

**STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS**

IN THE INVESTIGATION OF:

Case No. L14-3-1074

SUNSHINE MAKERS, INC.

Respondent

ASSURANCE OF VOLUNTARY COMPLIANCE

1. PURSUANT to the provisions of Chapter 501, Part II of the Florida Statutes, Florida's Deceptive and Unfair Trade Practices Act, the Office Of The Attorney General, Department Of Legal Affairs (hereinafter referred to as the "Department"), caused an investigation to be made into certain acts and practices of Sunshine Makers, Inc. (hereinafter, "Respondent" or "SMI").

2. Respondent's headquarters is located at 15922 Pacific Coast Hwy #300, Huntington Beach, CA 92649.

3. Respondent is prepared to enter into this Assurance of Voluntary Compliance (hereafter referred to as the "AVC") without an admission that Respondent violated Florida's Deceptive and Unfair Trade Practices Act or any other law and solely for the purpose of resolution of this matter with the Department. Respondent has fully cooperated with the Department's investigation.

4. Pursuant to Section 501.207(6), Florida Statutes, the Department agrees to accept this AVC in termination of its investigation as to Respondent solely as to the acts and practices that were the subject of the investigation.

STIPULATED FACTS

5. The Department and Respondent hereby agree and stipulate to the following:

a. During the time frame beginning at least January 1, 2009 through the present, Respondent engaged, and continues to engage, in commerce by manufacturing, marketing and selling a line of cleaning products under the registered trademark name "Simple Green" including Simple Green All-Purpose Cleaner and Simple Green Heavy Duty BBQ & Grill Cleaner to consumers in Florida and elsewhere.

b. The Department investigated allegations that Respondent committed unfair or deceptive acts toward consumers in the State of Florida and across the country in connection with environmental marketing claims on products sold in Florida including Simple Green All-Purpose Cleaner and Simple Green Heavy Duty BBQ & Grill Cleaner. Specifically, Simple Green All-Purpose Cleaner contained the unqualified environmental marketing claims the product is "Non-Toxic, Biodegradable" without clarifying whether the claims related to the packaging or only the product. Similarly, Simple Green Heavy Duty BBQ & Grill Cleaner contained the environmental marketing claim the product is "Non-Toxic & Biodegradable Formula." These claims are material in that they are likely to affect a consumer's choice or conduct regarding the purchase of household cleaning products.

c. In response to the Department's requests, SMI provided pre and post-claim evidence with regard to the substantiation of its environmental marketing claims for the Simple Green All-Purpose Cleaner and the Simple Green Heavy Duty BBQ & Grill Cleaner.

d. The evidence demonstrated, and SMI readily agreed, that the plastic container that holds the Simple Green All-Purpose Cleaner is not biodegradable. Further,

the evidence demonstrated, and SMI agreed, SMI did not have competent and reliable scientific evidence that the Simple Green All-Purpose Cleaner or Simple Green Heavy Duty BBQ & Grill Cleaner formulas reached 100% degradability prior to making the unqualified degradability claims.

6. This AVC is based upon the stipulated facts set forth herein. The Department shall not be estopped from taking further action in this matter should the facts described herein be shown to be incorrect in any material way or should this AVC not be complied with in full by Respondent. The parties agree that this AVC has been entered into based on the truthfulness of the information provided by Respondent.

TERMS

7. Respondent, including any representatives, agents, employees, successors, assigns, independent contractors or any other person who acts under, by, through, or on behalf of Respondent, directly or indirectly, or through any corporate or other device shall:

- a. Comply with the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes;
- b. Comply with the Federal Trade Commission's revised Guides for the Use of Environmental Marketing Claims, 16 C.F.R. Part 260;
- c. Comply with §817.41, Misleading Advertising Prohibited, Florida Statutes;
- d. Clarify that any degradable claims for the Simple Green All-Purpose Cleaner are limited to the product, and not the packaging; cease making any unqualified degradable claims for any product that is customarily disposed of in landfills, incinerators or recycling facilities; cease making any unqualified degradable claims unless Respondent has competent and reliable scientific evidence at the time the unqualified degradable claim is made that the entire product will completely break down and return to nature within a reasonably short period of time after customary disposal; cease making any unqualified degradable claim for products entering the solid waste stream unless Respondent has competent and reliable evidence at the time the unqualified degradable claim is made that the entire product will decompose within one year after customary disposal; and

- e. For all of Respondent's products that are manufactured after the date Respondent executes this AVC, Respondent shall: maintain competent and reliable scientific evidence to substantiate any environmental marketing claims for products sold in Florida at the time the claims are made and ensure that environmental marketing claims for products sold in Florida are substantiated with competent and reliable scientific evidence of the current formulation of the product being marketed and sold in Florida.

BUSINESS RECORDS

8. Respondent shall preserve and retain all relevant business and financial records relating to the acts and practices at issue in this AVC and other information reasonably sufficient to establish compliance with the provisions of this AVC for two (2) years from the effective date of this AVC, and shall provide reasonable access to such documents and information to the Department upon request.

NOTICE

9. Respondent shall make the terms and conditions of this AVC known to any managers, members, officers, directors, employees, agents, independent contractors, distributors, or anyone else acting for or on behalf of Respondent who is involved in the environmental marketing claims of Respondent. The obligations imposed by this AVC are continuing in nature and shall apply to Respondent's successors and assigns as well as any and all new officers, employees, agents, representatives or any other persons who become engaged in the business or activities of Respondent's or any new business entities created by Respondent's.

10. Respondent shall not affect any change in the form of doing business or the organizational identity of any of the existing business entities or create any new business entities as a method of avoiding the obligations and terms and conditions set forth in this AVC.

ATTORNEYS' FEES AND COSTS

11. Respondent shall make payment in the amount of Seventeen Thousand Five Hundred Dollars (\$17,500.00) to the Department pursuant to Section 501.2105, Florida Statutes, in payment of attorneys' fees, costs and investigative fees regarding this investigation and future investigative fees and costs, payable by cashier's check or other certified funds payable to **Department of Legal Affairs Revolving Trust Fund**. The payment due hereunder, along with the original AVC bearing the notarized signature of Respondent shall be simultaneously delivered to the attention of Assistant Attorney General Ryann Flack, Office of Attorney General, Consumer Protection Division, 444 Brickell Avenue, 6th Floor, Miami, FL 33131.

CIVIL PENALTIES

12. Subject to Respondent's full, complete and timely compliance with the terms of this AVC, the Department is waiving pursuant to this settlement and in consideration of the Respondent's performance hereunder the civil penalties that would otherwise be due for the acts and practices at issue under Sections 501.2075 or 501.2077, Florida Statutes, of up to \$15,000 per violation in consideration of the parties' entry into this AVC. The Attorney General reserves the right to seek penalties pursuant to Florida Statutes, Chapter 501, Part II, for any future violation(s) of the terms contained within this agreement.

13. The original AVC bearing the notarized signature of Respondent and the payment due hereunder will be delivered to the attention of Assistant Attorney General Ryann Flack, Office of Attorney General, Consumer Protection Division, 444 Brickell Avenue, 6th Floor, Miami, FL 33131.

FUTURE VIOLATIONS

14. It is hereby agreed by the parties that any failure to comply with the terms and conditions of this AVC by Respondent is by statute prima facie evidence of a violation of

Initials: 

Chapter 501, Part II, Florida Statutes, and will subject Respondent to any and all civil penalties and sanctions authorized by law, including attorneys' fees and costs.

EFFECTIVE DATE

15. The effective date of this AVC shall be the date of its execution by all parties. Acceptance by the Department shall be established by the signature of the Bureau Chief, South Florida Consumer Protection Division, Department of Legal Affairs, Office of the Attorney General. The receipt by the Department of any monies pursuant to the AVC does not constitute acceptance by the Department, and any monies received shall be returned to Respondent if this AVC is not accepted and fully executed by the Department.

MISCELLANEOUS

16. It is further agreed that facsimile copies of signatures and notary seals may be accepted as original for the purposes of establishing the existence of this agreement, and this AVC may be executed in counterparts the compilation of which shall constitute the full and final agreement.

17. Notice to any of the parties to this AVC as may be required shall be made by certified mail at the addresses set forth below unless any party notifies the other parties in writing of another address to which notices should be provided.

To Respondent:

William N. Shepherd, Esq.
Holland & Knight, LLP
222 Lakeview Avenue, Suite 1000
West Palm Beach, FL 33401

To the Department:

Ryann Flack, Assistant Attorney General
Consumer Protection Division
Office of the Attorney General

444 Brickell Avenue
Miami, Florida 33131

18. Nothing in this AVC is to be construed as a waiver of any private rights of any person or release of any private rights, causes of action, or remedies of any person against Respondent or any other person or entity.

19. It is a condition of each of the Department's obligations under this AVC that Respondent has fully and timely performed all of Respondent's obligations previously due under this AVC.

20. This AVC is the final, complete, and exclusive statement of the parties' agreement on the matters contained in this AVC, and it supersedes all previous negotiations and agreements. Other than any representation expressly stated in this AVC, the parties have not made any representations or warranties to each other, and neither party's decision to enter into this AVC is based upon any statements by the other party outside of those in this AVC.

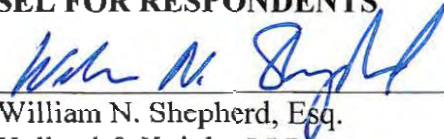
21. It is further agreed that the parties jointly participated in the negotiation of the terms of this AVC. No provision of this AVC shall be construed for or against any party on the grounds that one party had more control over establishing the terms of this AVC than another.

22. By my signature, I hereby affirm that I have authority to execute this AVC on behalf of the party indicated and, to the extent I am acting in a representative capacity, I am acting within the scope of my authority as corporate representative and that by my signature I am binding the businesses/party indicated to the terms and conditions of this AVC.

SIGNATURES ON SEPARATE PAGE(S)

COUNSEL FOR RESPONDENTS

By:



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OFFICE OF THE ATTORNEY GENERAL

By:



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Dated:

7/7/14

By:



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444 Brickell Avenue, 6th Floor
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Dated:

7/7/14

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