

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF
PENNSYLVANIA
By ATTORNEY GENERAL
MICHELLE A. HENRY,

Petitioner,

v.

PETSMART LLC,

Respondent.

CIVIL DIVISION

Code 020 – Equity

Case No. _____

**ASSURANCE OF VOLUNTARY
COMPLIANCE**

Filed on Behalf of Petitioner:

COMMONWEALTH OF PENNSYLVANIA
BY ATTORNEY GENERAL MICHELLE A.
HENRY

Counsel of Record for this Party:

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ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General Michelle A. Henry (“Petitioner” or “Commonwealth”), which caused an investigation to be made into the business practices of PetSmart LLC (“Respondent”), pursuant to 73 P.S. § 201-1, *et seq.* (“Consumer Protection Law”), and states the following:

PARTIES

WHEREAS, Petitioner is the Commonwealth of Pennsylvania, Office of Attorney General, with offices located at 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222; and, 15th Floor, Strawberry Square, Harrisburg Pennsylvania 17120;

WHEREAS, Respondent is PetSmart LLC, a limited liability company organized under the laws of the State of Delaware with its principal place of business at 19601 North 27th Avenue, Phoenix, Arizona 85027; and

WHEREAS, Respondent PetSmart LLC, formerly doing business as PetSmart, Inc., has been registered with the Commonwealth of Pennsylvania, Department of State, Bureau of Corporations and Charitable Organizations, as a foreign limited liability company since December 30, 1993.

BACKGROUND

WHEREAS, Respondent has engaged in trade and commerce within the Commonwealth of Pennsylvania by operating retail store locations in Pennsylvania as well as advertising, marketing, offering for sale, selling, and/or providing pet-related products (“Pet Products”) and pet-related services (“Pet Services”) in Pennsylvania;

WHEREAS, in connection with Respondent’s Pet Services, Respondent offers, and provides a career development program (the “Program”) to its Pennsylvania employees who wish to learn the skills needed to become a pet groomer;

WHEREAS, Respondent, during a limited period of time, made certain representations in connection with its offering of the Program to Pennsylvania employees and prospective employees that represented that certain aspects of its Program were “FREE”;

WHEREAS, beginning on January 1, 2018, Respondent required certain eligible Pennsylvania employees who elected to participate in the Program to enter into an agreement with Respondent (the “Agreement”) related to the Program before participating in the Program;

WHEREAS, the Agreement contains acknowledgements from the employee that the training is voluntary, and that the employee is signing the Agreement voluntarily;

WHEREAS, under the terms of the Agreement, Pennsylvania employees who participated in the Program and entered into the Agreement promised to pay Respondent the sum of \$5,000.00 (\$5,500.00 if the respective employee chose to receive grooming tools from Respondent) if their employment with Respondent terminated within two years of commencing the Program and half those amounts if the employee left after one year but within two years of commencing the Program;

WHEREAS, the Agreement also states that former employees authorize Respondent to withhold wages, salaries, vacation, or expense reimbursement due to the employee to satisfy the employee’s obligations under the Agreement in the event of termination, and further states that

former employees are required to pay any amounts owed to Respondent within 30 days of their voluntary or involuntary termination of employment;

WHEREAS, the Agreement further states that a former employee's failure to pay any amount due under the Agreement may result in Respondent filing a civil action against the former employee to collect the monetary damages, which may include: (i) costs and charges of collection and reasonable attorney's fees, if allowed by law; and (ii) interest on the full balance owed, at the highest rate permitted by law;

WHEREAS, Respondent warrants to the Commonwealth that it never ultimately withheld any wages, salaries, vacation, or expense reimbursement owed to a former Pennsylvania employee to satisfy the employee's obligations under the Agreement;

WHEREAS, Respondent warrants to the Commonwealth that it never initiated a civil action against a former Pennsylvania employee to collect monetary damages for failing to pay amounts owed to Respondent under the Agreement;

WHEREAS, it is the Commonwealth's position, due to representations the Respondent made relating to the Program being "FREE," that the Agreement is unenforceable under Pennsylvania law;

WHEREAS, the Commonwealth's position is disputed by Respondent;

WHEREAS, Respondent warrants to the Commonwealth that it voluntarily ceased use of the Agreement in Pennsylvania in 2022 and subsequently notified all remaining Pennsylvania employees still bound by the Agreements that they were released from all obligations therein;

WHEREAS, Respondent warrants to the Commonwealth that it directed the third-party debt collection agency to which it made referrals, and which collected payment (since voluntarily

reimbursed), from one Pennsylvania resident subsequent to their termination of employment with Respondent, to cease all collection efforts related to the Agreement in Pennsylvania in 2022; and

WHEREAS, Respondent warrants to the Commonwealth that it has not furnished any negative credit history to a consumer reporting agency, and that it has requested that the third-party debt collection agency to which it made referrals remove any negative credit history previously furnished to a consumer reporting agency by the third-party debt collection agency in regard to any Agreement.

VIOLATIONS

WHEREAS, based upon its investigation, the Commonwealth alleges that Respondent has engaged in conduct that violates the Consumer Protection Law by:

1. Representing that goods or services have a sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have, in violation of Section 201-2(4)(v) of the Consumer Protection Law, 73 P.S. § 201-2(4)(v); and
2. Engaging in other conduct which creates a likelihood of confusion or of misunderstanding, in violation of Section 201-2(4)(xxi) of the Consumer Protection Law, 73 P.S. § 201-2(4)(xxi);

WHEREAS, Respondent disputes these allegations and contends its practices were in compliance with the laws of the Commonwealth of Pennsylvania;

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Commonwealth pursuant to Section 201-5 of the Consumer Protection Law, in lieu of commencing statutory proceedings provided under Section 201-4 of the Consumer Protection Law. 73 P.S. §§ 201-4 and 201-5; and

WHEREAS, under Section 201-5 of the Consumer Protection Law, this Assurance of Voluntary Compliance shall not be considered an admission of a violation for any purpose. *See* 73 P.S. § 201-5.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade and commerce within the Commonwealth, Respondent agrees for itself; its successors, assigns, officers, partners, agents, representatives, employees, franchisees, retail divisions or stores and all other persons acting on its behalf; jointly or individually, directly or indirectly, or through any corporate or business device, as follows:

I. The Above Recitals are Incorporated Herein as Though Fully Set Forth.

II. Non-Monetary Relief

A. Respondent SHALL NOT, in the future, advertise or offer “free” services or goods unless all of the terms, conditions, and obligations of the “free” offer are set forth clearly and conspicuously at all times, or as permitted under the law; and

B. Respondent SHALL NOT, in the future, use agreements with its employees that contain contractual terms stating that its employees are required to pay Respondent for training costs that Respondent incurred if the worker’s employment terminates within a specified time period, unless such terms are clearly, conspicuously, and adequately disclosed or otherwise compliant with Pennsylvania law, including any amendments thereto, and Federal law, including any amendments thereto.

III. Monetary Relief

A. **Costs** – Without admission of fault or liability, upon Respondent signing this Assurance of Voluntary Compliance, Respondent is responsible for and shall pay to the Commonwealth a total payment of TWENTY THOUSAND and 00/100 Dollars (\$20,000.00) in Costs, which shall be distributed to the Commonwealth of Pennsylvania, Office of Attorney

General, to be used for future public protection and educational purposes. Civil penalties and restitution have not been assessed as part of this Assurance of Voluntary Compliance.

B. **Payment Terms** - Payment shall be made by certified check, cashier's check, wire, or money order, made payable to the "Commonwealth of Pennsylvania, Office of Attorney General;" and forwarded to Deputy Attorney General Kevin R. Green, Office of Attorney General, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania, 15222.

IV. Miscellaneous Terms

A. The Court of Common Pleas of Allegheny County shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent for the purpose of enforcing its terms.

B. Nothing in this Assurance of Voluntary Compliance shall be construed to waive or limit any right of action by a consumer or a local, state, federal, or other governmental entity.

C. Time shall be of the essence with regards to Respondent's obligations hereunder.

D. Respondent further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance, whether required prior to, contemporaneous with or subsequent to the Effective Date, as defined herein.

E. Respondent understands and agrees that if Respondent has made any false statement in or related to this Assurance of Voluntary Compliance, that such statement is made pursuant to and under penalty of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

F. This Assurance of Voluntary Compliance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance of Voluntary Compliance may be delivered

by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

G. This Assurance of Voluntary Compliance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance of Voluntary Compliance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance of Voluntary Compliance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

H. Respondent agrees by the signing of this Assurance of Voluntary Compliance that Respondent shall abide by each of the aforementioned provisions and that the breach of any one of these terms, including but not limited to the payment terms, shall be sufficient warrant for the Commonwealth of Pennsylvania to seek penalties provided for under Section 201-8(a) of the Consumer Protection Law, 73 P.S. § 201-8(a), and to seek any other equitable relief which the Court deems necessary or proper, up to and including forfeiture of the right to engage in trade or commerce within the Commonwealth of Pennsylvania.

I. Any failure of the Commonwealth to exercise any of its rights under this Assurance of Voluntary Compliance shall not constitute a waiver of its rights hereunder.

J. The “Effective Date” of this Assurance of Voluntary Compliance shall be the day it is filed with the Court.

K. If any clause, provision or section of this Assurance of Voluntary Compliance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or

unenforceability shall not affect any other clause, provision or section of this Assurance of Voluntary Compliance and this Assurance of Voluntary Compliance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

L. Respondent shall not represent or imply that the Commonwealth acquiesces in, or approves of Respondent's past or current business practices, efforts to improve its practices, or any future practices that Respondent may adopt or consider adopting.

WITNESSETH, that the parties, intending to be legally bound, have hereto set their hands and seals:

[SIGNATURES ON FOLLOWING PAGES]

FOR THE PETITIONER:

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

MICHELLE A. HENRY
ATTORNEY GENERAL

Date: 08/14/2024

By:



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FOR THE RESPONDENT:

PetSmart LLC

Date: Aug. 7, 2024

By: 

Maureen Kats, Esq.
Vice President and Associate General Counsel
PetSmart LLC
19601 North 27th Avenue
Phoenix, AZ 85027

Counsel for Respondent PetSmart LLC

Date: August 7, 2024

By: 

Douglas K. Rosenblum, Esq.
Pietragallo Gordon Alfano
Bosick & Raspanti, LLP
1818 Market Street, Suite 3402
Philadelphia, PA 19103
Counsel for Respondent

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CERTIFICATE OF SERVICE

I, Kevin R. Green, Esq., hereby certify that a true and correct copy of the foregoing *Assurance of Voluntary Compliance* was served on the below-listed Counsel for Respondent via U.S. First Class Mail and Electronic Mail on August 14, 2024:

Douglas K. Rosenblum, Esq.
Pietragallo Gordon Alfano
Bosick & Raspanti, LLP
1818 Market Street, Suite 3402
Philadelphia, PA 19103
Email: DKR@pietragallo.com
Counsel for Respondent

By:



Kevin R. Green (PA ID No. 321643)
Deputy Attorney General
For the Commonwealth

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CERTIFICATE OF COMPLIANCE

I, Kevin R. Green, Esq., hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 08/14/2024

By:



Kevin R Green (PA ID No. 321643)
Deputy Attorney General
For the Commonwealth