

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

MODERN CREATIONS LLC,

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 Modern Creations LLC, 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.* Modern Creations LLC agrees not to contest any terms of this Assurance.

The parties agree that the entry into this Assurance by Modern Creations LLC 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” or “the Attorney General”) has jurisdiction over the subject matter of this Assurance pursuant to MCL 445.905 and 445.910. Modern Creations LLC 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 Modern Creations LLC, whether acting through associates, principals, officers, directors, employees, representatives, successors or assigns, or through any other subsidiary, corporation, assumed name or business entity. Modern Creations LLC 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 “Modern Creations LLC” refers to Modern Creations LLC, or Happy Small Hands on Amazon, and all employees; officers; agents; representatives; and contractors for Modern Creations LLC.

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 Modern Creations LLC, collectively.

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

IV. COD's Informal Inquiry Related to Modern Creations LLC

4.1 On March 24, 2020, the Attorney General received from Amazon a list of Michigan-based third-party sellers that Amazon had flagged as having significantly inflated the price of Coronavirus-related consumer goods—*i.e.*, hand sanitizers, surface sanitizers, and N95 respirators—offered for sale on the Amazon online marketplace. Third-party seller “Happy Small Hands”, a profile operated by Modern Creations LLC, was included in that list.

Upon review of the data, the Attorney General discovered that, on February 21, 2020 Modern Creations LLC sold a 10-pack of 3M 8511 N95 Respirators for \$38.00 plus \$21.95 shipping—a grand total of \$59.95—to a consumer in Ann Arbor, Michigan (the “Ann Arbor Consumer”). The next day, Modern Creations LLC sold the same product to two other Michigan consumers—one in Rochester and one in Interlochen (the “First Rochester Consumer” and the “Interlochen Consumer,” respectively)—for \$42.00 plus \$46.95 shipping, charging a grand total of \$88.95 to each consumer. The average price for a 10-pack of 3M 8511 N95 Respirators as of January 19, 2020, calculated by taking the trailing 30-day average sales price for all Amazon sales of that product, was just \$13.67.

The Attorney General also discovered that, on February 25, 2020, Modern Creations LLC sold a 2-pack of 3M 8511 N95 Respirators for \$25.95 plus \$52.95 shipping—a grand total of \$78.90—to a consumer in Rochester, Michigan (the

“Second Rochester Consumer”). The trailing 30-day average sales price for all Amazon sales of that product as of January 19, 2020 was just \$5.13.

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.

The Attorney General issued a Notice of Intended Action to Modern Creations LLC on April 6, 2020. Modern Creations LLC responded to the Attorney General with a letter on April 16, 2020.

4.2 In entering into this 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 Modern Creations LLC is not an admission of liability with respect to the particular claims of any individual consumer. Modern Creations LLC 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 Modern Creations LLC may have engaged in any unfair or deceptive business practices in the State of Michigan, including any violations of the MCPA, Modern Creations LLC shall immediately cease and desist such practices. While Modern Creations LLC may continue to sell goods online, it gives assurance that it will no longer sell hand sanitizer, surface sanitizer, N95 respirators, or any other consumer goods associated with protection from the Coronavirus pandemic.

5.2 Modern Creations LLC understands that by accepting these assurances, the Attorney General and COD are making no representation as to its adequacy in selling products on Amazon, or on other online marketplaces; nor is any representation being made about its 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 Modern Creations LLC has violated, or is violating, the MCPA, Modern Creation LLC's implementation of these assurances shall not deprive COD from taking any appropriate action described in these laws.

VI. Financial Obligations

6.1 Modern Creations LLC will make a payment to the Attorney General's COD in the amount of \$2,500.00. 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 June 1, 2020. Additionally, Modern Creations LLC agrees that Amazon shall refund the Ann Arbor Consumer, the First Rochester Consumer, the Interlochen Consumer, and the Second Rochester Consumer \$59.95, \$88.95, \$88.95 and \$78.90, respectively—an amount totaling \$316.75—from the funds that Amazon holds in Modern Creation LLC's seller account.

6.2 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 Modern Creations LLC by email and first-class mail. Modern Creations LLC 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. Modern Creations LLC recognizes that any such payment failure will be regarded as a material breach of this Assurance, and will result in the Attorney General filing a lawsuit against it asserting claims of breach of contract and violations of the Michigan Consumer Protection Act. In the event such a lawsuit is filed, Modern Creations LLC understands that this Assurance will be filed with the court as evidence of the contract.

6.3 The payment to the State of Michigan anticipated by Section 6.1 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 Modern Creations LLC 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 its sale of hand sanitizer, surface sanitizer, and N95 respirators through Amazon under the username Happy Small Hands prior to the Effective Date. This release does not apply to Modern Creations LLC's 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 Modern Creations LLC's business practices and Modern Creations LLC 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 Modern Creations LLC 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: 5/1/2020 By: /s/ Rebecca Berels

Rebecca Berels (P81977)
Assistant Attorney General
Michigan Dep't of Attorney General
Corporate Oversight Division

Dated: 05/01/2020 By: 

Paul Rafelson
Attorney for Modern Creations LLC
Rafelson Schick PLLC
2255 Glades Road, Suite 319
Boca Raton, FL 33431