

**CITY OF NEW YORK  
DEPARTMENT OF CONSUMER AFFAIRS**

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DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

THE STOP & SHOP SUPERMARKET COMPANY  
LLC

Respondent.

**ASSURANCE OF  
DISCONTINUANCE**

**Violation No. GL005202632  
GL005227264  
CL000079645  
CL000079632  
CL000079639  
OL005202633  
OL005204465**

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The Stop & Shop Supermarket Company LLC ("Respondent") consents to this Assurance of Discontinuance ("AOD" or "Agreement") to settle the above captioned violations with the New York City Department of Consumer Affairs ("DCA" or "the Department") and agrees as follows:

**Definitions**

- 1) For the purposes of this Agreement, the following definitions shall apply:
  - a. "Advertisement" shall mean all labels, packaging, promotional materials, statements, visual descriptions, in store signage, or other representations of any kind disseminated in print, orally, or electronically by or on behalf of Respondent to New York City consumers including, but not limited to, mailings, postcards, flyers, signs, billboards, banners, circulars, newspaper print advertisements, circulars, television advertisements, internet advertisements and radio advertisements.
  - b. "Clear and conspicuous" and "clearly and conspicuously" mean that the statement, representation, or term is so presented as to be easily readable, readily apparent, and understood by the audience to whom it is addressed. Factors to be considered for this purpose include, but are not limited to, clarity of language, relative type size, font, color contrast, location within an advertisement or other documents, and proximity to the statement or

representation to which it applies.

**Injunctive Relief**

- 2) Respondent shall not sell or offer for sale imitation firearms in New York City that do not comply with the requirements of §10-131(g) ("the toy gun law") of the Administrative Code of the City of New York ("the Code").
- 3) Respondent shall not sell or offer for sale laser pointers in New York City in a manner inconsistent with NYC Administrative Code ("Code") §10-134.2(c) ("the laser pointer law").
- 4) Respondent shall not sell or offer for sale box cutters in New York City in a manner inconsistent with the Title 6 of Rules of the City of New York ("RCNY") §5-73(b)(2) ("the box cutter law").
- 5) Respondent agrees that it shall not advertise or promote imitation firearms for sale in its New York City stores that do not comply with the requirements of §10-131(g) of the Code. If Respondent advertises or promotes such products in media intended for circulation in New York City and the Tri-State area, Respondent shall include the following statement, "It is illegal to sell, offer for sale, or possess this product in NYC." This statement shall be easily legible and conspicuous.
- 6) If Respondent advertises imitation firearms on its website that do not comply with §10-131(g) of the Code, Respondent shall insert the phrase "Not available in New York City" in a clear and conspicuous manner, next to the imitation firearm.
- 7) Within ten (10) days of the execution of this Agreement, Respondent shall send a letter, attached as Addendum A, to the distributor of the below imitation firearm explaining that this item is illegal in New York City as it does not comply with §10-131(g) of the Code.
  - a. JARU Wild West Cap Gun (see picture attached as Addendum B)
- 8) Within fifteen (15) days of the execution of this Agreement, Respondent shall provide an affidavit to the Department describing its compliance with paragraph 7.

### Fines

- 9) Respondent shall pay a total fine of \$190,000.00 to settle the above captioned violations as follows:
  - a. \$160,000.00 to settle GL 5202632 and GL 5227264; and
  - b. \$30,000.00 to settle CL000079645, CL000079632, CL000079639, OL005202633, and OL005204465.

### Policies and Training

- 10) Respondent shall develop and implement policies and procedures to ensure that laser pointers and box cutters are not displayed in a manner inconsistent with §10-134.2(c) of the Code and 6 RCNY §5-73(b)(2), respectively, and that imitation firearms that do not comply with §10-131(g) of the Code are not sold or offered for sale in NYC. The policies and procedures shall include provisions for:
  - a. providing employees, and future employee within thirty (30) days of the hiring of that employee, who may have any responsibility related to advertising, marketing, ordering, shipping, displaying stocking, or and selling merchandise, relevant to this AOD, in New York City, whether or not the employee works in New York City, with a summary of the toy gun law, the laser pointer law, and the box cutter law and of the legal consequences associated with violating such provisions.
  - b. imposing discipline on any such person who violates the policies or causes a violation of the toy gun law, the laser pointer law, or the box cutter law.
  - c. such distribution shall continue for a three (3) year period.
- 11) Within fifteen (15) days of the execution of this Agreement, Respondent shall:
  - a. promulgate the policies and procedures required by paragraph 10 of this agreement;
  - b. distribute a copy of such policies and procedures to all of employees in the New York City and to its employees outside of New York City with responsibilities relevant to this AOD (i.e. employees responsible for advertising, marketing, ordering merchandise, and shipping merchandise); and
  - c. appoint \_\_\_\_\_ to serve as the Compliance Officer responsible for ensuring adherence to the terms of this AOD and to the policies, protocols and procedures implemented in conformance with this AOD; and

d. provide proof of compliance with this paragraph to the Department.

12) For a period of three (3) years following the execution of this AOD, Respondent shall notify the Department of a change in the person serving in the role of Compliance Officer within ten (10) days of any change.

### **Independent Monitor**

13) Respondent shall retain and pay for a mutually agreed upon independent monitor ("Independent Monitor") for a period of one (1) year commencing thirty (30) days from the execution of this Agreement. The Independent Monitor's duties and responsibilities shall include, but not be limited to:

- a. reviewing each form of Respondent's advertising, that contains advertisements for imitation firearms in media intended for circulation in New York City, to ensure compliance with this Agreement and with all other applicable laws;
- b. performing random, unannounced inspections at Respondent's stores located throughout New York City to ensure compliance with the Agreement, including performing a minimum of four (4) inspections per week from the time period between October 1, 2010 and November 1, 2010;
- c. reviewing random samples of invoices for toy products for Respondent's NYC stores to ensure that Respondent has not purchased any imitation firearms that violate §10-131(g) of the Code;
- d. reviewing the new policies and procedures implemented by Respondent, as per paragraphs 10-11 above, to ensure the policies and procedures are being properly followed;
- e. reporting to the Department's counsel all violations of this Agreement that he/she identifies within twenty-four (24) hours of discovery of the violation; and
- f. submitting quarterly reports to the Department on his/her activities beginning on November 1, 2010 and concluding on November 1, 2011.

14) Respondent shall provide DCA with a copy of a signed Independent Monitor retainer agreement no later than thirty (30) days from the execution of this Agreement. In addition, Respondent shall provide DCA with an accounting of how much it has paid the Independent Monitor at the end of each quarter

### **Further Compliance**

- 15) Respondent shall perform an unannounced inspection in each of its stores located in New York City at least once every six (6) months for three (3) years following the execution of this AOD to determine whether the store is in compliance with the policies and procedures required by paragraph 10 of this agreement, as specifically related to box cutters and laser pointers.
- 16) Six months after the execution of this AOD and every six (6) months thereafter until three (3) years from the execution of the AOD, Respondent shall deliver to the Department a report of its compliance with the AOD during the preceding six (6) months. The report shall include descriptions of every violation of the policies and procedures required by paragraph 10 of this agreement and of the actions, including imposition of discipline, that Respondent has implemented to correct the violation.

### **Consequences of Breach**

- 17) Respondent agrees that upon proof of any future violation of §10-131(g) or §10-134.2(c) of the Code by Respondent, at any New York City location owned or operated by Respondent, the Department shall be entitled to the maximum fine allowed by law plus \$500.00 per count for knowingly engaging in a deceptive trade practice under §20-700 of the Code ("the Consumer Protection Law"), and not less than \$500.00 per count for breach of the terms of this settlement Agreement, which constitutes a violation of Title 6 of the Rules of the City of New York ("RCNY") §6-42(c).
- 18) The consequences of breach provisions outlined in paragraph 17 shall remain in effect for ten (10) years from the execution of this AOD.
- 19) Respondent also understands that if it violates the §10-131(g) of the Code three (3) or more times within a two (2) year period, the Department may seal the premises where the violations occurred for a maximum of five (5) consecutive days.

### **Waiver of Appeals**

- 20) Respondent hereby agrees to waive any further right to a hearing and/or appeal of the above-referenced citation under Title 20, Chapter 1, §20-104 of the New York City Administrative Code or under Article 78 of the New York State Civil Practice Law and Rules, §§7801-7806.

21) Nothing herein shall be construed to limit in any way the authority of the Department to exercise its enforcement powers under Chapter 1, Title 20 or under Chapter 2, Title 20 of the Code.

Agreed to for the Respondent by:

Accepted for the Department by:

  
Staff Counsel

Thomas A. Hippler 8/31/10  
Signature Date

 8/31/10  
Signature Date

Thomas A. Hippler  
Print Name

  
Print Name