

**STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT**

2019 JUN -6 A 8:17

IN RE: DG RETAIL, LLC d/b/a
"DOLLAR GENERAL STORES"

)
)
)
)

CIVIL DIVISION

Docket No. 201-6-19 Wicv

FILED

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General Thomas J. Donovan, Jr. ("the Attorney General") and DG Retail, LLC d/b/a "Dollar General Stores" ("Respondent" or "Dollar General") hereby agrees to this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459.

REGULATORY FRAMEWORK

1. Vermont's Weights and Measures law, Chapter 73 of Title 9 of the Vermont Statutes Annotated (the "Weights and Measures law"), requires accurate pricing for any sale of goods in a retail store.
2. The Weights and Measures law authorizes the Vermont Agency of Agriculture, Food, and Markets (the "Agency of Agriculture") to "test the accuracy and use of laser scanning and other computer assisted check-out systems in stores" and "compare the programmed computer price with the item price of any consumer commodity offered by a store." 9 V.S.A. § 2643(b).
3. It is a violation of the Weights and Measures law if "the programmed price of a commodity exceeds the price printed on or the advertised price of the commodity." 9 V.S.A. § 2643(b).
4. It is also a violation of the Weights and Measures law to misrepresent the price of any product sold or advertised for sale by weight, measure, or count. 9 V.S.A. § 2677.
5. A violation of the Weights and Measures law is considered an unfair or deceptive act or practice in commerce in violation of the Vermont Consumer Protection Act, Chapter 63 of Title

9 of the Vermont Statutes Annotated (the “CPA”), and subject to the penalty provisions contained in the CPA. *See* 9 V.S.A. § 2771 (providing that “[i]n addition to other penalties provided by law,” a violation the Weights and Measures law “shall constitute an unfair or deceptive act or practice in commerce subject to the penalty provisions established in” the CPA).

6. The CPA prohibits unfair and deceptive acts and practices in commerce. 9 V.S.A. § 2453(a).

BACKGROUND

7. Respondent DG Retail, LLC is organized under the laws of Tennessee, with its principal place of business located at 100 Mission Ridge, Goodlettsville, TN, 37072.

8. Respondent DG Retail, LLC is licensed to do business in the State of Vermont as a foreign limited liability company.

9. Respondent DG Retail, LLC operates 36 “Dollar General” retail stores in Vermont.

10. The Agency of Agriculture employs inspectors to fulfill its statutory duty to test the accuracy of scanners and other computer systems in Vermont’s retail stores to ensure that the programmed price of a product does not exceed the price posted on the shelf or product’s label (referred to hereinafter as a “price verification inspection” or “inspection”). If the programmed price exceeds the shelf or label price, this is known as an “overcharge error.”

11. Pursuant to 6 V.S.A. § 15 and 9 V.S.A. § 2643(b), the Agency of Agriculture may impose administrative penalties of up to \$1,000 for each overcharge error if an inspector identifies overcharge errors in more than two percent of the products sampled.

12. Additionally, pursuant to 6 V.S.A. § 15 and 9 V.S.A. § 2677, the Agency of Agriculture may impose administrative penalties of up to \$1,000 for each misrepresentation of price of any product sold or advertised for sale by weight, measure, or count.

13. In conducting price verification inspections, inspectors follow the method set forth in Section V of the National Institute of Standards and Technology's Handbook 130, as adopted by the National Conference on Weights and Measures. Section V of Handbook 130 is titled "Examination Procedure for Price Verification."
14. From October 14, 2013, to January 23, 2019, the Agency of Agriculture identified 362 overcharge errors during 56 price verification inspections at 22 different Dollar General stores.
15. The failed inspections occurred at the Dollar General stores located in the following Vermont towns: Alburg, Barre (three different stores), Berlin, Chester, Colchester (two different stores), Enosburg, Fair Haven, Fairlee, Island Pond, Milton (two different stores), North Troy, Northfield, Randolph, Richford, Rutland (two different stores), Williamstown, and Windsor.
16. Of the 362 overcharge errors, the Agency of Agriculture found that the programmed price of a single product in this group exceeded the shelf or label price of that product by an amount ranging from \$0.02 to \$6.00, with a median overcharge amount of \$0.35.
17. Since 2013, Dollar General has paid approximately \$241,700 in penalties to the Agency of Agriculture for overcharge errors.
18. Respondent has cooperated with the Attorney General's investigation into its pricing practices.
19. For purposes of this AOD, Respondent admits the truth of all facts set forth in the Background section.
20. The Attorney General alleges that the above conduct constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453.

INJUNCTIVE RELIEF

21. Respondent shall comply with all provisions of Vermont law, including the Vermont Consumer Protection Act, 9 V.S.A. Chapter 63, and Vermont's Weights and Measures law, 9 V.S.A. Chapter 73.
22. Respondent shall adopt a written set of pricing accuracy policies and procedures, attached hereto as Exhibit A (the "Pricing Accuracy Policy"), designed to ensure compliance with the pricing accuracy requirements contained in Vermont's Weights and Measures law, as well as compliance with this AOD. The Pricing Accuracy Policy shall be in effect for a period of three (3) years after its adoption.
23. Respondent shall submit for approval to the Vermont Attorney General any modifications or amendments to the Pricing Accuracy Policy while in effect.
24. All Dollar General employees working in Vermont stores who have pricing responsibilities shall participate in pricing training within 90 days of the execution of this AOD, and annually thereafter during the month of July, for a period of three (3) years. Additionally, all Store Managers hired after the execution of this AOD shall participate in pricing training within fourteen (14) days of commencing employment.
25. The trainings conducted pursuant to paragraph 24 shall include the following topics:
 - a. The pricing accuracy requirements contained in Vermont's Weights and Measures laws.
 - b. The Pricing Accuracy Policy and how to ensure that the correct prices are displayed and charged for all products sold at Vermont's Dollar General stores.
26. The Divisional Vice President, the Vermont Regional Director, and the Vermont District Managers working in Vermont stores shall be provided with:

- a. A copy of this AOD, and be required to read it, within 30 days of its execution;
- b. A copy of the Pricing Accuracy Policy, and be required to read it, within 40 days of the execution of this AOD; and
- c. Any modifications or amendments to the Pricing Accuracy Policy, within ten (10) days of adoption.

27. Respondent shall keep records of the training sessions conducted pursuant to paragraph 24 for a period of three (3) years from the date of training. The records shall include, but are not limited to, completion records, presentations, handouts, or other instruction materials.

28. Respondent shall conduct internal audits for a period of three (3) years such that all Vermont Dollar General stores are audited at least once per year. Internal audits shall include the random sampling of 100 items, including sale and non-sale items, at each Vermont Dollar General Store. Each audit shall generate a "Report" that includes the following:

- a. The store location and store number;
- b. The number of items sampled by the auditor;
- c. The total number of overcharge errors found by the auditor;
- d. For every overcharge error found,
 - i. The name of the item sampled and the corresponding UPC code;
 - ii. The lot size;
 - iii. The shelf price; and
 - iv. The scan or register price.

29. If an internal audit reveals overcharge errors in more than two (2) percent of the products sampled at any one store (a "failed audit"), Respondent shall immediately correct the pricing inaccuracies. Within ten (10) days of a failed audit, Respondent shall submit to the Attorney

General the Report of the failed audit and a corrective action plan describing how Respondent intends to prevent future pricing inaccuracies.

30. Respondent shall retain all Reports and other records of every internal audit for a period of three (3) years from the date of each audit, and produce all such Reports or records to the Attorney General upon request.

RESTITUTION AND PENALTIES

Respondent shall make a monetary payment of \$1,750,000.00 to be allocated:

31. Respondent DG Retail, LLC shall pay \$1,650,000.00 in civil penalties to the State of Vermont between July 1, 2019 and July 31, 2019. Respondent shall make payment by check to the "State of Vermont" and send payment to: Shannon Salembier, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

32. Respondent DG Retail, LLC shall pay \$100,000.00 on a *cy pres* basis to the Vermont Foodbank between July 1, 2019 and July 31, 2019. Respondent shall make payment by check to the "Vermont Foodbank" and send payment to: John Sayles, Vermont Foodbank, 33 Parker Road, Barre, Vermont 05641.

OTHER TERMS

33. Respondent DG Retail, LLC agrees that this AOD shall be binding on it, and its successors and assigns.

34. The Attorney General hereby releases and discharges any and all claims arising under the Vermont Consumer Protection Act, 9 V.S.A. Chapter 63, that it may have against DG Retail, LLC for the conduct described in the Background section of this AOD.

35. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this AOD and the parties hereto for the purpose of enabling the Attorney General to apply

to this Court at any time for orders and directions as may be necessary or appropriate to enforce compliance with or to punish violations of this AOD.

36. Acceptance of this AOD by the Vermont Attorney General's Office shall not be deemed approval by the Attorney General of any practices or procedures of Respondent not required by this AOD, and Respondent shall make no representation to the contrary.

NOTICE

37. Respondent may be located at:

DG Retail, LLC
c/o General Counsel
100 Mission Ridge
Goodlettsville, TN, 37072

38. Respondent shall notify the Attorney General of any change of business name or address within 20 business days.

SIGNATURE

In lieu of instituting an action or proceeding against DG Retail, LLC, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

DATED at Goodlettsville, TN, this 29 day of May, 2019.



Authorized agent of DG Retail, LLC

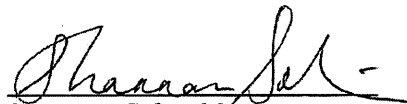
ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 24th day of May, 2019.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By:



Shannon Salembier
Justin Kolber
Assistant Attorneys General
Office of Attorney General
109 State Street
Montpelier, Vermont 05609
shannon.salembier@vermont.gov
justin.kolber@vermont.gov
(802) 828-5479

EXHIBIT A
PRICING ACCURACY POLICY

Store Responsibilities:

- Store Manager (“SM”) shall begin executing Super Tuesday pricing activities at 7:00 AM (eastern);
- SM shall scan all labels for Super Tuesday price changes prior to implementation;
- SM shall scan pricing on clearance and markdown stickers as part of Super Tuesdays activities;
- SM shall contact his/her District Managers (“DM”) upon completion of Super Tuesday price activities;
- SM shall monitor pricing of pre-priced products prior to placement on sales floor (e.g., pre-priced PDQs, stack-outs and individual products);
- SM shall discard or black-out pricing on PDQs at the conclusion of the pricing event;
- SM should walk the store with the Weights and Measure Inspector to better understand any pricing issue identified during the audit;
- SM shall send any Weights and Measures inspection reports to the appropriate personnel through Scan & Send;
- Upon fourteen (14) days of receiving his/her store, the SM shall complete Pricing Training via a computer based learning (“CBL”) and, upon thirty (30) days of receiving his/her store, the SM shall complete in-person Pricing Training. Such training shall include:
 - Pricing accuracy requirements contained in Vermont’s Weights and Measures laws;
 - Process for implementing price changes;
 - Correcting or remediating pricing issues;
 - Participating in the price verification inspection by the Agency of Agriculture;
 - Processing the Agency of Agriculture’s inspection reports;
 - Checking pre-priced product before placement on sales floor;
 - Removing pre-priced PDQs upon conclusion of a pricing event; and
 - This Pricing Accuracy Policy.

Field Leadership Responsibilities:

- DMs shall hold a conference call with all store managers each Tuesday at 11:00 (ET) to verify Super Tuesday execution and discuss any pricing issues;
- DMs shall ensure SMs receive (i) CBL Pricing Training upon 14 days of receiving his/her store and (ii) in-person Pricing Training upon 30 days of receiving his/her store;
- DMs shall (i) review exception based reporting re: stores that failed to print price change labels and (ii) follow-up with SM where necessary;

- DMs shall review the store's pricing binder when performing his/her store visit to ensure the store is timely and consistently executing price changes; and
- DMs, RD and DVP to hold weekly conference call to ensure stores are executing price changes.

Field Pricing Specialist:

- Dollar General shall employ at least four Field Pricing Specialist ("FPS") to perform weekly audits of all Vermont stores;
- The FPS shall verify Vermont stores are timely and consistently complying with Dollar General's pricing procedures;
- The FPS shall identify and investigate potential pricing issues in Vermont stores and assist the store in promptly resolving such issues (when applicable);
- The FPS shall providing coaching and recommendations on pricing execution to Vermont Stores; and
- The FPS shall report any pricing issues found at stores to the appropriate DM.