



STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL

IN THE MATTER OF:

MACYS.COM, INC.

Respondent.

_____ /

ASSURANCE OF VOLUNTARY COMPLIANCE

A. INTRODUCTION

1. WHEREAS, pursuant to the provisions of Chapter 501, Part II, Florida Statutes, the OFFICE OF THE ATTORNEY GENERAL (hereinafter "the Attorney General"), caused an inquiry to be made into the online pricing practices of Macys.com, Inc. ("Respondent"), whose principal place of business is 680 Folsom Street, San Francisco, California 94107.

2. WHEREAS, beginning December 2013 through May 2014, the Attorney General investigated the online sales and pricing practices of Respondent. Respondent is an online retailer that sells numerous consumer items, including apparel, accessories, furniture, bedding, cookware and kitchen electrics. The Attorney General's investigation alleges that Respondent marketed promotional "sales" prices and discounts on certain kitchen electrics for an unreasonable duration of time in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.*

3. THEREFORE, for the purpose of resolution of this matter only, the Attorney General, by and through the undersigned, does in this matter accept this Assurance of Voluntary

Compliance (“AVC”) in termination of this investigation with prejudice, pursuant to Section 501.207(6), Florida Statutes, and by virtue of the authority vested in the Attorney General by said statute and without any finding of wrongdoing on the part of Respondent. The Attorney General and Respondent (hereinafter “the Parties”) hereby agree and stipulate to the following:

B. JURISDICTION AND VENUE

1. IT IS AGREED by the Parties that the State of Florida has jurisdiction over Respondent solely for the purpose of entering into this AVC and in any enforcement or investigative actions arising out of this AVC.

2. IT IS FURTHER AGREED by the Parties that venue for any matter relating to or arising out of this AVC shall lie solely in Leon County, Florida.

C. DEFINITIONS

1. “Badge Promotion” is any promotional pricing discount that is applied to the final sales price of an item after the consumer has selected and placed merchandise in his or her virtual shopping cart.

2. “Clear and Conspicuous” or “Clearly and Conspicuously” means:

- a. In textual communications, the disclosure must be in a noticeable type, size, and location, using language and syntax comprehensible to an ordinary consumer;
- b. In communications disseminated orally or through audible means, the disclosure must be delivered in a volume, cadence, language, and syntax sufficient for an ordinary consumer to hear and comprehend them;
- c. In communications disseminated through videos: (1) written disclosures must be in a form consistent with definition 3.a and appear on the screen for a

duration sufficient for an ordinary consumer to read and comprehend them, and be in the same language as the predominant language that is used in the communication; and (2) audio disclosures must be consistent with definition 3.b; and

- d. The disclosure cannot be combined with other text or information that is unrelated or immaterial to the subject matter of the disclosure. No other representation(s) may be contrary to, inconsistent with or in mitigation of, the disclosure

3. “Consumer Statute” means the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.*

4. “Electrics” means home electric products intended for use in the kitchen, including coffee makers, mixers, blenders, juicers and toasters.

5. “Reference Price” refers to any former price advertised as a comparison to a current reduced price, either directly or indirectly, and includes but is not limited to the use of phrases or terms such as “Regular,” “REG.,” “Original,” or “ORIG.”

D. AGREEMENT OF COMPLIANCE

1. IT IS AGREED by the Parties that Respondent and representatives, agents, or employees, who act on behalf of Respondent, directly or indirectly, in respect to any Reference Price advertising for Electrics, shall comply with each and every term of this AVC and shall further comply with, in respect to all advertising, promotion, and sales in the State of Florida, the Consumer Statute and the Federal Trade Commission’s 1964 Guides on Deceptive Pricing, 16 Code of Federal Regulations, Chapter 1, Part 233.

2. IT IS FURTHER AGREED by the Parties that Respondent shall clearly and conspicuously disclose information regarding the basis for Reference Prices used in Electrics whenever a comparison between a Reference Price and reduced price is made by including the following disclosure on the product page: “Savings may not be based on actual sales”. The disclosure shall be made directly on the product page, and not only through a hyperlink.

3. IT IS FURTHER AGREED by the Parties that any Reference Price advertised by Respondent shall be a bona fide price, offered to the public for a reasonably substantial period of time. Circumstances may exist where Respondent’s Reference Price is in full compliance with State and Federal law and the Reference Price represents the actual bona fide price openly and actively offered to the public for sale on a regular basis for a reasonably substantial period of time, but for legitimate business reasons, few or no actual sales of an item may exist. In any such circumstances, the Parties agree that Respondent will not be in violation of the AVC if it has included in any and all Reference Price advertisements, in a clear and conspicuous manner, a disclosure using the following statement:

Savings may not be based on actual sales.

For purposes of this AVC the legitimate business factors listed on “Exhibit A” attached hereto and incorporated by reference, may be considered relevant in determining whether those circumstances exist. Neither the absence nor presence of any factor shall necessarily be determinative.

4. IT IS FURTHER AGREED by the Parties that Respondent shall undertake commercially reasonable steps to ensure that items shall not be offered at a discounted price for an unreasonable period of time.

5. IT IS FURTHER AGREED by the Parties that Respondent shall undertake training for the Electrics merchants on the standards imposed under this AVC and specifically shall address the appropriate use of Promotional Badges. Such training will be conducted within thirty (30) days of the Attorney General's acceptance of this AVC, and refresher training will be conducted at least once each Spring and Fall season. Respondent also will conduct seasonal Spring and Fall audits of Electrics pricing. Specifically, Respondent will pull reports reflecting when items were offered at sale prices and/or with Promotional Badges, and will review such reports for compliance with its standards for comparative price advertising, as well as the standards reflected in this AVC. To the extent any instances of non-compliance are noted, Respondent will address those issues with the responsible merchants so that corrective action may be taken, as needed.

6. IT IS FURTHER AGREED by the Parties that, for a period of two years from date of execution of this AVC, Respondent shall, provide the Attorney General with reports detailing the online sales periods, prices, and volumes of 10 Electrics items selected by the Attorney General from the macys.com site. Such reports will be provided in March of each year and shall reflect information from the prior fiscal year. The reports shall include, the following information:

- a. the item name and SKU
- b. the number of units sold at the Reference Price;
- c. the number of days the item was listed at the Reference Price;
- d. each unique price the item was listed for, and the number of days the item was listed for each price; and
- e. any Badge Promotion added to the sales price.

E. PAYMENT BY RESPONDENTS

1. To resolve claims by the Attorney General, Respondent agrees to pay the sum of eighty thousand dollars (\$80,000) to the Attorney General, payable within 90 days of execution of this AVC. Respondents' payments shall be made payable to the Department of Legal Affairs Revolving Trust Fund for expended attorney's fees and costs and expenses, including but not limited to non-attorney employee costs, management fees, administrative expenses and overhead associated with the matters resolved herein and to cover the Attorney General for the costs of future enforcement, and shall be delivered to Richard P. Lawson, Director, Consumer Protection Division, Office of the Attorney General, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, Florida 32399-1050, pursuant to Section 501.207(6), Florida Statutes (2006).

F. RECORDKEEPING PROVISIONS

1. IT IS FURTHER AGREED by the Parties that for a period of twenty-four (24) months from the date of execution of the AVC, Respondent shall retain all records material to this Agreement. Respondents shall make such records and reports available for inspection following fifteen (15) days' notice to counsel for Respondent.

2. IT IS FURTHER AGREED by the Parties that a period of twelve (12) months from the date of the execution of this AVC, or until such time as the indebtedness described in Section E is satisfied, whichever period is longer, Respondent shall promptly notify the Attorney General of any changes in corporate structure that may affect compliance obligations arising under the AVC, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate entity that engages in any acts or practices subject to this AVC; the filing of any bankruptcy petition; a change in the corporate name or address.

3. IT IS FURTHER AGREED by the Parties that for a period of twelve (12) months from the date of the execution of the AVC or until such time as the indebtedness described in Section E is satisfied, whichever period is longer, Respondent shall notify the Attorney General of any material change in any corporate ownership or control.

4. IT IS FURTHER AGREED by the Parties that for purposes of this AVC,

a. Respondent shall, unless otherwise directed by Attorney General representatives, mail all written notifications to the Attorney General, identifying all written communications as in reference to Attorney General Case No. L13-3-1177, and sent to:

Consumer Protection Division/Tallahassee
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050; and

b. The Attorney shall, unless otherwise directed by Respondents, mail all written notifications to Respondents to:

Wendy Schmidt
GVP, Assoc. General Counsel
680 Folsom Street, Suite 1211
San Francisco, California 94107

G. NO ADMISSION OF LIABILITY OR WAIVER OF DEFENSES

IT IS FURTHER AGREED by the Parties that this AVC is not and shall not in any event be construed, deemed to be, and/or used as:

1. An admission or evidence of the validity of any claim that the Attorney General has or could assert against Respondent or an admission of any alleged wrongdoing or liability by Respondent;

2. An admission or evidence of any fault of omission by Respondent in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal, other

than such proceedings as may be necessary to consummate or enforce this AVC. Moreover, by entering into this AVC and agreeing to the terms and conditions provided herein, Respondent does not intend to waive and does not waive any defenses it may have in any other action or proceeding that has been or may be brought against Respondent arising from this investigation;

3. A finding by any court or agency, including the Attorney General, that Respondents have engaged in any act or practice declared unlawful by any laws, rules or regulations of the State of Florida.

H. APPLICATION, EFFECT AND OTHER TERMS

IT IS FURTHER AGREED by the Parties that:

1. This AVC shall become effective upon its acceptance by the Attorney General, by and through Richard P. Lawson, Director, Consumer Protection Division, who may refuse to accept it at his discretion;

2. Respondent will implement the terms of this AVC immediately upon acceptance by the Attorney General, and this AVC shall remain in effect for two years from the date of such acceptance, provided, however, that Respondents ongoing obligation to comply with applicable law pursuant to Section D.1 shall continue thereafter;

3. No waiver, modification or amendment of the terms of this AVC shall be valid or binding unless made in writing, signed by the parties and then only to the extent set forth in such written waiver, modification, or amendment;

4. This AVC shall be governed by, construed and enforced exclusively in accordance with and subject to the laws of the State of Florida, including, but not limited to, its choice of law principles;

5. No waiver of any term, provision, or condition of this AVC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the party making the waiver;

6. If any clause, provision, or section of the AVC shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this AVC, and this AVC shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein;

7. Violations of this AVC shall subject Respondent to civil penalties and sanctions provided by law, and payment of attorney's fees and costs incurred in enforcing the provisions of this AVC;

8. This AVC shall become effective upon its execution by all parties;

9. This AVC constitutes the entire agreement and understanding between the Parties relating to the subject matter contained herein. This AVC may not be altered, amended, or modified in any respect or particular whatsoever except by a writing duly executed by each of the Parties hereto.

I. RELEASE

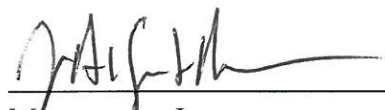
10. By execution of this Assurance and following a full and complete payment to the State, the Attorney General of the State of Florida releases and forever discharges, to the fullest extent of the law, Macys.com, Inc., from the following: all civil claims, causes of action, damages, restitution, fines, costs, and penalties that the Florida Attorney General could have

asserted against Macys.com, Inc., prior to the Execution Date under the Consumer Statute based on the allegations underlying the investigation (collectively the "Released Claims"). Released Claims do not include claims pursuant to any other statute or regulation (including, without limitation, state marketing laws, rules, and regulations, including those under the Consumer Statute, state or federal antitrust laws, state or federal securities law, environmental laws, tax laws, and criminal statutes or codes), nor do they include actions or proceedings brought pursuant to State consumer protection laws or statutes alleging violations that are not alleged in Section A, paragraph 2 in this Assurance or addressed by the terms of this Assurance.

J. EXECUTION

BY MY SIGNATURE I hereby affirm that I am acting in my capacity with Macys.com, Inc., and that by my signature I am binding said company to this Agreement.

MACYS.COM, INC.

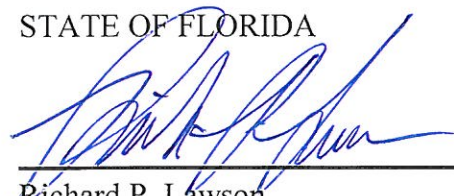


Macys.com, Inc.,

11/6/14

Date


STATE OF FLORIDA



Richard P. Lawson
Director, Consumer Protection Division
OFFICE OF THE ATTORNEY GENERAL
The Capitol, PL-01
Tallahassee, Florida 32399-1050

11/20/14

Date



William Armistead
Assistant Attorney General

11/17/14

Date

EXHIBIT A

- A) The relative period of time the product was offered for sale at or above the Reference Price;
- B) The advertised reduction from the Reference Price;
- C) The extent to which the Reference Price is within range of prices at which other sellers in Macy's trading area offer the same or comparable products
- D) The nature of the merchandise, including the extent to which it is a seasonal item;
- E) The need to reduce prices to foster customer goodwill, accommodate reasonable customer requirements or meet a competitor's price
- F) The extent to which there were causes beyond Macy's control, including, but not limited to, vendor delays or adverse weather;
- G) The extent to which display space was devoted to the merchandise during the period(s) the merchandise was offered by Macy's at the Reference Price; and
- H) Any other legitimate business factors that tend to show the Reference Price was a bona fide price at which Macy's intended to make sales.

RECEIVED
Office of the Attorney General

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Consumer Protection Division
Tallahassee

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