

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

RECEIVED
ATTORNEY GENERAL OF OHIO

JAN 18 2022

STATE OF OHIO)
)
IN THE MATTER OF:)
NATHANIEL ELLIS DBA)
MASSIVE FAMILY MARKETING)

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

DOCKET NO. 589781

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (hereafter "Assurance") is entered into this 11th day of January, 2022 by Nathaniel Ellis ("Supplier") and Dave Yost, Attorney General of the State of Ohio ("Attorney General"). For purposes of this Assurance, "Supplier" means Nathaniel Ellis, personally and individually, and through his use of the fictitious name Massive Family Marketing, his managers, successors, or assigns and all persons acting in concert or participation with him, directly or indirectly, through any corporate device, partnership, association or affiliation.

WHEREAS, the Attorney General, having reasonable cause to believe that Supplier has engaged in acts and practices which violate the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., has investigated Supplier pursuant to the authority granted him pursuant to R.C. 1345.06, and;

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

WHEREAS, the Attorney General, having reasonable cause to believe that Supplier has engaged in acts which violate the Valentine Act, Ohio's antitrust law, R.C. 1331.01, et seq., has investigated Supplier pursuant to the authority granted to him pursuant to R.C. 1331.16 and the common law of the State of Ohio, and;

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

WHEREAS, Supplier, desiring to comply with all aspects of the CSPA, hereby voluntarily enters 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 by his Consumer Protection Section of Supplier's business practices and actions occurring on or before the Effective Date of this Assurance.
- (3) By giving this written Assurance, Supplier agrees to comply with all the terms of this Assurance and to conduct his business in compliance with all applicable Ohio laws, including without limitation, the CSPA and its substantive rules.

BACKGROUND AND STATEMENT OF FACTS

- (4) Nathaniel Ellis is an online seller of hand sanitizer and other products who resides at 16750 Raintree Dr. Marysville, OH 43040.
- (5) At all times relevant to this Assurance, Nathaniel Ellis conducted his business under the fictitious name Massive Family Marketing.
- (6) Nathaniel Ellis is a "supplier" as that term is defined in R.C. 1345.01(C) as he has 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) Supplier operates an online business in which he acquires a variety of products, including hand sanitizer, and resells those products to the general public via the online platform Amazon.
- (8) Early in 2020, COVID-19, a highly communicable and dangerous contagion, arrived in the United States and began to spread.
- (9) In the face of these developments and developments on a national level, Ohioans and people across the nation became increasingly frightened.
- (10) 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. Those products included disinfecting wipes, hand sanitizers, respirator masks, and even toilet paper.
- (11) In February, hand sanitizer products could still be purchased from retailers such as Staples and Office Depot with no significant change in price over the previous month.
- (12) Supplier regularly purchased large amounts of these products from retailers such as Staples and Office Depot with the intention to resell them online via Amazon.
- (13) In the aggregate, mass purchases and hoarding of these items by Supplier and others who sought to resell necessary pandemic-related products led to a shortage of the products, driving up demand.
- (14) Supplier increased the prices of the hoarded hand sanitizer over pre-emergency retail market prices by an average of 282.9%.

- (15) For example, in January of 2020, before COVID-19 had created a national health crisis, the average sales price of a 2-pack of 8-oz. bottles of Purell hand sanitizer sold on Amazon for an average of \$12.86 per package. Supplier sold this item for \$40.55 in February and March.
- (16) In total, Supplier made \$7,467.94 more by selling hand sanitizer at inflated prices than he would have by selling at the average price for each product.
- (17) Supplier 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 a national health crisis.
- (18) Supplier committed unconscionable acts and practices in violation of R.C. 1345.03(A), as set forth in 1345.03(B)(5), by requiring consumers to enter into transactions that Supplier knew were substantially one-sided in favor of Supplier.
- (19) Supplier unlawfully created and carried out unreasonable restrictions in trade by 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 offering it for sale at artificially inflated anticompetitive levels during a national health crisis.

COMPLIANCE PROVISIONS

- (20) Supplier 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 times of widespread fear and panic.
- (21) Supplier shall not violate the Valentine Act, R.C. 1331.01, *et seq.*, and specifically shall not hoard products related to a pandemic and/or price products for sale at artificially inflated anticompetitive levels during times of widespread fear and panic.

GENERAL PROVISIONS

- (22) By accepting this written Assurance, the Attorney General agrees to terminate his current investigation into Supplier's business practices occurring prior to the date of this Assurance, relative to Supplier's practices of inflating the sales price of goods during a national health crisis as set forth in paragraphs (1) through (16) above.
- (23) Supplier understands and agrees that this Assurance applies to any related owners, principals, officers, directors, agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns.
- (24) This Assurance shall be governed by laws of the State of Ohio.
- (25) This Assurance is entered into by Nathaniel Ellis of his own free and voluntary act, upon advice of counsel and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this Assurance.
- (26) This Assurance does not constitute an approval by the Attorney General of any of Supplier's business practices, and Supplier 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 his business practices.
- (27) This Assurance sets forth the entire agreement between the Attorney General and Supplier 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.
- (28) 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.

(29) Nathaniel Ellis shall negotiate in good faith, through the Office of the Attorney General, any consumer complaints filed with this Office regarding Supplier's 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.

(30) This Assurance constitutes a public record and shall be placed in the Public Inspection File pursuant to R.C. 1345.05(A)(3).

(31) This Assurance shall in no way exempt Supplier from any other obligation imposed by law, and nothing contained herein shall relieve him of any legal responsibility for any acts or practices he has engaged in other than those specifically addressed by this Assurance.

(32) Nothing in this Assurance shall in any way preclude any investigative or enforcement action(s) against Supplier 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

(33) Supplier shall pay Seven Thousand Four Hundred Sixty-Seven Dollars and Ninety-Four Cents (\$7,467.94) to consumers determined by the Attorney General to have purchased COVID-19 pandemic related products that Supplier sold at significant price increases on Amazon. Suppliers shall distribute the consumer restitution as follows:

- a. Upon the Effective Date of this Assurance, Suppliers will distribute restitution to each consumer identified by the Attorney General.
- b. Consumers will not be required to submit claims or take any action. Suppliers will distribute restitution using the Amazon seller portal. Restitution shall be distributed within fourteen (14) calendar days of the Effective Date of this Assurance, and Suppliers will submit evidence to the Attorney General that restitution was distributed to all applicable consumers within this time period.
- c. The determination of whether a consumer shall receive restitution and the determination of the amount of any such restitution paid to such consumers shall be determined by the Attorney General.
- d. If any restitution funds are returned by Amazon as undeliverable, the remaining restitution money shall be paid to the Ohio Attorney General's Office for deposit into the Consumer Protection Enforcement Fund. Any such funds shall be delivered to the Ohio Attorney General's Office no later than 30 calendar days after the Effective Date of this Assurance.

(34) As part of the consideration for the termination of this investigation, Supplier shall pay Two Thousand Dollars (\$2,000.00) to the Attorney General as reimbursement for investigative and administrative costs associated with this matter. This payment shall

be due upon execution of this Assurance and 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.

- (35) Payments made under paragraph 34 and paragraph 33(d) shall be made by delivering a certified check or money order, made payable to the "Ohio Attorney General's Office," and containing the code "CPS" in the memo line," to:

**Financial Specialist
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215**

PENALTIES FOR FAILURE TO COMPLY

- (36) The Attorney General may assert any claim that Supplier has violated this Assurance in a separate civil action to enforce the terms of this Assurance against Supplier and the Court shall apply applicable standards of law to determine damages for any subsequent violations of the CSPA which may include any and all remedies available to the Attorney General pursuant to R.C. 1345.07.

- (37) Pursuant to R.C. 1345.06(F), this Assurance is not, and shall not be construed as, evidence of any violation of the CSPA and its Substantive Rules, by Supplier. 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 under 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: _____

Date: _____

Christopher Ramdeen (0095623)

Mark Kittel (0095323)

Assistant Attorney General

30 East Broad Street, 14th Floor

Columbus, Ohio 43215-3400

Phone: (614) 995-1577

Christopher.Ramdeen@OhioAttorneyGeneral.gov

Counsel for Plaintiff, State of Ohio

Accepted:

By: _____

Date: 1/11/2022

Nathaniel Ellis

DBA Massive Family Marketing

16750 Raintree Dr.

Marysville, OH 43040

Accepted:

By: _____

Date: 1/17/2022

Samir B. Dahman

Counsel for Supplier

