

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Division of Consumer Affairs

FILED

AUG 25 2017

Division of Consumer Affairs

By: Russell M. Smith, Jr.
Deputy Attorney General
(973) 877-1280

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

In the Matter of

APPLE INC.,

Respondent.

Administrative Action

CONSENT ORDER

WHEREAS this matter was opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), including the portion of the CFA concerning the Sale or Offer for Sale of Merchandise without a Tag or Label with the Total Selling Price, N.J.S.A. 56:8-2.5 et seq. (“Merchandise Pricing Statute”), and the Refund Policy Disclosure Act, N.J.S.A. 56:8-2.14 et seq. (“Refund Act”), have been or are being committed by Apple Inc., with a main business address of 1 Infinite Loop, Cupertino, California 95014, as well as by its owners, officers, directors, managers, employees, representatives and/or agents (collectively, “Respondent”) (hereinafter referred to as the “Investigation”);

WHEREAS Respondent has been engaged in the Advertisement, offer for Sale and/or Sale of Merchandise at Apple Stores, Including iPhones, iPods, iPads, iMacs, MacBooks and Apple Watches;

WHEREAS on August 16 and 26, 2016, the Division conducted inspections of all Apple Stores;

WHEREAS the Division alleges that, at Apple Stores, Respondent was Advertising, offering for Sale and/or Selling Merchandise without the total selling price of such Merchandise plainly marked by a stamp, tag, label or sign either affixed to the Merchandise or located at the point where the Merchandise is offered for Sale and, instead had the total selling price of Merchandise available electronically through a pricing app;

WHEREAS the Division alleges that Respondent did not offer a refund policy that is exempt from the Refund Act;

WHEREAS the Division alleges that, at Apple Stores, Respondent failed to conspicuously post its refund policy at any of the four (4) locations required by the Refund Act, specifically: attached to the item itself; affixed to each cash register or point of sale; so situated as to be clearly visible to the buyer from the cash register; or posted at each store entrance used by the public; and

WHEREAS the Division and Respondent (collectively, "Parties") have reached an amicable agreement resolving the issues in controversy and concluding this Investigation without the need for further action, and Respondent has voluntarily cooperated with the Investigation and consented to the entry of the within order ("Consent Order") and for good cause shown:

IT IS ORDERED AND AGREED as follows:

1. EFFECTIVE DATE

1.1 This Consent Order is effective on the date that it is filed with the Division (“Effective Date”).

2. DEFINITIONS

As used in this Consent Order, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Consent Order:

2.1 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a). This definition applies to other forms of the word “Advertisement,” including “Advertise,” and “Advertising.”

2.2 “Apple Stores” shall refer to all retail locations owned and/or operated by Apple Inc. in New Jersey which, at the time of the Division’s inspection, totaled twelve (12) locations.

2.3 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.4 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such size, color, contrast, duration, location and audibility, compared to the other information in which it is presented that it is readily apparent and understandable and in language and terms used in accordance with their common or ordinary usage and meaning. If such a statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable. For purposes of the Merchandise Pricing Statute, the term “plainly” shall mean a statement that conforms with the definition in this section.

2.5 “Consumer” shall refer to any Person who is offered Merchandise for Sale.

2.6 “Include[s]” and “Including” shall be construed as broadly as possible and shall mean “without limitation.”

2.7 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and Includes iPhones, iPods, iPads, iMacs (desktop computers), MacBooks (laptop computers) and Apple Watches.

2.8 “New Jersey” and “State” shall refer to the State of New Jersey.

2.9 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.10 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e). This definition applies to other forms of the word “Sale,” Including “Sell.”

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended, Including the CFA, the Merchandise Pricing Statute and the Refund Act.

3.2 Respondent shall not Advertise, offer for Sale and/or Sell Merchandise at Apple Stores unless the total selling price of such Merchandise is plainly marked by a stamp, tag, label or sign affixed to the Merchandise or located at the point where the Merchandise is offered for Sale, as required by the Merchandise Pricing Statute, specifically N.J.S.A. 56:8-2.5.

3.3 Within sixty (60) days of the Effective Date, Respondent shall plainly mark the total selling price of Merchandise at Apple Stores: (a) on the Merchandise and/or where the Merchandise is offered for Sale; (b) in a continuously visible format; and (c) in a manner that does not require Consumer interaction with a pricing application, a pricing device or Respondent’s sales representatives.

3.4 Respondent shall Clearly and Conspicuously post its refund policy as to all Merchandise in at least one of four (4) following locations in Apple Stores, as required by the Refund Act, specifically N.J.S.A. 56:8-2.16: (a) attached to the Merchandise itself; (b) affixed to each cash register or point of Sale; (c) so situated as to be clearly visible to the buyer from the cash register; or (d) posted at each Apple Store entrance used by the public.

3.5 On or before the Effective Date, Respondent agrees to Clearly and Conspicuously post its refund policy at the entrance to each Apple Store used by the public. In the event Respondent seeks to change the location of its refund policy from the entrance of each Apple Store used by the public, Respondent shall move the Refund Policy to a location permitted by the Refund Act.

4. SETTLEMENT PAYMENT

4.1 Within fourteen (14) days of the Effective Date, Respondent shall pay Twenty Three Thousand Eight Hundred Fifty Three and 96/100 Dollars (\$23,853.96) in reimbursement of the Division's investigative costs and attorneys' fees pursuant to N.J.S.A. 56:8-11 and -19 ("Settlement Payment").

4.2 Respondent shall make the Settlement Payment by certified or cashier's check, money order, wire transfer or credit card made payable to the "New Jersey Division of Consumer Affairs" and forwarded to:

Russell M. Smith, Jr., Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Department of Law and Public Safety
Division of Law
124 Halsey Street- 5th Floor
Newark, New Jersey 07101

4.3 Upon making the Settlement Payment, Respondent shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

5. GENERAL PROVISIONS

5.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

5.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

5.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

5.4 This Consent Order contains the entire agreement between the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

5.5 Except as otherwise explicitly provided in this Consent Order, nothing in this Consent Order shall be construed to limit the authority of the Attorney General to protect the interests of the people of the State.

5.6 If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

5.7 This Consent Order shall be binding upon Respondent's owners, officers, directors, managers, employees, representatives, agents, successors and assigns, and any Person through which

it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

5.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order be used to avoid compliance with this Consent Order.

5.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Respondent; and (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA, the Merchandise Pricing Statute and/or the Refund Act.

5.10 This Consent Order is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Order; or (b) any action or proceeding involving a Released Claim (as defined in Section 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.11 This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

5.12 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Order.

6. REPRESENTATIONS AND WARRANTIES

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

6.2 Respondent represents and warrants that within sixty (60) days of the Effective Date, it will place on tables at Apple Stores on which Merchandise is offered for Sale a 4 ½ inch by 3 ½ inch pricing wedge which contains the starting from price of the Merchandise displayed on that table, as well as a statement at the bottom directing customers to the pricing app on the Merchandise for further information. At least one (1) pricing wedge will be placed on each table that displays iPhones, iPods, iPads, iMacs, MacBooks or Apple Watches and abuts a wall. At least two (2) pricing wedges will be placed on all other tables displaying iPhones, iPods, iPads, iMacs, MacBooks or Apple Watches. All of the pricing wedges will be placed so that they face customers and will have a text font size of no less than 12-point.

7. RELEASE

7.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment in the manner specified in Section 4, the Division hereby agrees to release Respondent from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondent for violations of the CFA arising from the Investigation, as well as the matters specifically addressed in this Consent Order (“Released Claims”).

7.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any

claims against Respondent by any other agency or subdivision of the State.

8. PENALTIES FOR FAILURE TO COMPLY

8.1 The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Order or to seek sanctions for violations hereof or both.

8.2 The Parties agree that for any future violations of Section 3 of this Consent Order, the CFA, the Merchandise Pricing Statute and/or the Refund Act Respondent may be liable for enhanced civil penalties.

9. COMPLIANCE WITH ALL LAWS

9.1 Except as provided in this Consent Order, no provision herein shall be construed as:

- a. Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
- b. Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

10. NOTICES UNDER THIS CONSENT ORDER

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides tracking services and identification of Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Russell M. Smith, Jr., Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Department of Law and Public Safety
Division of Law
124 Halsey Street- 5th Floor
Newark, New Jersey 07101

For the Respondent:

Brittany H. Sokoloff, Esq.
Schiff Hardin LLP
666 Fifth Avenue, Suite 1700
New York, New York 10103

IT IS ON THE 25th DAY OF August, 2017 SO ORDERED.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: 

STEVE C. LEE, DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES BESIDE THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

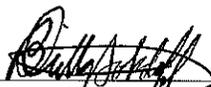
CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: 
Russell M. Smith, Jr.
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

Dated: 8/25, 2017

FOR THE RESPONDENT:

SCHIFF HARDIN LLP

By: 
Brittany H. Sokoloff, Esq.
666 Fifth Avenue, Suite 1700
New York, New York 10103

Dated: August 24, 2017

APPLE INC.

By: 
Noreen Krall
Vice President, Chief Litigation Counsel
1 Infinite Loop, Cupertino, CA 95014

Dated: Aug. 22, 2017