

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

January 9, 2018

Tracy A. Uhrin, Esquire
Merrimack County Superior Court
PO Box 2880
Concord, NH 03302-2880

RE: New Hampshire Snowmobile Association

Dear Clerk Uhrin:

Enclosed please find the State's Assurance of Discontinuance for filing with the court.

Thank you for your assistance in this matter.

Sincerely,

Jennifer L. Foley, #10519
Assistant Attorney General
Consumer Protection & Antitrust Bureau
(603) 271-7987

JLF/kaw
Enclosure

**THE STATE OF NEW HAMPSHIRE
MERRIMACK, SS SUPERIOR COURT**

**IN THE MATTER OF:
NEW HAMPSHIRE SNOWMOBILE ASSOCIATION**

ASSURANCE OF DISCONTINUANCE

NOW COMES the State of New Hampshire by and through the Office of the Attorney General, and the New Hampshire Snowmobile Association, and enter into the following Assurance of Discontinuance pursuant to RSA 358-A:7.

Parties

1. Gordon J. MacDonald is the Attorney General of the State of New Hampshire. He is authorized by NH RSA 358-A:4, III and NH RSA 358-A:6, IV to seek injunctive relief, restitution, civil penalties, and recovery of legal costs and expenses against any person who he has reason to believe has engaged in or is about to engage in unfair method of competition or unfair or deceptive act or practice in the conduct of trade or commerce in violation of RSA 358-A:2, including RSA 358-A:2, XIV, and to enter into this Assurance by and through the Consumer Protection and Antitrust Bureau (the "Bureau"), in settlement of claims which could be raised under RSA 358-A.

2. New Hampshire Snowmobile Association ("NHSA") is a nonprofit corporation organized under NH RSA 292 and is located at 614 Laconia Road, Unit 4, Tilton, New Hampshire. It is governed by a Board of Directors including positions for executive officers and county directors. NHSA also employs a full-time executive director. It is also a charitable organization subject to the registration and reporting requirements of RSA 7:19; 28, I and II.

3. NHSA's stated purpose in its governing documents includes, among other things, promoting and fostering safe snowmobiling in New Hampshire and promoting snowmobile tourism in New Hampshire. Its membership includes local snowmobile clubs who chose to join NHSA. NHSA operate as a platform for addressing issues common to local snowmobile clubs and the snowmobiling community, and it serves on the New Hampshire statewide trail system advisory committee, NH RSA 216-F:5.

INTRODUCTION

4. In September and November of 2016, the State received complaints against NHSA relating to, among other things, NHSA's operation of its website to solicit and procure online membership sales for local snowmobile clubs ("NHSA online club

membership sales portal”) as allegedly violating state antitrust laws and state consumer protection laws.

5. The State conducted an investigation through the Bureau, which included interviewing witnesses and collecting documents from various sources. *See* NH RSA 358-A:1 *et seq.*; NH RSA 356:1 *et seq.*

6. The subject matter of the Bureau’s investigation included alleged price fixing conduct, and related unfair method of competition and unfair or deceptive practices in facilitating and securing agreements from NHSA member clubs to set uniform club dues for consumers when selling club memberships through NHSA’s online club membership sales portal, and in requiring consumers who use NHSA’s online club membership sales portal to also become individual NHSA members without sufficiently informing of, or providing an option regarding, a dual membership purchase. (“Matters Investigated”). The scope of this Assurance is the Matters Investigated only.

7. As a result of the Bureau’s investigation, the State has alleged that NHSA engaged in price fixing conduct in violation of NH RSA 356:2 and NH RSA 358-A:2, and NHSA engaged in unfair method of competition and/or unfair or deceptive conduct in violation of NH RSA 358-A:2. (“Allegations”). Background underlying these Allegations is set forth in the succeeding section of this Assurance.

8. Based on the Allegations of violations pertaining to state antitrust laws, the State could have pursued an action claiming violation of RSA 358-A:2 and alleged that the price fixing conduct comprised unfair or deceptive acts in the course of trade or commerce. *See* NH RSA 358-A:2 & :2, XIV.

9. This Assurance does not constitute an admission that NHSA has violated the Consumer Protection Act, NH RSA ch. 358-A *et seq.*, or the Combination and Monopolies Act, NH RSA ch. 356 *et seq.*

ALLEGATIONS

10. Local snowmobile clubs maintain snowmobile trails within their club areas throughout New Hampshire, and the trail system runs about 7,000 miles across the state connecting businesses and including major trail corridors.

11. A local snowmobile club may receive state grant-in-aid, when eligible and as funds are available, as part of their revenue for maintaining trails so long as it is an organized dues-paying group of snowmobile users with bylaws, and registered with the secretary of state as a nonprofit organization. NH RSA 215-C:1, XVI; :39.

12. Some local snowmobile clubs serve as registration agents for consumers registering their snowmobile in order to ride New Hampshire trails. *See* NH RSA ch. 214-A *et seq.*; NH RSA 215-C:39.

13. A statutory registration discount is available to an individual registering a snowmobile who provides proof at the time of registration that the individual is a member of an organized New Hampshire nonprofit snowmobile club which is a member of NHSA. *See* NH RSA 215-C:39, I, III.

14. Consumers are not required by current state law to purchase an individual NHSA membership in order to be eligible for joining a local snowmobile club or for obtaining the statutory registration discount. *See* NH RSA 215-C:39.

15. Historically, all local snowmobile clubs have joined NHSA.

16. Each local snowmobile club operates as an independent entity and establishes its own club dues offered to consumers. Local snowmobile clubs solicit and sell club memberships to consumers at various locations such as at club houses, at snowmobile registration agent sites, through paper mailings, and/or through club website portals.

17. In 2015, NHSA undertook efforts to develop an online club membership sales portal on its website in order to facilitate local snowmobile clubs selling club memberships to consumers through an electronic means, and to facilitate a uniform voucher system as proof of eligibility for the statutory registration discount available under NH RSA 215-C:39.

18. When developing this online system, NHSA determined that any participating NHSA club must charge a uniform dues rate of \$35 for each club membership when selling its local club memberships to consumers through NHSA's online club membership sales portal.

19. In 2015 and 2016, NHSA distributed to its NHSA club members Letters of Understanding communicating, among other things, the condition for setting uniform club dues for participating in NHSA's online club membership sales portal. The majority of NHSA club members agreed to do so.

20. NHSA's online club membership sales portal operated throughout 2016 and for part of 2017. For each \$35 club membership sold through NHSA's online club membership sales portal, NHSA remitted \$25 to the local club for which the consumer purchased membership and NHSA automatically retained \$10 as payment for the consumer's additional NHSA membership. NHSA also charged a \$2 transaction fee.

21. NHSA's online club membership sales portal, among its purposes, facilitates the efficient solicitation of club memberships including for local snowmobile clubs that may have a difficult time directly selling memberships to consumers, electronically or otherwise.

22. Selling club memberships through an electronic means meaningfully enhances a given local snowmobile club's opportunity and ability to reach a greater

volume of consumers, including those who purchase club memberships for the purpose of obtaining a statutory registration discount.

COMPLIANCE OBLIGATIONS

NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

23. NHSA shall not solicit or facilitate agreement among local snowmobile clubs to set uniform club membership dues as a condition for NHSA club members participating in NHSA's online system for selling to consumers memberships in local snowmobile clubs.

24. Except as otherwise required in order to comply with applicable law and/or regulations, NHSA shall not set as a condition for a local club's membership in NHSA, or participation in the NHSA's online sales portal, that every member of that local club purchase a membership in the NHSA. Nothing herein shall prevent NHSA from requiring a local club also to offer to its local club members the ability to become members of NHSA, provided that no separate fee is charged by NHSA for such NHSA memberships independent of the dues charged by NHSA to its member clubs.

25. In its online or printed promotion, marketing, sale and/or distribution of memberships in a local snowmobile club and/or in NHSA, NHSA shall not make any claim that is false, misleading, or deceptive, including but not limited to:

- representing, or making misleading statements or omissions, to consumers or to NHSA membership that individuals must purchase a NHSA membership in order to be eligible for the statutory registration discount for snowmobiles under NH RSA 215-C:39 or similar applicable state law or regulatory provision.
- representing, or making misleading statements or omissions, to consumers or to NHSA membership to the effect that purchase by individuals of dual membership in both a local club and NHSA is required by law and/or regulations, or communicating that NHSA's online system is the exclusive manner for purchasing local snowmobile club memberships.

Whether NHSA's online or printed statements comprise a false, misleading, or deceptive claim must account for applicable law and/or regulations then in effect.

26. NHSA agrees to maintain and comply with written policies and procedures to ensure that its online membership sales program conforms to these Compliance Obligations.

27. NHSA agrees to disseminate this Assurance of Discontinuance to its NHSA member clubs by electronic or other means intended to effectuate actual receipt, within five (5) business days of the effective date of this Assurance. NHSA agrees to

send confirmation of completion to the following representative for the Attorney General: Jennifer Foley, Assistant Attorney General, Jennifer.Foley@doj.nh.gov.

RECITALS

28. NHSA enters into this Assurance for the sole purposes of resolving any current claims that the State may have relating to the Allegations arising from the Matters Investigated by the Bureau under NH RSA ch. 358-A and NH RSA ch. 356. NHSA understands that this Assurance does not provide any release for other potential claims under laws other than NH RSA ch. 358-A and NH RSA ch. 356 such as claims that could arise under state tax laws, securities laws, or charitable trust laws; or for any action to enforce this Assurance and subsequent, related orders or judgments.

29. NHSA understands and agrees, as set forth in NH RSA 358-A:7, that this Assurance of Discontinuance shall be filed with the Merrimack County Superior Court, that matters closed by this Assurance may be reopened by the Attorney General at any time that it is in the public interest to do so, and that evidence of any violation of this Assurance shall constitute prima facie evidence of a violation of RSA 358-A in any action thereafter commenced by the Attorney General.

30. This Assurance does not create a waiver or limit NHSA's legal rights, remedies, or defenses in any other action and does not waive or limit NHSA's right to defend itself from, or make any argument in, any other matter, claim, or suit, including but not limited to any investigation or litigation relating to the subject matter or terms of this Assurance.

31. This Assurance shall not create a private cause of action or confer any right to any third party for violation of any federal or state law except that the Bureau may file an action to enforce the terms of this Assurance.

32. The Parties acknowledge that no other promises, representations, or agreements of any nature have been made or entered into by the parties. The parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

33. This Assurance shall be construed under New Hampshire law.


34. This Assurance may be changed, altered, or modified only by written agreement of the Parties, by court order, or by a material change in applicable law and/or regulations.

35. NHSA has sought and received the advice of its legal counsel regarding all matters related to this Assurance, including the effects of adoption of this Assurance.


36. NHSA understands and agrees that this Assurance of Discontinuance shall be effective on the date that it is accepted through signature by the Attorney General or his representative.

NEW HAMPSHIRE SNOWMOBILE ASSOCIATION

By signing below, I certify that I am authorized by, New Hampshire Snowmobile Association, to enter into this Assurance of Discontinuance, and that my signature irrevocably binds that entity to this agreement.



NHSA President
Beth Horvath-Palmer
PO Box 249
N. Sutton, NH 03260
(603) 927-6364



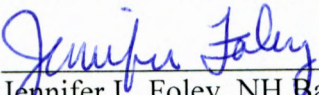
NHSA Legal Counsel
Frank P. Spinella, Jr.
Wadleigh, Starr & Peters, PLLC
95 Market Street
Manchester, NH 03101
(603) 206-7277
www.wadleighlaw.com

Date: January 9, 2018

Date: January 9, 2018

ATTORNEY GENERAL ACCEPTANCE

This Assurance is accepted on January 9, 2018 by the Attorney General.

THE STATE OF NEW HAMPSHIRE
Gordon J. MacDonald, Attorney General


Jennifer L. Foley, NH Bar # 10519
Assistant Attorney General
Consumer Protection and Antitrust Bureau
NH Department of Justice
33 Capitol Street
Concord, NH 03301