
STATE OF MARYLAND

v.

JOHNSON & JOHNSON
VISION CARE, INC.

IN THE
CIRCUIT COURT
FOR BALTIMORE COUNTY

Case Number: 03 - C-16-002271

ASSURANCE OF DISCONTINUANCE

In February 2016, the State of Maryland (the State) in its sovereign capacity, filed a Complaint seeking equitable relief against Johnson & Johnson Vision Care, Inc. (JJVCI). In its Complaint, the State alleged that JJVCI reached a resale price maintenance agreement with retailers including Costco Wholesale Corporation, Sam's Club and BJ's Wholesale Club, all of which do business in the State of Maryland, and that this alleged agreement was a violation of the Maryland Antitrust Act.

Now, while denying the allegations, any and all wrongdoing, and any violation of the laws of the State of Maryland, JJVCI assures that it has voluntarily and permanently discontinued the alleged agreements that were the subject of the State's Complaint.

Under the authority of Md. Commercial Law Code Ann. §11-206(a), the Maryland Attorney General (the Attorney General) hereby accepts JJVCI's assurance, and in exchange for the assurance, the Attorney General will not seek other or further legal or equitable relief or prosecute any alleged violation of Md. Commercial Law Code Ann. §§11-201 et seq.

True Copy Test

MILLIE E. ENSOR, Clerk

A. Stecher
Assistant Clerk

FILED MAR 29 2017

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cc: zidlicky, Metnick, Akowuah, Faden

(the Maryland Antitrust Act) arising from or related to the alleged agreements described in the Complaint.¹

This Assurance of Discontinuance may not be considered for any purpose as, and is not, an admission of any violation of law.

PRELIMINARY STATEMENT

The Attorney General is authorized by Md. Com. Law Code Ann. §11-209(a) to enforce the provisions of the Maryland Antitrust Act. By the authority of Md. Com. Law Code Ann. §11-206, in enforcing the Maryland Antitrust Act, the Attorney General may accept an assurance of discontinuance of an act or practice considered by the Attorney General to be a violation of the Maryland Antitrust Act, from any person allegedly engaged in the act or practice. The assurance of discontinuance must be in writing, filed with and subject to the approval of the Court of the county where the assuring party resides or has its principal place of business.

JJVC I is a Florida corporation having its principal place of business in Jacksonville, FL. JJVC I distributes contact lenses for retail sale, to retail dealers within the State of Maryland, including Baltimore County, Maryland. For the purpose of this Assurance of Discontinuance only, JJVC I accedes to venue in Baltimore County, Maryland.

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and, for the purpose of this Assurance of Discontinuance only, the defendant JJVC I consents to jurisdiction

¹ In pleadings it has filed in this case, JJVC I has expressed the view that the Maryland Antitrust Act as applied, is unconstitutional. The Attorney General disagrees. Solely for purposes of approval and enforcement of this Assurance of Discontinuance, JJVC I waives the right to assert that constitutional argument as a defense to approval or enforcement of this Assurance.

over this action pursuant to the Maryland Antitrust Act, Md. Com. Law Code Ann. §11-206(b) (2013).

II. APPLICABILITY

The provisions of this Assurance of Discontinuance shall be applicable to Johnson & Johnson Vision Care, Inc., 7500 Centurion Parkway, Suite 100; Jacksonville, Florida 32256, including its successors, divisions, subsidiaries, and assigns.

III. RELIEF

Unless Md. Com. Law Code §11-204(b) is repealed or held unconstitutional, for a period of five (5) years from the date of judicial approval of this Assurance of Discontinuance, JJVCI will not in any manner, directly or indirectly, or through any corporation, subsidiary, division or other device, enter into any contract, conspiracy, agreement, or understanding with any retail seller of JJVCI brand contact lenses that requires the retail seller to sell contact lenses at or above a minimum retail price in Maryland. This Assurance of Discontinuance does not limit the ability of JJVCI to impose unilateral price policies that do not involve any contract, conspiracy, agreement, or understanding with any retail seller of JJVCI brand contact lenses.

IV. CIVIL PENALTIES, FEES AND COSTS

In its Complaint, the State sought imposition of civil penalties, fees and costs. While continuing to deny that its conduct violated Maryland law, and solely to avoid the costs and risks of litigation, JJVCI has agreed to pay a civil penalty of \$50,000.00 in connection with this Assurance of Discontinuance. Payment shall be made by wire transfer to the Office of the Attorney General no later than ten (10) calendar days from the date JJVCI receives notice that this Assurance of Discontinuance has been signed by a Judge of the Circuit Court for Baltimore County. The State has agreed to accept that sum in settlement of all of its claims in the

Complaint and in full satisfaction of all remedies available to the State in this action, including monetary claims and demand for a civil penalty.

V. ENFORCEMENT

If the Attorney General believes that this Assurance of Discontinuance has been violated, he/she may apply to the Court for an order of contempt. Before doing so, the Attorney General shall give JJVCI written notice with reasonable specificity of the facts supporting his/her belief that the Assurance of Discontinuance has been breached, and a reasonable opportunity for JJVCI to cure any alleged violations. If the Court finds that JJVCI has breached this Assurance of Discontinuance and failed to cure that breach after notice and a reasonable opportunity to do so, the Court may order any statutory remedy appropriate to cure the breach, including specific performance or other equitable relief.

If Md. Com. Law Code §11-204(b) is repealed or held unconstitutional, this Assurance of Discontinuance shall be deemed null and void, and JJVCI reserves the right in such circumstances to move for relief from the Assurance of Discontinuance.

VI. JURISDICTION RETAINED

Jurisdiction shall be retained by this Court for five (5) years from the date of approval of this Assurance of Discontinuance, for the purpose of enabling any party to apply for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Assurance of Discontinuance; for the purpose of enabling the Attorney General to establish proof of failure to comply with this Assurance by JJVCI; or for the purpose of enabling the Attorney General in any subsequent litigation based upon a failure to comply with this Assurance of Discontinuance by JJVCI to establish proof of a violation of the Maryland

Antitrust Act after the effective date of this Assurance. This Assurance will become effective on the date approved by the Court.

BY CONSENT:

STATE OF MARYLAND, BY:



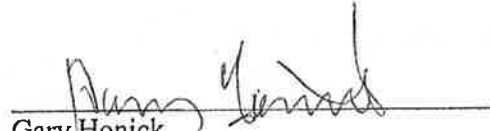
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The Court has reviewed the papers filed in this matter, determines that no testimony has been taken in this action, finds that venue is proper, and, pursuant to Md. Com. Law Code Ann. §11-206(c), approves the Assurance of Discontinuance. Subject to paragraph VI, above, this case and action is closed with each party to bear its own costs.

DATED: 3/23/17


JUDGE