

At the Ex-Parte Motion Office at the
Supreme Court of the State of New
York, held in and for the County of
New York, at the County Court
House, on the 19th day of
AUGUST 2002

Present: _____
Hon. _____ Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
STATE OF NEW YORK ex. rel Eliot Spitzer,

Plaintiff,

v.

CANDLE BUSINESS SYSTEMS, INC.,

Defendant.
----- X

Index No. 402805-02

CONSENT JUDGMENT

Defendant having consented to the jurisdiction and venue of this Court, and the parties to this action having executed a Settlement Agreement dated June 19, 2002, a copy of which is attached as Exhibit A and incorporated by reference in this Judgment, and having agreed on a final and complete resolution of all claims brought against Defendant, and without the Court finding or Defendant admitting any liability, or Defendant conceding the veracity of the facts alleged in the Complaint except for jurisdiction and venue, pursuant to the Settlement Agreement it is hereby

ORDERED ADJUDGED AND AGREED THAT:

Penalties and Other Payments

1. Defendant shall pay the Plaintiff the sum of \$360,000 in civil penalties.
2. Defendant shall pay the sum of \$20,000 to the Office of the New York Attorney General, and the sum of \$20,000 to the Special Commissioner of Investigation, New York City

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NEW YORK
COUNTY CLERK'S OFFICE

Board of Education, for fees and costs incurred in investigating Defendant's conduct and in bringing this action.

Definitions

3. For purposes of this Judgment, the following terms shall have the meanings defined below:

- A. "Candle" means Candle Business Systems, Inc. and all of its predecessors, successors, parents, subsidiaries, divisions, and related or affiliated entities.
- B. "Fictitious Bid" means an offer to sell a good or service, where the Person denoted as making the offer has not submitted it in a good faith effort to compete for acceptance of the offer. The term includes, but is not limited to, bids that the denoted author did not authorize, bids solicited by a competing bidder, and bids whose material terms were drafted by, or in consultation or conjunction with, a competing bidder.
- C. "Government Contract" means any contract to which a New York State or local government is a party, including any office, subdivision agency or entity of such a government, which sets the price or terms at which the government entity agrees to purchase or lease a product or service.
- D. "High Managerial Agent" is defined as set forth in New York Penal Law § 20.20, except that it shall not include any sales personnel.
- E. "Off-Contract Sale" means the sale or lease of any product or service not made pursuant to, or in accordance with the price or terms of, a Government

Contract.

F. "Office Equipment" means electronic equipment used in office settings, including but not limited to copiers, duplicators, scanners and fax machines, as well as support, supplies and maintenance for these products.

G. "Office Equipment Dealer" means any Person that sells Office Equipment.

H. "Person" means any natural person, association, cooperative, partnership, corporation, or other business or legal entity.

Prohibited Conduct

4. For a period of five years, Defendant is hereby enjoined from directly or, indirectly – or through any other Person – entering into, organizing, implementing, or soliciting, any agreement, understanding, contract or combination, either express or implied, with any other person or competitor, or attempting to do any of the foregoing:

- A. Not to compete against one another in the sale of any Office Equipment;
- B. To allocate, rotate or divide the sale of any Office Equipment;
- C. To establish any plan or program with any competitor to fix, raise, maintain or stabilize the price for any Office Equipment offered for sale;
- D. To communicate with or inquire of any competitor about any intention, decision, or plan to bid or to refrain from bidding for any particular sale or contract for Office Equipment – including any intention, decision, or plan regarding any actual or proposed bid – where such communication or inquiry is to any other Person who, to Candle's knowledge, presently sells or may sell Office Equipment.

E. To request, suggest, urge or advocate that any other Person refrain from bidding against or competing with Candle for the sale of any Office Equipment;

F. To submit, or ask any other Person to submit, Fictitious Bids for the sale of any Office Equipment;

G. To provide anything of value to any employee of a New York City or State government entity in exchange for that entity's agreement either to purchase any Office Equipment from Candle or to enable Candle to submit a bid or other offer to sell any Office Equipment;

H. To make any Off-Contract Sale to any government entity, after: a) representing to any employee or official of any government entity that the price and terms for which the item was sold was that set forth in the Government Contract; or b) indicating on the documentation for the sale that the sale was in accordance with a Government Contract; and

I. To make any Off-Contract sale to the New York City Board of Education.

5. For a period of five years, Defendant is hereby enjoined from attempting to engage in any of the conduct prohibited in paragraph 4.

Reporting Obligations

6. During the period that paragraph 4 is in effect and for two years thereafter, Candle shall comply with the following reporting obligations:

A. Candle shall disclose, in writing, any intention to purchase, acquire or merge with another Office Equipment Dealer no later than the earlier of (1) 30 days

after Candle executes an agreement to purchase, acquire or merge with any such Dealer, or (ii) 30 days prior to the closing date of such transaction. Candle shall provide documents responsive to any request by the Attorney General of the State of New York ("the Attorney General") concerning the transaction within 10 days or reasonable period after that for good cause of any such request, but in no case less than 10 days before the closing of the transaction.


B. Candle shall report, in writing, to the Attorney General, any act prohibited by Paragraph 4 of this Judgment, within seven days of any Candle High Managerial Agent acquiring knowledge of the event.

Retention of Jurisdiction

7. This Court shall retain jurisdiction over this action and the parties for the purpose of enabling any party to apply to this Court for further orders and directions as may be necessary or appropriate to carry out or construe this Judgment or the Settlement Agreement, to modify or terminate any of the provisions of this Judgment or the Settlement Agreement, to enforce compliance and to punish violations of the Judgment or the Settlement Agreement.

8. In all other respects, Plaintiff's action is dismissed with prejudice.

9. The Plaintiff shall have execution for the sums directed to be paid in paragraph 1 and 2 of this Judgment.



Hon. _____
Justice of the Supreme Court

MARTIN SCHOENFELD

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of June 19, 2002, is made and entered by and among the State of New York, by and through its Attorney General ("New York" or "Plaintiff"), and Candle Business Systems, Inc. ("Candle").

New York intends to file a Complaint against Candle ("the Complaint") for civil penalties and injunctive relief, alleging that Candle entered into contracts, agreements, arrangements or combinations with other Office Equipment Dealers not to compete, or otherwise unreasonably suppress competition; and

The Parties have concluded that it is in their best interests to reach a resolution of the costly and time-consuming litigation that would arise from the Complaint;

NOW, THEREFORE, the Parties agree as follows:

I. Definitions

For purposes of settlement only, and as used in this Settlement Agreement, the following terms shall have the meanings specified below:

A. "Alleged Illegal Conduct" means the following conduct, through the date of the filing of the Complaint: 1) an arrangement between Candle and Facsimile Communications, Inc., doing business as Atlantic Business Products, Inc. ("Atlantic") not to compete against one another, and to provide each other with Fictitious Bids; 2) an arrangement between Candle and Copyworld of America, Inc. ("Copyworld") not to compete against one another, and to provide each other with Fictitious Bids; 3) the use or procurement of Fictitious Bids to obtain contracts with the New York City Board of

Education.

B. "Candle" means Candle Business Systems, Inc. and all of its predecessors, successors, parents, subsidiaries, divisions, and related or affiliated entities.

C. "Effective Date" means the date as of which all of the Parties have executed this Settlement Agreement.

D. "Fictitious Bid" means an offer to sell a good or service, where the Person denoted as making the offer has not submitted it in a good faith effort to compete for acceptance of the offer. The term includes, but is not limited to, bids that the denoted author did not authorize, bids solicited by a competing bidder, and bids whose material terms were drafted by, or in consultation or conjunction with, a competing bidder.

E. "Government Contract" means any contract to which a New York State or local government is a party, including any office, subdivision agency or entity of such a government, which sets the price or terms at which the government entity agrees to purchase or lease a product or service.

F. "High Managerial Agent" is defined as set forth in New York Penal Law § 20.20, except that it shall not include any sales personnel.

G. "Off-Contract Sale" means the sale or lease of any product or service not made pursuant to, or in accordance with the price or terms of, a Government Contract.

H. "Office Equipment" means electronic equipment used in office settings, including but not limited to copiers, duplicators, scanners and fax machines, as well as support, supplies and maintenance for these products.

I. "Office Equipment Dealer" means any Person that sells Office Equipment.

J. "Parties" means the parties to this Agreement.

K. "Person" means any natural person, association, cooperative, partnership, corporation, or other business or legal entity.

II. Agreement

The Parties agree to compromise, settle, and resolve fully and finally, on the terms set forth herein, any and all claims, actions and causes of action by New York arising out of the Alleged Illegal Conduct. Candle does not, by entering into this Agreement, admit to the allegations set forth in the complaint, and the Parties agree that this Settlement Agreement shall not be deemed or construed as an admission of any issue of fact or law.

III. Civil Penalties and Costs

Candle agree to pay New York the sum of \$360,000 on or before October 31, 2002, by bank or certified check, as a civil penalty provided for by N.Y. Gen. Bus. Law § 342-a. Candle further agrees to pay New York the sum of \$20,000, and the Special Commissioner of Investigation for the New York City School District the sum of \$20,000, on or before October 31, 2002, by certified or bank check, for reimbursement of the costs of their investigation into the Alleged Illegal Conduct.

IV. Injunction

Candle agrees to the entry of a judgment enjoining it, directly or, indirectly – or through any other Person – from entering into, organizing, implementing, or soliciting any agreement,

understanding, contract or combination, either express or implied, with any other person or competitor:

- A. Not to compete against one another in the sale of any Office Equipment;
- B. To allocate, rotate or divide the sale of any Office Equipment in New York State;
- C. To establish any plan or program with any competitor to fix, raise, maintain or stabilize the prices for any Office Equipment in New York State;
- D. To communicate with or inquire of any competitor about any intention, decision, or plan to bid or to refrain from bidding for any particular sale or contract for Office Equipment, including any intention, decision, or plan regarding any actual or proposed bid, where such communication or inquiry is to any other competitor; or any other Person who, to Candle's knowledge, presently sells or may sell Office Equipment;
- E. To request, suggest, urge or advocate that any other Person refrain from bidding or competing with Candle for the sale of any Office Equipment;
- F. To submit, or ask any other Person to submit, Fictitious Bids for the sale of any Office Equipment;
- G. To provide anything of value to any employee of a New York City or State government entity in exchange for that entity's agreement either to purchase any Office Equipment from Candle or to enable Candle to submit a bid or other offer to sell any Office Equipment;
- H. To make any Off-Contract Sale to any New York City or State government entity, after: a) representing to any employee or official of any government entity that the price or terms for which the item was sold were those set forth in the Government Contract; or b)

indicating on the documentation for the sale that the sale was in accordance with a Government Contract; and/or

I. To make any Off-Contract sale to the New York City Board of Education.

Candle further agrees to the entry of a judgment enjoining it from attempting to engage in any of the conduct prohibited by this section.

V. Reporting

A. For seven years following the Effective Date of this Agreement:

1. Candle shall disclose, in writing, any intention to purchase, acquire or merge with another Office Equipment Dealer no later than the earlier of (i) 30 days after Candle executes an agreement to purchase, acquire or merge with any such Dealer, or (ii) 30 days prior to the closing date of such transaction. Candle shall provide documents responsive to any request by the Attorney General of the State of New York ("the Attorney General") concerning the transaction within 10 days of any such request, or a reasonable period after that for good cause, but in no case less than 10 days before the closing of the transaction.

2. Candle shall report, in writing, to the Attorney General, any act prohibited by Paragraph 4 of this Judgment, within fifteen days of any Candle High Managerial Agent acquiring knowledge of the act.

B. Any written notice required of Candle under this Agreement shall be sent to the following address:

Antitrust Bureau
Office of the New York Attorney General
120 Broadway
26th Floor
New York, NY 10271

VI. Cooperation and Best Efforts

The Parties agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Settlement Agreement and to exercise their best efforts to accomplish those terms and conditions. The Parties agree to exercise their best efforts to obtain entry of the Judgment (attached as Exhibit A) by the Court. The Parties will not seek to appeal either such entry or approval, to modify the Judgment (or all or any part of its terms), or to take any action, directly or indirectly, that might prevent or delay entry of the Judgment.

VII. Amendment

The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

VIII. Complete Agreement

The Settlement Agreement constitutes the entire agreement among the Parties and no representations, warranties or inducements have been made to any Party concerning the Settlement Agreement other than the representations, warranties and covenants contained and memorialized in this document.

IX. Execution

The Settlement Agreement may be executed in one or more counterparts or by facsimile, with the same effect as if all parties had signed the same physical page of this Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument.

X. Successors

The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

XI. Enforcement

The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all Parties submit to the jurisdiction of the Court for that purpose.

XII. Service

Candle agrees to accept service of any documents to be filed under this agreement, including the complaint and proposed judgment in the underlying action, by mail at the address of its undersigned counsel, or at the following address:

Candle Business Systems, Inc.
1500 Ocean Avenue
Bohemia, NY 11716

Such service shall be available to Plaintiff in addition to, and not in lieu of, any other legal method of service.

XIII. Choice of Law

The Settlement Agreement and any related documents shall be subject to, governed by and construed, interpreted and enforced pursuant to the laws of the State of New York.

XIV. Third Party Beneficiaries

Nothing in this Agreement shall confer any right or benefit on any third party.

AGREED AND CONSENTED TO:

CANDLE BUSINESS SYSTEMS, INC.

By: 

Robert F. Katzberg, Esq.
Kaplan & Katzberg
767 Third Avenue
New York, NY 10017
Counsel for Candle Business Systems, Inc.

STATE OF NEW YORK
ELIOT SPITZER
Attorney General

By: 

JAY L. HIMES
Bureau Chief
Antitrust Bureau
New York Attorney General's Office
120 Broadway
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