

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

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

THRIFTWAY STATEN ISLAND DRUG CORP.

Respondent.

**ASSURANCE OF  
DISCONTINUANCE**

**Violation No. OL 5281106**

THRIFTWAY STATEN ISLAND DRUG CORP. ("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.

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COUNSEL  
DEPT. OF CONSUMER AFFAIRS

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### **Injunctive Relief**

- 2) Respondent shall not sell or offer for sale fake guns in New York City that do not comply with the requirements of §10-131(g) (“the fake gun law”) of the Administrative Code of the City of New York (“the Code”).
- 3) Respondent agrees that it shall not advertise nor promote fake guns 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.
- 4) If Respondent advertises fake guns 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 fake gun.
- 5) 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 fake gun 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 Pop Gun

- 6) Within fifteen (15) days of the execution of this Agreement, Respondent shall provide an affidavit to the Department describing its compliance with paragraph 5, to which it shall attach a copy of the letter.

### **Fines**

- 7) Respondent shall pay a total fine of \$24,000.00 to settle the above- captioned violation.

### **Policies and Training**

- 8) Respondent shall develop and implement policies and procedures to ensure that fake guns 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 all current 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 fake gun 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 fake gun law; and
- c. such distribution shall continue for a three (3) year period.

9) Within fifteen (15) days of the execution of this Agreement, Respondent shall:

- a. promulgate the policies and procedures required by paragraph 8 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 Richard Rubenstein 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.

10) 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.

### **Compliance**

11) The Compliance Officer, identified in paragraph 9, shall also perform the following functions:

- a. reviewing each form of Respondent's advertising that contains advertisements for fake guns 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, 2012 and November 1, 2012 and at least one inspection in each of the Respondent's stores located in NYC for all other time periods;
- c. reviewing random samples of invoices for toy products for Respondent's NYC stores to ensure that Respondent has not purchased any fake guns that violate §10-131(g) of the Code;
- d. reviewing the new policies and procedures implemented by Respondent, as per paragraphs 8-9 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;
- f. all violations must be reported by letter sent to the following address:

NYC Department of Consumer Affairs  
Legal Division  
Broadway, 9<sup>th</sup> floor  
New York, NY 10004

- g. submitting quarterly reports to the Department on his/her activities beginning on March 1, 2012 and concluding on April 30, 2012. The quarterly reports must include descriptions of every violation of the policies and procedures required by paragraph 8-9 of this agreement and the actions, including imposition of discipline, that the Respondent has implemented to correct the violation.

### **Consequences of Breach**

- 12) Respondent agrees that upon proof of any future violation of §10-131(g) 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 for each violation of §10-131(g) of the Code, 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 for each 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).

13) Respondent understands that that after a total of three (3) violations of §10-131(g) of the Code 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**

14) 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.

15) 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:

Hal Epstein 10/29/12  
Signature Date  
Hal Epstein  
Print Name

[Redacted] Senior Staff Attorney  
Signature  
[Redacted] 11/14/2012  
Signature Date  
[Redacted]  
Print Name

# THRIFTWAY PHARMACY

2728 Hylan Boulevard  
Staten Island, N.Y. 10306

Phone (718) 987-0700

Fax (718) 987-7667

October 24, 2012

JARU Inc.  
4030 Phillips Hwy  
Jacksonville, Fl. 32207

“Wild West Pop Gun”

To Whom It May Concern

The Department of Consumer Affairs and Thriftway Staten Island Drug Corp. have recently settled an enforcement action involving the Wild West Pop Gun fake gun. The product is an illegal fake gun which violates the New York City Public Safety Law.

We are required to inform you that realistic looking toy guns are illegal in New York City under the Public Safety Law (NYC Administrative Code 10-131(g)), it is unlawful for any person to sell, offer for sale, or possess a fake gun which substantially duplicates or can reasonably be perceived to be an actual firearm.

Sincerely,



Thriftway Staten Island Drug Corp.