

**STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION**

STATE OF OHIO)
)
IN THE MATTER OF:)
DAVID STECIW AND)
SMARTER BUYING ENTERPRISES, LLC)
)
)

DOCKET NO. 597030

RECEIVED
ATTORNEY GENERAL OF OHIO

SEP 28 2021

ASSURANCE OF VOLUNTARY COMPLIANCE

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

This Assurance of Voluntary Compliance (hereafter “Assurance”) is entered into this 28th day of September, 2021 by David Steciw and Smarter Buying Enterprises, LLC (“Suppliers”) and Dave Yost, Attorney General of the State of Ohio (“Attorney General”). For purposes of this Assurance, “Suppliers” means David Steciw, personally and individually, and as the owner/operator of the online seller entity known as Smarter Buying Enterprises, LLC, as well as their officers, partners, managers, successors or assigns and all persons acting in concert or participation with them, directly or indirectly, through any corporate device, partnership, association and affiliation.

WHEREAS, the Attorney General, having reasonable cause to believe that Suppliers have engaged in acts and practices which violate the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 *et seq.*, the Valentine Act, Ohio’s antitrust law, R.C. 1331.01, *et seq.*, and having authority to investigate Suppliers pursuant to R.C. 1345.06, R.C. 1331.16 and the common law of the State of Ohio, the Attorney General has conducted an investigation pursuant to the authority granted him, and;

WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(F) enter into and accept an Assurance of Voluntary Compliance, and;

WHEREAS, this Assurance of Voluntary Compliance is an Assurance in writing by Suppliers of their intent to conduct their business in a manner designed to comply with all provisions of the CSPA, R.C. 1345.01, *et seq.*, its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, and the provisions of the Valentine Act, R.C. 1331.01, *et seq.* and;

WHEREAS, Suppliers voluntarily entering into this Assurance does not constitute, nor shall it be construed, as an admission of any violation of any state or federal law, but Suppliers desire to resolve this investigation and avoid the expense and other costs of an ongoing investigation and potential litigation, and;

WHEREAS, Suppliers, desiring to comply with all aspects of the CSPA and the Valentine Act, hereby voluntarily enter into this Assurance with the Attorney General.

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto **AGREE** as follows:

- (1) The "Effective Date" shall mean the date that is indicated on the first page of this Assurance.
- (2) By accepting this written Assurance, the Attorney General agrees to terminate the current investigation of David Steciw and Smarter Buying Enterprises, LLC's business practices and actions occurring on or before the Effective Date of this Assurance.
- (3) By giving this written Assurance, Suppliers agree to comply with all the terms of this Assurance and to conduct their business in compliance with all applicable Ohio laws, including without limitation, the CSPA, together with its substantive rules, and the Valentine Act.

BACKGROUND AND STATEMENT OF FACTS

- (4) David Steciw and Smarter Buying Enterprises, LLC are online sellers of hand sanitizer and other products, with their principal place of business located at 4659 Ruby Ln., Brunswick, Ohio 44212.
- (5) At all times relevant to this Assurance, David Steciw served as owner and sole member of Smarter Buying Enterprises, LLC.
- (6) David Steciw and Smarter Buying Enterprises, LLC are “suppliers” as that term is defined in R.C. 1345.01(C) as they have been, at all times relevant herein, engaged in the business of effecting consumer transactions by selling hand sanitizer products to individuals in the State of Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A).
- (7) Suppliers operate an online business in which they acquire a variety of products, including hand sanitizer and cleaning products, and resell those products to the general public via the online platform Amazon.
- (8) In early 2020, COVID-19, a highly communicable and dangerous contagion, arrived in the United States and began to spread.
- (9) On February 29, 2020 the United States reported its first death from COVID-19 in Washington state.
- (10) In the face of these developments, Ohioans and people across the nation became increasingly frightened.
- (11) This fear prompted many citizens to bolster their personal supplies of products they believed might be needed and/or in short supply if the crisis continued to worsen to

pandemic levels. Those pandemic-related products included disinfecting wipes, hand sanitizers, respirator masks and even toilet paper.

- (12) In early March 2020, hand sanitizer products could still be purchased from retailers such as Marc's, Staples, Discount Drug Mart, and Walmart with no significant increase in price over the price charged in January 2020.
- (13) Suppliers purchased hand sanitizer products and disinfectants (the "Identified Products") from retailers such as Marc's, Staples, Discount Drug Mart, and Walmart to resell the products to consumers online, mostly via Amazon.
- (14) In the aggregate, purchases of the Identified Products by Suppliers may have contributed to a shortage of the products, potentially driving up demand.
- (15) In total, Suppliers purchased and resold over 1,000 units of the Identified Products online via Amazon.com.
- (16) By way of example, the Attorney General's investigation determined that Suppliers purchased 8-oz. pump bottles of Purell Advanced Hand Sanitizer for between \$3.00 and \$7.00 a bottle. During March 2020, Suppliers sold this item for between \$29.99 and \$34.99 a bottle.
- (17) Between March 2, 2020 and March 6, 2020, Suppliers purchased well over 100 containers of disinfecting wipes from various retailers and re-sold these products online via Amazon.com.
- (18) By way of example, the Attorney General's investigation determined that in January 2020, before COVID-19 created a statewide and national crisis, the Suppliers purchased three-packs of 35 count (105 count total) Lysol Disinfecting wipes for

between \$5.75 and \$6.47. During March 2020, Suppliers sold this item for between \$29.99 and \$49.99.

- (19) In total, Suppliers gross revenue from selling the Identified Products on Amazon exceeded \$20,000.
- (20) The Attorney General alleges that Suppliers committed unfair, deceptive, and unconscionable acts and practices in violation of R.C. 1345.02 and R.C. 1345.03 by offering hand sanitizer for sale at substantially increased prices in light of the national health crisis.
- (21) The Attorney General alleges that Suppliers committed unconscionable acts and practices in violation of R.C. 1345.03(A), as set forth in R.C. 1345.03(B)(5), by requiring consumers to enter into transactions which Suppliers knew were substantially one-sided in favor of Suppliers.
- (22) The Attorney General alleges that Suppliers committed and carried out unreasonable restrictions in trade and commerce and increased the price of merchandise in violation of R.C. 1331.01(C) and R.C. 1331.04, by acquiring and artificially manipulating the available supplies of hand sanitizer and combining with and utilizing an online platform to offer it for sale at artificially inflated anticompetitive levels during a national health crisis.
- (23) Suppliers deny that they committed any unfair, deceptive and unconscionable acts or restrained trade as alleged above by the Attorney General.

COMPLIANCE PROVISIONS

- (24) Suppliers shall not violate the CSPA, R.C. 1345.01, *et seq.*, and specifically shall not engage in unfair, deceptive or unconscionable acts or practices under R.C. 1345.02 and R.C. 1345.03, by inflating the price of goods during a pandemic.
- (25) Suppliers shall not violate the Valentine Act, R.C. 1331.01 *et seq.*, and specifically shall not create and carry out unreasonable restrictions in trade or commerce and/or prevent competition in the sale or purchase of merchandise under R.C. 1331.01 and R.C. 1331.04, by removing goods from the stream of commerce for purposes of reselling at anticompetitive levels during a pandemic.

GENERAL PROVISIONS

- (26) By accepting this written Assurance, the Attorney General agrees to terminate his current investigation into Suppliers' business practices occurring prior to the date of this Assurance, relative to Suppliers' practices of inflating the sales price of goods during a national health crisis as set forth above.
- (27) Suppliers understand and agree that this Assurance applies to any related owners, principals, officers, directors, agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns.
- (28) This Assurance shall be governed by the laws of the State of Ohio.
- (29) This Assurance does not constitute an approval by the Attorney General of any of the Suppliers' business practices, and the Suppliers shall not represent directly or indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of their business practices.

- (30) This Assurance sets forth the entire agreement between the Attorney General and Suppliers and supersedes any and all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel regarding the subject matter hereof. This Assurance may be amended by written agreement of the Parties, subject to any further requirements under state law.
- (31) The Parties hereto acknowledge that no other promises, representations, or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.
- (32) Suppliers shall negotiate in good faith, through the Office of the Attorney General, any consumer complaints filed with this Office regarding Suppliers' conduct occurring prior to or after the Effective Date of this Assurance, brought by consumers known at the time or discovered after entering into this Assurance.
- (33) This Assurance constitutes a public record and shall be filed in the Public Inspection File pursuant to R.C. 1345.05(A)(3).
- (34) This Assurance shall in no way exempt Suppliers from any other obligation imposed by law, and nothing contained herein shall relieve them of any legal responsibility for any acts or practices they have engaged in other than those specifically addressed by this Assurance.

- (35) Nothing in this Assurance shall in any way preclude any investigative or enforcement action(s) against Suppliers under any legal authority granted to the Ohio Attorney General:
- a. With respect to the transactions which are the subject of this enforcement action if the terms of the Assurance are not fully obeyed, or,
 - b. With respect to transactions or occurrences which are not the subject of this Assurance.

PAYMENT TO THE STATE AND RESTITUTION

- (36) As part of the consideration for the termination of this investigation, Suppliers shall pay Three Thousand Five Hundred Dollars (\$3,500.00) to the Attorney General as reimbursement for investigative and administrative costs associated with this matter. Of this payment, 50% shall be placed in the Ohio Attorney General's Consumer Protection Enforcement Fund, for use by the Attorney General as provided in R.C. 1345.51; and 50% shall be placed in the Ohio Attorney General's Antitrust Fund, as provided in R.C. 109.82.
- (37) Suppliers shall pay consumer restitution in the amount of Five Thousand Dollars (\$5,000.00) to the Attorney General to distribute at its discretion to have purchased COVID-19 pandemic related products that Suppliers sold at significant price increases on Amazon. If any restitution funds are returned as undeliverable, the remaining restitution money shall be paid to the Ohio Attorney General's Office for deposit into the Consumer Protection Enforcement Fund.
- (38) Payments contemplated in paragraphs 36 and 37 herein shall be due in three equal payments. The first payment is due upon the execution of this Assurance.

Subsequent payments shall be made at 30 and 60 days after the execution of this Assurance. All payments shall be made by delivering a certified check or money order, made payable to the "Ohio Attorney General's Office" and containing "CPS" in the memo line, to:

Financial Specialist
Consumer Protection Section
30 E. Broad St., 14th fl.
Columbus, OH 43215

PENALTIES FOR FAILURE TO COMPLY


- (39) The Attorney General may assert any claim that Suppliers have violated this Assurance in a separate civil action to enforce the terms of this Assurance against Suppliers and the Court shall apply applicable standards of law to determine damages for any subsequent violations which may include any and all remedies available to the Attorney General pursuant to R.C. 109.81, 1331.03, 1331.06, 1331.08, 1331.11, 1331.99, and 1345.07.
- (40) Pursuant to R.C. 1345.06(F), this Assurance is not, and shall not be construed as, evidence of any violation by Suppliers of the CSPA, its Substantive Rules. Evidence of a violation of an Assurance of Voluntary Compliance, though, is prima-facie evidence of an act or practice in violation of the CSPA, R.C. 1345.01 *et seq.*, if presented after the violation in an action brought pursuant to the CSPA, R.C. 1345.01 *et seq.*

WHEREFORE, the Parties hereto affix their signatures in recognition and acceptance of the terms contained herein and warrant and represent that by affixing their signatures below they have the legal right to do so.


SIGNATURES

Accepted:

**DAVE YOST,
OHIO ATTORNEY GENERAL**

By: 
Teresa Heffernan
Section Counsel
Consumer Protection Section, Ohio Attorney General
30 E. Broad St., 14th Floor
Columbus, OH 43215
Phone: 614-644-9636
Teresa.Heffernan@OhioAGO.gov

Date: September 28, 2021

By: 
James Roberts
Principal Assistant Attorney General
Antitrust Section, Ohio Attorney General
30 E. Broad St., 26th Floor
Columbus, OH 43215
Phone: 614-466-1730
James.Roberts@OhioAGO.gov

Date: 9/28/21

Counsel for Ohio Attorney General

Accepted:

By:


David Steciw

4659 Ruby Lane

Brunswick, Ohio 44212

Phone: 330-310-8149

*Individually, and d/b/a Smarter Buying Enterprises
Supplier*

Date:

9/27/21

Accepted:

By:


James D. Abrams

Taft Law

65 E. State St., Suite 1000

Columbus, Ohio 43215

Phone: 614-562-5460

jabrams@taftlaw.com

Attorney for, and on behalf of, Suppliers

Date:

9/27/21

