of \$1,050.00. This payment will be accomplished through a check made payable to the State of Michigan. This sum will be retained by the Attorney General to compensate the citizens of Michigan for costs associated with the informal inquiry giving rise to this Assurance. The payment shall be due to the State of Michigan on May 15, 2020.

6.2 Additionally, [REDACTED] agrees to refund the Franklin Consumer, the Lansing Consumer, the Utica Consumer, the East Lansing Consumer, and the Ann Arbor Consumer \$183.19, \$103.08, \$103.08, \$92.09, and \$92.09, respectively—an amount totaling \$573.53. These refunds shall be accomplished in one of two ways. If Amazon holds sufficient funds in [REDACTED] seller account, Amazon shall issue the refunds from the funds held in that account. If Amazon does not hold sufficient funds in [REDACTED] seller account, or otherwise declines to facilitate the consumer reimbursements, [REDACTED] shall pay the additional sum of \$573.53 to the Attorney General's COD in the manner described in Section 6.1. This additional payment shall be due on June 1, 2020. [REDACTED] shall cooperate with the Attorney General in identifying the names and addresses of the Lansing Consumer, the Utica Consumer, the East Lansing Consumer, and the Ann Arbor consumer, and the Attorney General shall make distributions of the refunds to the consumers upon identification.

6.3 Should any payment anticipated under this Assurance 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 [REDACTED] by

email and first-class mail. [REDACTED] understands the COD reserves the right to commence a lawsuit for collection of the obligations under this Assurance should any payment be more than fourteen days late. [REDACTED] understands that any such payment failure will be regarded as a material breach of this agreement, and will result in the Attorney General filing a lawsuit with claims against him for both breach of contract and violations of the Michigan Consumer Protection Act.

6.4 The payments to the State of Michigan anticipated by Sections 6.1 and 6.2 shall be sent to the attention of Rebecca Berels 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 [REDACTED] and any of his entities, affiliates, subsidiaries, predecessors, successors or assigns, and each and all of his 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 his sale of hand sanitizer through Amazon under the username Dealz-N-KY prior to the Effective Date. This release does not apply to [REDACTED] sale of any other products, whether through Amazon or any other online marketplace. 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 [REDACTED] business practices and [REDACTED] 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 Unless a temporary restraining order is sought, COD will make reasonable efforts to provide written notice in the event that COD believes [REDACTED] [REDACTED] 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: 5/8/2020 By: /s/ Rebecca Berels
Rebecca Berels (P81977)
Assistant Attorney General
Michigan Dep't of Attorney General
Corporate Oversight Division

Dated: 5/8/2020 By: 