

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

STATE OF OHIO)	
)	
IN THE MATTER OF:)	Docket #: 491111
OHIO MULCH SUPPLY, INC.)	
)	
)	

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (“Assurance”) is entered into this 10th day of December, 2014 by and between Ohio Mulch Supply, Inc., (“Respondent” or “Ohio Mulch”) and Michael DeWine, Attorney General of the State of Ohio (“Attorney General”). For the purposes of this Assurance, “Respondent” shall include Ohio Mulch Supply, Inc. and its officers, principals, directors, partners, agents, representatives, salespersons, employees, successors or assigns and all persons acting in concert or participation with it, directly or indirectly, through any corporate device, partnership, association or affiliation.

WHEREAS, the Attorney General, having reasonable cause to believe that Respondent may have engaged in acts and practices which violate Chapter 1345 of the Ohio Revised Code, specifically the Consumer Sales Practices Act, has conducted, and Respondent fully cooperated with, an investigation of Respondent pursuant to the authority granted to him by 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, this Assurance of Voluntary Compliance is an assurance in writing by Respondent of its intent to conduct its business in a manner designed to comply with the

provisions of the Consumer Sales Practices Act and its Substantive Rules, R.C. 1345.01 et seq. (“CSPA”); and

WHEREAS, Respondent, desiring to comply with all aspects of the CSPA and its Substantive Rules, 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 Respondent’s business practices and actions occurring on or before the Effective Date of this Assurance.
- (3) By giving this written Assurance, Respondent agrees to comply with all the terms of this Assurance and to conduct its business in compliance with all applicable Ohio laws, including without limitation, the CSPA, R.C. 1345.01 et seq. and the Ohio Administrative Code, O.A.C. 109:4-3-01 et seq.

BACKGROUND AND STATEMENT OF FACTS

- (4) Ohio Mulch Supply, Inc. is an Ohio Corporation located at 1600 Universal Road, Columbus, Ohio 43207.
- (5) Ohio Mulch is a supplier as that term is defined in R.C. 1345.01(C) as Respondent is, or at all times relevant herein was, engaged in the business of effecting consumer transactions by manufacturing, advertising and selling mulch and soil products in Franklin County and across the State of Ohio for purposes that were primarily personal, family, or household within the meaning specified in R.C. 1345.01(A) and (D).

- (6) On March 31, 2014, the Ohio Department of Agriculture inspected a random sample of twelve bags from three different product lines of 1.5 cubic foot bags of Ohio Mulch mulch product purchased from a third-party retailer. Testing of the product stopped after six bags for each product, because each of the six product bags tested failed to contain the stated volume of 1.5 cubic feet of mulch or was not within the maximum allowable variance.
- (7) The Ohio Department of Agriculture notified Ohio Mulch that it had identified bags of its mulch products that had failed State of Ohio testing for the volume of product in the bag.
- (8) On April 24, 2014, the Ohio Department of Agriculture issued a Stop Sale Order to Ohio Mulch for 1.5 cubic foot bags manufactured prior to April 6, 2014.
- (9) On or between April 22, 2014 and May 7, 2014, the Ohio Department of Agriculture inspected a random sample of 2.0 and 3.0 cubic foot bags of Ohio Mulch mulch product purchased from third-party retailers. Sample bags were tested from most or all of the product lines offered by Ohio Mulch. Some of the product bags tested failed to contain the stated volume of 2.0 cubic feet or 3.0 cubic feet of mulch or was not within the maximum allowable variance.
- (10) On May 9, 2014, the Ohio Department of Agriculture issued a Stop Sale Order for 2.0 cubic foot and 3.0 cubic foot bags manufactured by Ohio Mulch.
- (11) On May 13, 2014, and as a result of litigation between the parties, the May 9, 2014 Stop Sale Order was modified via an agreement between Ohio Mulch and the Ohio Department of Agriculture.
- (12) Prior to notification by the Ohio Department of Agriculture that its bags of mulch failed state testing, Ohio Mulch had already bagged over 3 million bags of mulch and had

shipped nearly 2 million of these bags of mulch to third-party retailers and its own retail locations.

- (13) Ohio Mulch attributed the under-filled mulch bags to a malfunctioning and/or defective bagging machine.
- (14) Prior to notification by the Ohio Department of Agriculture that its bags of mulch failed state testing, Ohio Mulch's quality assurance procedures were not in writing.
- (15) Prior to notification by the Ohio Department of Agriculture that its bags of mulch failed state testing, Ohio Mulch did not print a lot number on its mulch bags.
- (16) Prior to notification by the Ohio Department of Agriculture that its bags of mulch failed state testing, Ohio Mulch calibrated its mulch bagging machines once daily.
- (17) Due to its lack of quality assurance procedures, Ohio Mulch was unable to determine when the bagging machine began to malfunction.
- (18) Due to its lack of quality assurance procedures, Ohio Mulch failed to discover that its bags of mulch were being under-filled and did not contain the volume of mulch represented on the packaging.
- (19) Due to its lack of quality assurance procedures, Ohio Mulch was unable to determine how long its mulch bags had been under-filled and did not contain the volume of mulch represented on the packaging.
- (20) Due to its lack of quality assurance procedures, Ohio Mulch was unable to determine the number of mulch bags that were under-filled and did not contain the volume of mulch represented on the packaging.
- (21) Due to its lack of quality assurance procedures, Ohio Mulch sold bags of under-filled mulch for an unknown period of time to consumers.

COMPLIANCE PROVISIONS

- (22) Respondent shall not engage in acts and practices that violate the CSPA.
- (23) Respondent shall not violate the CSPA, R.C. 1345.02(B)(2), by representing that the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model if it is not.
- (24) Respondent shall implement quality assurance procedures that include the following:
 - a. Visually inspect bagging machines daily to ensure they are in proper working order;
 - b. Include a bagging date and lot number on each bag of mulch produced in such a way that it can be determined which bagging machine filled a particular bag;
 - c. Transition to the use of clear product packaging to allow for visual inspection of the mulch content;
 - d. Visually inspect mulch bags as they come off the production line and test any bag that appears to be under-filled;
 - e. Test bags of mulch being filled on a production line at least every 30 minutes for volume;
 - f. Document in writing the results of bag testing on the production line;
 - g. Establish written policies and procedures regarding corrective action to be taken if a bag of mulch is found to be under-filled during a production line test;
 - h. For 2.0 cubic foot products, use a testing box of 9 inches x 16 inches x 25 ½ inches or larger to assure that any product bag contains at least 2.0 cubic feet of mulch, if not more;

- i. For products of a volume other than 2.0 cubic feet, use a testing box that exceeds the exact volume measurement desired to ensure that any product bag contains at least the volume printed on the packaging, if not more; and
 - j. Implement as needed additional quality assurance procedures in order to assure maximum quality, color and volume accuracy in the mulch product Ohio Mulch produces.
- (25) Respondent shall put all quality assurance policies and procedures in writing.
- (26) Respondent shall ensure that each effected employee has received, read, and understood the quality assurance policies and procedures.
- (27) Respondent shall have written policies and procedures to address repercussions to employees who fail to comply with its quality assurance policies and procedures.
- (28) For 18 months following the execution of this Assurance, upon request, Respondent shall provide the Attorney General with copies of any internal or external testing that takes place related to the Respondent's mulch bag filling procedures.
- (29) Respondent shall document and record all consumer complaints, whether made orally or in writing, and shall record its resolution and/or the outcome of the complaint. Complaints that provide information that indicate a failure of compliance with its quality assurance policies and procedures should be investigated immediately.

GENERAL PROVISIONS

- (30) Respondent understands and agrees that this Assurance applies to any related owners, principals, officers, directors, agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns.
- (31) This Assurance shall be governed by the laws of the State of Ohio.
- (32) This Assurance is entered into by the Respondent of its own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this Assurance.
- (33) This Assurance does not constitute an approval by the Attorney General of any of Respondent's business practices, and Respondent 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 its business practices.
- (34) This Assurance sets forth the entire agreement between the Attorney General and Respondent and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the subject matter hereof. This Assurance may be amended by written agreement between the Parties, subject to any further requirements under state law.
- (35) The Parties 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.

- (36) Respondent shall negotiate in good faith, through the Office of the Attorney General, any consumer complaints filed with this Office concerning Respondent's conduct occurring prior to or after the Effective Date of this Assurance, which are brought by consumers that are discovered after entering into this Assurance.
- (37) This Assurance is a public record and shall be maintained in the Public Inspection File.

PAYMENT TO THE STATE AND CONSUMER RESTITUTION

- (38) As part of the consideration for the termination of the Attorney General's investigation of Respondent under the CSPA, R.C. 1345.01 et seq., Respondent shall pay Twenty-five Thousand Dollars (\$25,000.00) to reimburse the Office of the Ohio Attorney General for its costs. This payment will be placed in the Consumer Protection Enforcement Fund. Payment shall be due upon the execution of this Assurance and shall be made by delivering a certified check or money order, containing the code "CPS" in the memo line and payable to the "Ohio Attorney General's Office," to:

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

- (39) Respondent shall implement a restitution plan to compensate consumers for their possible losses. As a result of Ohio Mulch's inability to determine the extent that consumers were affected by its manufacture and sale of under-filled bags, Ohio Mulch will implement an Ohio-wide restitution plan, consisting of the following:
- a. Ohio Mulch shall issue a rebate notice coupon for one free bag of specified Ohio Mulch mulch product from Ohio Mulch's retail locations or any third-party retailer in the State of Ohio (the "Rebate Coupon"). Specified products shall include, but not be limited to, 2.0 cubic foot bags of Ohio Mulch manufactured

mulch, either branded with the Ohio Mulch name or the name of a third-party, in brown, black, gold or red;

- b. The Rebate Coupon shall be available in print and electronic form in the Cleveland Plain Dealer, Toledo Blade, Dayton Daily News, Columbus Dispatch, Youngstown Vindicator, Akron Beacon Journal, and Cincinnati Enquirer the weekends of May 2, 2015, May 9, 2015, and May 16, 2015;
- c. The Rebate Coupon shall be available online at Ohio Mulch's website from April 30 through May 17, 2015;
- d. The Rebate Coupon shall be redeemable as reimbursement for purchases made between May 1 and May 17, 2015;
- e. The Rebate Coupon shall require no additional purchase and will be limited to one Rebate Coupon for one bag per household;
- f. The Rebate Coupon shall clearly and conspicuously state the dates the Rebate Coupon is redeemable, the products for which the Rebate Coupon is redeemable and how to redeem the Rebate Coupon. Respondent shall not require that the Rebate Coupon be presented at the time of purchase or sent to Respondent for redemption nor shall consumers be able to redeem the Rebate Coupon at the point of sale or at any third party retailer locations;
- g. May 1 through May 31, 2015, Respondent shall maintain an online rebate portal for consumers to electronically submit their Rebate Coupon and contact information for Respondent to send the consumer the requested rebate amount. Consumers shall not be required to send copies of the purchase receipt to Respondent via regular mail, but Respondent shall have the option to accept a

scan of the receipt, a photograph of the receipt, or identifying information from the receipt and about the consumer to verify the purchase. Respondent will also provide an address and instructions for redemption of the rebate via regular mail. The only method for submitting and requesting their rebate is via the online rebate portal or at the designated regular mail address. Consumers shall not be able to redeem the Rebate Coupon at the point of sale or at any third party retailer locations. Respondent shall bear all of the postage costs of mailing the rebate amount.

PENALTIES FOR FAILURE TO COMPLY

- (40) The Attorney General may assert any claim that Respondent has violated this Assurance in a separate civil action to enforce this Assurance against Respondent 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. 1345.07. 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 Respondent. 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.
- (41) This Assurance shall in no way exempt Respondent from any other obligations imposed by law, and nothing contained herein shall relieve Respondent of any legal responsibility for any acts or practices engaged in by Respondent other than those acts specifically resolved by this Assurance.

- (42) Nothing in this Assurance shall in any way preclude any investigative or enforcement action against Respondent under any legal authority granted to the Attorney General:
- (a) With respect to the transactions or occurrences which are the subject of this enforcement action, if the terms of this Assurance are not fully obeyed; or
 - (b) With respect to transactions or occurrences which are not the subject of this action.
- (43) By execution of this Assurance and following a full and complete payment to the Attorney General and completion of the restitution plan, the Attorney General releases and forever discharges to the fullest extent of the law Respondent from the following: all civil claims, causes of action, damages, restitution, fines, costs, and penalties that the Attorney General could have asserted against Respondent prior to the Effective Date of this Assurance under the C.S.P.A., R.C. 1345.01 et seq., and its Substantive Rules, based on the allegations described in paragraphs 4-11 of this Assurance.
- (44) For the purposes of resolving disputes with respect to compliance with this Assurance, should the Attorney General have legally sufficient cause to believe that Respondent is not in compliance, then the Attorney General shall notify Respondent in writing of the specific objection, and identify with particularity the provisions of this Assurance or the Consumer Sales Practices Act and/or the Substantive Rules to which the objection applies prior to filing any enforcement action.

WHEREFORE, the parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 10th day of December 2014.

SIGNATURES

ACCEPTED BY:

FOR THE OHIO ATTORNEY GENERAL, MICHAEL DEWINE

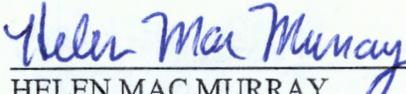

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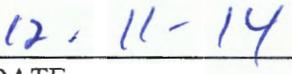

DATE

FOR OHIO MULCH SUPPLY, INC.


COMPANY REPRESENTATIVE


DATE


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