

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law - 5<sup>th</sup> floor  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07101

**FILED**

AUG 06 2009

**Division of Consumer Affairs**

By: James J. Savage  
Assistant Attorney General  
(973)877-1280

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS

**IN THE MATTER OF AN INVESTIGATION  
BY THE NEW JERSEY DIVISION OF  
CONSUMER AFFAIRS**

**of**

Mattress Giant Corporation,

**Respondent.**

Administrative Action  
I No. 09-100464

**CONSENT ORDER**

This matter having been opened by the Division of Consumer Affairs, Office of Consumer Protection (hereinafter referred to as "Consumer Affairs" or "Division"), as an investigation in order to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (hereinafter referred to as "CFA" or the "Act"), and the regulations promulgated thereunder, N.J.A.C. 13:45A- 1.1 et seq., ("Regulations"), including but not limited to the Regulations Governing the Delivery of Household Furniture and Furnishings, N.J.A.C. 13:45A - 5.1 et seq. (hereinafter referred to as the "Furniture Regulations"), have been

or are being committed by Mattress Giant Corporation which maintains stores located in Mays Landing, Maple Shade, Cherry Hill, Mount Holly, Northfield, Sicklerville, Voorhees, Delran, Ellisburg Circle(Cherry Hill), Lawrenceville and Vineland (hereinafter referred to as the "Respondent"), and the Division and Respondent (hereinafter collectively referred to as the "Parties") having reached an amicable agreement thereby resolving the issues in controversy and concluding this matter without the need for further action, and Respondent having voluntarily cooperated and consented to the entry of the within order (hereinafter referred to as the "Consent Order") without having admitted any fact or violation of law, and for good cause shown,

IT IS on this 6<sup>th</sup> day of Aug., 2009 ORDERED and AGREED as follows:

### **BUSINESS PRACTICES**

1. Respondent, its principals, officers, agents, representatives and employees shall not engage in any unfair or deceptive acts or practices in the conduct of their business in the State of New Jersey and shall comply with such state laws, rules and regulations as now constituted or as may hereafter be amended, including but not limited to, the CFA, the Furniture Regulations, in connection with all future sales of household furniture and furnishings.

2. Respondent shall cease and desist from engaging in the following:

a. Failing to have the "**Promise Statement**" printed in ten point bold type on contract form and/ or sales document as required by N.J.A.C. 13:45A-5.2 (a).

b. Failing to have the "**Choice Statement**" printed in ten point bold type on a contract form and/or sales document as required by N.J.A.C. 13:45A-5.3(a).

3. Specifically, Respondent shall comply with the following business practices:

a. In accordance with N.J.A.C. 13:45A-5.2 (a), at the time that any contract is signed,

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Respondent shall include on the first page of every contract form and/or sales document the following sentence in ten-point bold face type:

**The merchandise you have ordered is promised for delivery to you on or before (insert date or length of time agreed upon).**

b. In accordance with N.J.A.C. 13:45A-5.3 (a), Respondent shall include on the first page of every contract form and/or sales document the following notice in ten point bold face type:

**If the merchandise ordered by you is not delivered by the promised delivery date, (insert name of seller) must offer you the choice of (1) canceling your order with a prompt, full refund of any payments you have made, or (2) accepting delivery at a specific later date.**

#### **FUTURE CONSUMER COMPLAINTS**

4. For a period of twelve (12) months from the entry of this Consent Order, the Division will forward to Respondent any consumer complaints it has received within thirty (30) days of receipt of the complaint. Complaints received by any county or municipal Consumer Affairs Local Assistance (CALA) office will be forwarded to Consumer Affairs which will then forward these complaints to Respondent within thirty (30) days of Consumer Affairs' receipt from the county or municipal CALA office.

4.1 The Division shall notify these consumers, in writing, of the following: (a) that their complaints have been forwarded to Respondent; (b) that they should expect a response from Respondent within thirty (30) days from the date of the notice; and (c) they have the right to refer their complaints to the Alternative Dispute Resolution ("ADR") Unit of the Division for binding arbitration if Respondent disputes the complaint and/or requested relief.

4.2 Within thirty (30) days of receipt of the complaint, Respondent shall send a

written response to each listed consumer, with a copy to the following: Division of Consumer Affairs, Office of Consumer Protection, Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101.

4.3 If Respondent does not dispute the consumer's complaint and requested relief, the Respondent's written response shall so inform the consumer and shall include the appropriate restitution. Where restitution concerns a credit, Respondent shall include documents evidencing that such adjustments have been made. Where restitution concerns a refund or other payment, such shall be made by certified check, money order or other guaranteed funds made payable to the consumer. Upon verification by the Division that such consumer has been satisfied by Respondent, the consumer complaint shall be deemed closed by the Division's Office of Consumer Protection ("OCP").

4.4 If Respondent's written response disputes the consumer's complaint or the relief sought by the consumer, the response shall include copies of all documents related to Respondent's dispute of the complaint.

4.5 If the Division has not received notice from Respondent that a forwarded complaint has been settled on or before the forty-fifth (45) day after being transmitted to Respondent, the Division will notify the consumer of the right to arbitration and forward the complaint to the Division's ADR Unit to reach a resolution of the complaint through binding arbitration. Thereafter, the matter will proceed in accordance with the ADR guidelines. Respondent agrees herein to participate in this arbitration process and be bound by the arbitrator's decision. Respondent further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:10-1 et seq.

4.6 In the event that Respondent fails or refuses to participate in the arbitration process with a consumer, the arbitrator may enter a default against Respondent.

4.7 Respondent shall pay any and all arbitration awards within 15 days of the arbitrator's decision unless otherwise specified in writing in the arbitration award.

4.8 Failure or refusal to participate in the arbitration process or to timely pay an award shall constitute a violation of this Consent Order.

4.9 If a consumer refuses to participate in the ADR program, the consumer's complaint shall be deemed closed for the purposes of this Consent Order.

4.10 After the initial year, the complaint resolution procedure set forth above will automatically renew for successive one year periods unless terminated in writing upon sixty (60) days advance written notice by either party. Written termination under this provision of the Consent Order shall be provided as follows: For the Division, written notice shall be forwarded via certified mail, return receipt requested, to the New Jersey Division of Consumer Affairs, Office of Consumer Protection, Supervisor, Case Management Tracking, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101; for Respondent, written notice shall be forwarded via certified mail, return receipt requested to: Mattress Giant Corporation, Corporate Headquarters, 14665 Midway Road, Suite 100, Addison, TX 75001 Attention: Rose Turner (Payne).

4.11 Nothing contained in this Consent Order shall be deemed to waive any right of the Division of Consumer Affairs or the Attorney General to take any civil or administrative action deemed appropriate in the best interest of the public with respect to any complaint received regarding Respondent after the date of this Consent Order.

**PAYMENT TO THE STATE**

5. Respondent shall pay the Division of Consumer Affairs the sum of \$5,000.00 as a civil penalty pursuant to N.J.S.A. 56:8-13 and \$478.98 as reimbursement for the Division's costs pursuant to N.J.S.A. 56:8-11. The aforesaid amounts, totaling \$5,478.99 shall be submitted together with this fully executed Consent Order by means of a certified check, attorney trust account check or other guaranteed funds made payable to the "New Jersey Division of Consumer Affairs" and shall be delivered to the following address:

Attention: Supervisor  
Case Management Tracking  
New Jersey Department of Law and Public Safety  
Division of Consumer Affairs  
124 Halsey Street  
P.O. Box 45025  
Newark, New Jersey 07101

6. If, after the signing of this Consent Order, Respondent engages in any acts or practices which constitute a violation of the Consumer Fraud Act, the Regulations or this Consent Order, Respondent may be subject to the imposition of enhanced penalties pursuant to N.J.S.A. 56:8-13 or N.J.S.A. 56:8-18, without prejudice to Respondent's right to present evidence in mitigation and affirmative defenses.

**GENERAL PROVISIONS**

7. Nothing contained in this Consent Order shall be construed to limit or affect the rights of any persons or entities who are not parties to this Consent Order with respect to any of the matters contained herein.

8. Nothing contained herein shall in any manner or fashion be construed to limit or affect any position that the parties may take in any future or pending action not specifically encompassed herein.

9. If any provision of this Consent Order or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Consent Order or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Consent Order shall be valid and enforced to the fullest extent permitted by law.

10. This Consent Order resolves all claims and causes of action against Respondent which were known by the Division's Office of Consumer Protection through July 21, 2009 for violations of the CFA and the regulations promulgated pursuant to the CFA , N.J.A.C. 13:45A- 1.1 et seq., including but not limited to the Regulations Governing the Delivery of Household Furniture and Furnishings, N.J.A.C. 13:45A-5.1 et seq.

11. The parties represent that an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that this person has done so with the authority to legally bind the respective parties.

12. This Consent Order constitutes the entire agreement between the parties hereto and shall bind the parties hereto and their representatives, officers, directors, agents, employees, successors and assigns.

13. Respondent shall not represent or imply that any advertising procedure or other act or practice hereinafter used or engaged in by Respondent has been required or approved, in whole or part, by the Attorney General or the Division of Consumer Affairs or any of the State's agencies or agents.




14. The Division has advised the Respondent to seek the advice of an attorney prior to entering into this agreement.

15. The parties acknowledge that for purposes of enforcement of this Consent Order, New Jersey law shall govern the terms and provisions herein.

16. This Consent Order constitutes a final agency action and shall be effective upon filing.

17. Respondent acknowledges that this Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

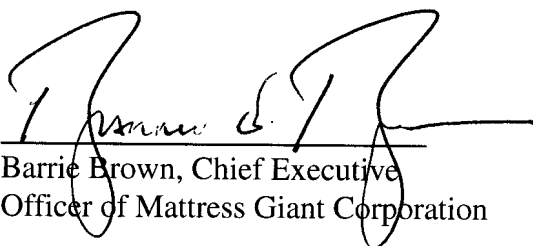
ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY

BY:   
David Szuchman, Director  
New Jersey Division of Consumer Affairs

DATED: 8/6/09

The undersigned has read this Consent Order, understands it, and agrees to be bound by its terms.

Consent is hereby given as to the form and entry of this Order.

  
Barrie Brown, Chief Executive  
Officer of Mattress Giant Corporation

DATED: 3 August 2009

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