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Division of Law
124 Halsey Street – 5th Floor
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FILED

OCT 10 2014

Division of Consumer Affairs

By: Glenn T. Graham (013822009)
Deputy Attorney General
[REDACTED]

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

In the Matter of	:	
	:	
	:	Administrative Action
JKM PRODUCTS CORPORATION	:	
d/b/a JKM RIBBON & TRIM	:	
	:	
	:	<u>CONSENT ORDER</u>
	:	
Respondent.	:	

WHEREAS this matter having been 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”), the Regulations Governing Deceptive Mail Order Practices, N.J.A.C. 13:45A-1.1 et seq. (“Mail Order Regulations”) and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. (“Advertising Regulations”), have been or are being committed by JKM Products Corporation d/b/a JKM Ribbon & Trim (“Respondent”) (hereinafter referred to as the

“Investigation”);

WHEREAS Respondent is a New Jersey corporation, headquartered at 50 Egg Harbor Road, Suite 14, Berlin, New Jersey 08009, and is engaged in the Advertisement, offering for Sale and Sale of Merchandise to Consumers in New Jersey and elsewhere;

WHEREAS as a result of the Investigation, the Division alleges that Respondent has violated the CFA, Mail Order Regulations and Advertising Regulations, among other things, by failing to deliver Merchandise by the promised delivery date;

WHEREAS Respondent denies that it has violated the CFA, Mail Order Regulations and Advertising Regulations; and

WHEREAS the Division and Respondent (collectively, “Parties”) have reached an amicable agreement hereby resolving the issues in controversy and concluding the Investigation without the need for further action, and Respondent having 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 shall be 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 “Additional Consumer” shall refer to any Consumer who submits to the Division directly or through another agency, a written Consumer complaint concerning Respondent’s business practices after the Effective Date.

2.2 “ADR Unit” shall refer to the Alternative Dispute Resolution Unit of the Division.

2.3 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a). For purposes of the Advertising Regulations, “Advertisement” shall be defined in accordance with N.J.A.C. 13:45A-9.1. These definitions apply to other forms of the word “Advertisement” including, without limitation, “Advertise[s].”

2.4 “Affected Consumer” shall refer to any Consumer who directly submitted to the Division prior to the Effective date, a complaint concerning Respondent’s business practices, which complaint remains unresolved.

2.5 “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.

2.6 “CALA” shall refer to Consumer Affairs Local Assistance within counties and/or municipalities in the State.

2.7 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such type, size, color, contrast, duration, location and audibility, compared to other information with 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 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.

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

2.9 “Division” or “Division of Consumer Affairs” shall refer to the New Jersey Division of Consumer Affairs.

2.10 “JKM Website” shall refer to the website located at <http://www.jkmribbon.com>.

2.11 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c), and includes decorative ribbons, trims, fabric and floral and craft supplies.

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

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

2.14 “Restitution” shall refer to all methods undertaken by Respondent to resolve Consumer complaints including, but not limited to, the issuance of credits or refunds or the reversal of credit card or debit card charges.

2.15 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).

3. REQUIRED AND PROHIBITED BUSINESS PRACTICES

3.1 Respondent shall not engage in any unfair or deceptive acts or practices in the conduct of any business in the State and shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended, including, but not limited to, the CFA, the Mail Order Regulations and the Advertising Regulations.

3.2 Respondent shall not collect and/or accept monies from Consumers for Merchandise purchased by mail, telephone, facsimile transmission, electronic mail and/or through the JKM Website and then permit six (6) weeks to elapse without either: (a) delivering or mailing the Merchandise order; (b) making a full refund; (c) complying with the Consumer

letter and notice requirements of N.J.A.C. 13:45A-1.1(b)(3); or (d) sending the Consumer substituted Merchandise in accordance with N.J.A.C. 13:45A-1.1(b)(4).

3.3 Respondent shall Clearly and Conspicuously designate within all Advertisements and on the JKM Website which Merchandise possesses special or limiting factors relating to price, quality, condition and/or availability of such Merchandise.

3.4 Respondent shall not make false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering and/or or the quantity of Advertised Merchandise available for Sale, including representations concerning any Merchandise's expected shipment date, in accordance with N.J.A.C. 13:45A-9.2(a)9.

3.5 Respondent shall respond to Consumer inquiries concerning the status of orders and/or request for refunds within five (5) business days.

4. AFFECTED CONSUMER RESTITUTION

4.1 Attached as Exhibit A is a list prepared by the Division that identifies each Affected Consumer, as well as the agreed upon Restitution, pursuant to N.J.S.A. 56:8-8, which totals Nine Hundred Forty-Three and 70/100 Dollars (\$943.70).

4.2 Within thirty (30) days after the Effective Date, Respondent shall forward to each Affected Consumer the Restitution amount identified in Exhibit A. Where Restitution concerns the reversal of credit or debit card charges, Defendant shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made by bank check or money order made payable to the Affected Consumer.

4.3 Within ninety (90) days after the Effective Date, Respondent shall provide written notification to the Division as to whether each Affected Consumer has received Restitution.

Such notification shall include the following:

- (a) The name and address, if known, of the Affected Consumer;
- (b) The amount paid to each Affected Consumer;
- (c) Copies of documents evidencing the Restitution paid to the Affected Consumer; and
- (d) In the event that the Restitution is returned undeliverable, documents evidencing the efforts undertaken to locate the Affected Consumer.

4.4 Within ninety (90) days after the Effective Date, Respondent shall forward to Plaintiffs any remaining balance of the Affected Consumer Restitution. Such payment shall be made by bank check, attorney trust account check or other guaranteed funds made payable to “New Jersey Division of Consumer Affairs” and shall be forwarded to the undersigned:

Glenn T. Graham, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

4.5 Upon making the payment referenced in Section 4.4, 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, and the Division shall have sole discretion as to the application of such monies.

5. ADDITIONAL CONSUMER COMPLAINTS

5.1 For a period of three (3) years from the Effective Date, the Division shall forward to Respondent copies of any Additional Consumer complaints received by the Division or

forwarded to the Division, among other things, by any CALA office. The Division shall forward to Respondent the Additional Consumer complaint within thirty (30) days of the Division's receipt thereof.

5.2 The Division shall notify the Additional Consumers, in writing, of the following: (a) that the Additional Consumer's complaint has been forwarded to Respondent; (b) that he/she should expect a response from Respondent within thirty (30) days; and (c) the right to have his/her complaint referred to the ADR Unit for binding arbitration if Respondent disputes the Additional Consumer's complaint and/or requested relief.

5.3 Within thirty (30) days of receiving the Additional Consumer's complaint from the Division, Respondent shall send a written response to the Additional Consumer, with a copy to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Attention: Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101; or (b) cmt@dca.lps.state.nj.us.

5.4 If Respondent does not dispute the Additional Consumer's complaint and requested relief, Respondent's written response shall so inform the Additional Consumer. Respondent shall contemporaneously forward to such Additional Consumer the appropriate Restitution. Where Restitution concerns the reversal of credit or debit card charges, Respondent shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made by bank check, money order or other guaranteed funds made payable to the Additional Consumer.

5.5 If Respondent disputes the Additional Consumer's complaint and/or requested relief, Respondent's written response shall include copies of all documents concerning

Respondent's dispute of the complaint.

5.6 Within forty-five (45) days of Respondent's receipt of the Additional Consumer's complaint, Respondent shall notify the Division as to whether such Additional Consumer's complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Additional Consumer;
- (b) Whether or not the Additional Consumer's complaint has been resolved;
- (c) An identification of any Restitution provided to the Additional Consumer;
- (d) Copies of all documents evidencing any Restitution;
- (e) In the event Respondent's written response was returned as undeliverable, the efforts Respondent has undertaken to locate the Additional Consumer; and
- (f) Confirmation that Respondent sent all mailings to the Additional Consumer as required by this Section.

Following the Division's receipt and verification that the Additional Consumer's complaint has been resolved, the Additional Consumer's complaint shall be deemed closed for purposes of this Consent Order.

5.7 If within sixty (60) days of Respondent's receipt of the Additional Consumer's complaint: (a) Respondent has not notified the Division that the Additional Consumer's complaint has been resolved; (b) Respondent has notified the Division that the Additional Consumer's complaint has not been resolved; or (c) Respondent has notified the Division that the Additional Consumer refuses Respondent's offer of Restitution, the Division shall forward such Additional Consumer's complaint to the ADR Unit to reach a resolution of the complaint through binding arbitration. Respondent agrees herein to consent to this arbitration process and to 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. 59:1-1 et seq. The Division shall notify in writing the Additional Consumer of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached as Exhibit B).

5.8 If Respondent refuses to participate in the ADR program, the arbitrator may enter a default against Respondent. Unless otherwise specified in the arbitration award, Respondent shall pay all arbitration awards within thirty (30) days of the arbitrator's decision.

5.9 Respondent's failure or refusal to comply with the requirements of Sections 5.3 through 5.6 and/or participate in the arbitration process or to pay an arbitration award timely shall constitute a violation of this Consent Order. Under these circumstances, the Division may unilaterally discontinue the Additional Consumer complaint resolution process upon notice to Respondent.

5.10 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Consent Order.

5.11 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

5.12 Following the expiration of the three (3) year period, Respondent may request to continue the Additional Consumer complaint resolution process for up to three (3) successive one (1) year periods upon written notice by Respondent to the Division submitted no later than thirty (30) days prior to the expiration of the initial three (3) year or any subsequent one (1) year period. The Division may decline to grant Respondent's request, at its sole discretion and for any reason including, but not limited to, those set forth in Section 5.9.

6. SETTLEMENT PAYMENT

6.1 The Parties have agreed to a settlement of the Investigation in the amount of Fifteen Thousand and 00/100 Dollars (\$15,000.00) (“Settlement Payment”).

6.2 The Settlement Payment comprises Seven Thousand Five Hundred Fifty-Seven and 54/100 Dollars (\$7,557.54) in civil penalties, pursuant to N.J.S.A. 56:8-13, Three Thousand Three Hundred Eighty-Eight and 50/100 Dollars (\$3,388.50) in reimbursement of the Division’s attorneys’ fees and Four Thousand Fifty-Three and 96/100 Dollars (\$4,053.96) in reimbursement of the Division’s investigative costs, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.

6.3 Respondent shall make the Settlement Payment in installments as follows:

- a. Five Hundred and 00/100 Dollars (\$500.00) shall be paid on or before the Effective Date; and
- b. The remaining Fourteen Thousand Five Hundred and 00/100 Dollars (\$14,500.00) shall be paid in equal installments of Four Hundred Two and 78/100 Dollars (\$402.78) due on or before the first of each month for a period of three (3) years commencing on September 1, 2014.

6.4 All payments in satisfaction of the Settlement Payment shall be made by bank check, money order, wire transfer, credit card or other guaranteed funds payable to “New Jersey Division of Consumer Affairs” and shall be forwarded to the undersigned:

Glenn T. Graham, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

6.5 Upon making any payment in satisfaction of the Settlement Payment, Respondent

shall immediately be fully divested on any interest in, or ownership of, the amounts 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.

7. FORBEARANCE ON EXECUTION AND DEFAULT

7.1 In the event that Respondent fails to make any of the payments referenced in Section 6, all unpaid amounts due and payable under this Consent Order shall be immediately accelerated and due and payable upon written notice by the Division, with interest and with the Division's cost of collections. In any such notice, however, the Division shall provide Respondent with the specific details of Respondent's alleged noncompliance and Respondent shall be afforded a thirty (30) day period within which to cure any such noncompliance. Failure by Respondent to cure any such noncompliance shall be considered an Event of Default. In addition to the relief provided for in this Section, a default shall entitle the Division to make an application to the Court for an order directing compliance and any other relief in aid of litigant's rights, including an award of attorneys' fees.

8. GENERAL PROVISIONS

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

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

8.3 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.

8.4 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.

8.5 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 or the people of the State.

8.6 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.

8.7 This Consent Order shall be binding upon Respondent as well as its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, successors and assigns, and any entity or device 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.

8.8 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.

8.9 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, Mail Order Regulations and/or Advertising Regulations.

8.10 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.

8.11 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.

8.12 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.

9. RELEASE

9.1 In consideration of the payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent providing Restitution in the manner specified in Section 4 and making the Settlement Payment in the manner specified in Section 6, 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, the Mail Order Regulations and/or the Advertising Regulations, arising out of the Investigation as well as the matters specifically addressed in this Consent Order (“Released Claims”).

9.2 Notwithstanding any term of this Consent Order, the following do not comprise Released claims: (a) private rights of action provided, however, that nothing herein shall prevent Respondent from raising the defense of set-off against an Affected Consumer or an Additional

Consumer who has received Restitution; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

10. PENALTIES FOR FAILURE TO COMPLY

10.1 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.

10.2 The Parties agree that any future violations by Respondent of Section 3 of this Consent Order, the CFA, the Mail Order Regulations and/or the Advertising Regulations shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondent may be liable for enhanced civil penalties.

11. COMPLIANCE WITH ALL LAWS

11.1 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.

12. NOTICES UNDER THIS CONSENT ORDER

12.1 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:

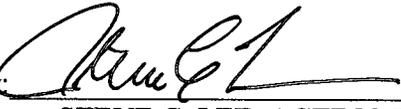
Assistant Deputy of Enforcement, Office of Consumer Protection
Division of Consumer Affairs, State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
124 Halsey Street – 7th Floor
P.O. Box 45028, Newark, New Jersey 07101

For the Respondent:

Daniel G.P. Marchese, Esq.
The Marchese Law Firm, LLC
93 Spring Street, Suite 300
Newton, New Jersey 07860

IT IS ON THE 10th DAY OF October, 2014 SO ORDERED.

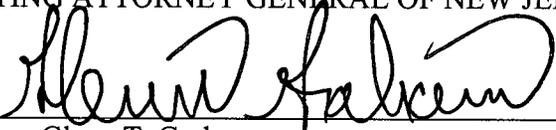
JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
STEVE C. LEE, ACTING 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:

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Glenn T. Graham
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

Dated: October 10, 2014

FOR THE RESPONDENT:

THE MARCHESE LAW FIRM, LLC

By: 
Daniel G.P. Marchese, Esq.
93 Spring Street, Suite 300
Newton, New Jersey 07860

Dated: 10/09/14, 2014

JKM PRODUCTS CORPORATION
D/B/A JKM RIBBON & TRIM

By: *Carmela A. Covone*
Print Name: Carmela A. Covone
Title: President

Dated: September 8, 2014