

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

COVER SHEET

OPSS/KRZ/TPHER1
8 July 2020
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6D-20-007437

FILED

Plaintiff(s)

Commonwealth of Pennsylvania by
Attorney General Josh Shapiro

2020 JUL -8 AM 9:50
CIVIL DIVISION
ALLEGHENY COUNTY PA

Case Number :

GD - 20 - 7437

Type of pleading :

Assurance of Voluntary
Compliance

Code and Classification : 020

Filed on behalf of

Commonwealth of Pennsylvania
by Attorney General Josh
Shapiro

Defendant(s)

Vs

Shawn Vogt d/b/a Vogt True Value

(Name of the filing party)

- Counsel of Record
- Individual, If Pro Se

Name, Address and Telephone Number :

Phillip E. Raymond
Deputy Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222
412-880-0520

Attorney's State ID : 325734

Attorney's Firm ID : NA

**IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA**

IN THE MATTER OF	:	
	:	CIVIL DIVISION -
COMMONWEALTH OF PENNSYLVANIA	:	EQUITY
Acting by Attorney General	:	
JOSH SHAPIRO	:	
	:	No. _____
Petitioner,	:	
	:	
v.	:	
	:	
SHAWN VOGT D/B/A VOGT TRUE VALUE	:	
	:	
	:	
	:	
	:	
Respondent.	:	

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro (hereinafter the “Petitioner” or “Commonwealth”), which has caused an investigation to be made into the business practices of Shawn Vogt d/b/a Vogt True Value (hereinafter “Respondent”), pursuant to the Pennsylvania *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, *et seq.* (hereinafter the “Consumer Protection Law”), and states the following:

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

WHEREAS, Respondent Shawn Vogt is an adult individual who conducts business from 1308 E. Carson St. Pittsburgh, Pennsylvania 15203;

WHEREAS, Respondent has at all times relevant and material hereto, engaged in trade and commerce within the Commonwealth of Pennsylvania through the operation of a franchised hardware store under the business name “Vogt True Value;”

WHEREAS, Respondent has at all times relevant and material hereto operated Vogt True Value as a sole proprietorship;

WHEREAS, based on its investigation, the Commonwealth contends that Respondent has engaged in conduct in violation of the Consumer Protection Law and the Pennsylvania *Price Gouging Act*, 73 P.S. §§ 232.1, *et seq.* (hereinafter the “Price Gouging Law”);

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 under Section 201-4 thereof;

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. 73 P.S. § 201-5;

WHEREAS, this Assurance of Voluntary Compliance does not constitute an approval by the Commonwealth of any of the Respondent’s former or current business practices;

WHEREAS, the Respondent agrees to cease and desist from violating the Consumer Protection Law and the Price Gouging Law and desires to comply with the civil laws of the Commonwealth; and

WHEREAS, the Effective Date of this Assurance of Voluntary Compliance shall be the date upon which it is executed by both parties.

SETTLEMENT TERMS

NOW THEREFORE, Respondent agrees for himself, his successors, assigns, officers, partners, agents, representatives, employees, and all other persons acting on his behalf, jointly or individually, directly or indirectly or through any corporate or business device, as follows:

I. Facts and Legal Violations

A. Under the Price Gouging Law, during and within 30 days of the termination of a state of disaster emergency declared by the Governor pursuant to the provisions of 35 Pa. C.S § 7301(c) (relating to general authority of the Governor), it is unlawful for any party within the chain of distribution of consumer goods or services or both to sell or offer to sell goods or services within the geographic region that is the subject of the declared emergency for an amount which represents an unconscionably excessive price. 73 P.S. § 232.4(a).

B. In addition, it is *prima facie* evidence that a price is unconscionably excessive if, during and within thirty (30) days of the termination of a state of disaster emergency, any party within the chain of distribution charges a price that exceeds an amount equal to or in excess of twenty percent (20%) of the average price at which the same or similar consumer goods or services were obtainable in the affected area during the last seven (7) days immediately prior to the declared state of emergency. 73 P.S. § 232.4(b).

C. On March 6, 2020, the Governor of Pennsylvania declared a State of Disaster Emergency for the Commonwealth of Pennsylvania related to the COVID-19 pandemic.

D. As of the Effective Date of this Assurance of Voluntary Compliance, a State of Disaster Emergency is currently in place or the Commonwealth of Pennsylvania.

E. Respondent is involved in the chain of distribution of KN95 Face Masks (hereinafter “KN95 Masks”). Respondent sells KN95 Masks to consumers primarily for personal, family or household purposes.

F. During the period of a State of Disaster Emergency, as declared on March 6, 2020, Respondent sold or offered to sell KN95 Masks for an unconscionably excessive price in violation of the Price Gouging Law and the Consumer Protection Law.

G. During the State of Disaster Emergency, Respondent charged a price for KN95 Masks in excess of twenty percent (20%) of the average price that the product or a similar product was offered in the geographic region in the seven (7) days prior to March 6, 2020.

H. The Commonwealth alleges that by reason of the aforesaid conduct, Respondent’s methods, acts or practices constitute violations of the Price Gouging Law, including, but not limited to, Section 232.4(a), which prohibits any party within the chain of distribution of consumer goods or services or both to sell or offer to sell the goods or services within the geographic region that is the subject of the declared emergency for an amount which represents an unconscionably excessive price. 73 P.S. § 232.4(a).

I. The Commonwealth alleges that by reason of the aforesaid conduct, Respondent’s aforesaid methods, acts or practices constitute unfair methods of competition and unfair acts or practices in the conduct of trade or commerce prohibited by Section 201-3 of the Consumer Protection Law, as defined by Section 201-2 of said Law, including, but not limited to, the following:

1. Section 201-2(4)(v), which prohibits representing that goods or services have a sponsorship, approval, characteristics, ingredients, uses, benefits or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have. 73 P.S. § 201-2(4)(v); and

2. Section 201-2(4)(xxi), which prohibits engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding. 73 P.S. § 201-2(4)(xxi).

73 P.S. §§ 201-3 and 201-2(4)(v) and (xxi).

II. Injunctive Relief & Affirmative Relief

A. Respondent SHALL NOT, in the future, engage in conduct which violates the Consumer Protection Law and any future amendments thereto, including, but not limited to:

1. Respondent SHALL NOT represent that goods or services have a sponsorship, approval, characteristics, ingredients, uses, benefits or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have as prohibited by the Consumer Protection Law at 73 P.S. § 201-2(4)(v); and

2. Respondent SHALL NOT engage in other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding as prohibited by the Consumer Protection Law at 73 P.S. § 201-2(4)(xxi).

73 P.S. §§ 201-3 and 201-2(4)(v) and (xxi).

B. Respondent SHALL NOT, in the future, engage in conduct which violates the Price Gouging Law and any future amendments thereto, including, but not limited to,

selling or offering to sell the goods or services within the geographic region that is the subject of the declared emergency for an amount which represents an unconscionably excessive price as prohibited by the Price Gouging Law at 73 P.S. § 232.4(a).

C. Respondent SHALL fully comply with any and all provisions of the Consumer Protection Law, including any amendments thereto, and is permanently enjoined from any violation thereof.

D. Respondent SHALL fully comply with any and all provisions of the Price Gouging Law, including any amendments thereto, and is permanently enjoined from any violation thereof.

III. Monetary Relief

A. Respondent hereby agrees to pay the amount of ONE HUNDRED TEN and 25/100 Dollars (\$110.25) (“Costs”) to the Commonwealth of Pennsylvania, Office of Attorney General, to be allocated as costs to be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, to be deposited in an interest-bearing account from which both principal and interest shall be expended for public protection and education purposes.

B. **Suspended Civil Penalties** – The sum of ONE THOUSAND EIGHT HUNDRED and 00/100 Dollars (\$1,800.00) as Civil Penalties (“Civil Penalties”) shall be suspended and shall not become due and payable by Respondent to the Commonwealth unless and until a court determines that Respondent has engaged in acts or practices that violate any of the terms of this Assurance of Voluntary Compliance.

1. Should the Civil Penalties be found to be due and payable by a court, the payment shall become immediately due and owing by Respondent.

2. Respondent acknowledges that the requirement to pay the Civil Penalties, resulting from a violation of any of the terms of this Assurance of Voluntary Compliance, shall be in addition to, and not in lieu of, any other sanctions that may be imposed under Section 201-8 of the Consumer Protection Law or any other applicable statute or rule of law. 73 P.S. § 201-8(a).

C. **Payment Terms-** Respondent agrees to pay the above-referenced amount toward Costs in accordance with the terms of Paragraph III(A) herein, by certified check, cashier's check, or money order, made payable to the "Commonwealth of Pennsylvania, Office of Attorney General," and forwarded to the Office of Attorney General, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222, upon Respondent's execution of the Assurance of Voluntary Compliance.

D. **Additional Restitution** - Respondent acknowledges that there may be consumers who have been harmed by the conduct cited herein; and, Respondent agrees to pay restitution (hereinafter "Additional Restitution"), as follows:

1. Respondent shall pay Additional Restitution, consistent with Section 201-4.1 of the Consumer Protection Law, to any consumer who submits a claim to the Commonwealth within sixty (60) days of the Effective Date of this Assurance of Voluntary Compliance, and:

2. Who provides adequate documentation which supports his or her claim and/or complaint in the form of a sales receipt showing purchase of a KN95 mask(s) from Vogt True Value between April 22nd and April 23rd of 2020.

3. Any claim submitted by a consumer that is postmarked by the sixtieth (60th) day after the Effective Date of the Assurance of Voluntary Compliance shall be deemed timely.

4. The determination of whether a consumer shall receive Additional Restitution hereunder, the determination of the amount of any such Additional Restitution paid to such consumer, and the manner of payment shall be within the sole discretion of the Commonwealth.

5. The total Additional Restitution is capped at and shall not exceed One Thousand Twelve and 80/100 Dollars (\$1,012.80).

6. Respondent agrees to pay the Additional Restitution by certified check, cashier's check, or money order, made payable to the "Commonwealth of Pennsylvania, Office of Attorney General," and forwarded to the Office of Attorney General, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222 within thirty (30) days of the Commonwealth's submission of a demand to Respondent.

IV. Miscellaneous Terms

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

B. 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 execution of this Assurance of Voluntary Compliance.

C. The Court of Common Pleas of Allegheny County, Pennsylvania shall have jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondent for purposes of enforcement of this Assurance of Voluntary Compliance, violation of which shall be deemed a violation of an injunction issued pursuant to Section 201-4 of the Consumer Protection Law, so that a violation of this Assurance of Voluntary Compliance shall provide a jurisdictional basis for the Attorney General of this Commonwealth to request the Court to impose penalties as provided in the Consumer Protection Law and any other equitable relief which the Court deems necessary or proper.

D. Nothing contained herein shall be construed to waive any individual right of action by any consumer, person or entity, or any local, state, federal or other governmental entity.

E. 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.

F. 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 the 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.

G. 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.

H. Respondent understands and agrees that if he has made any false statements 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.

I. 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.

J. 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.

K. The terms of this Assurance of Voluntary Compliance are effective upon execution of the agreement by both parties. Due to limited courthouse operations in Allegheny County, the parties acknowledge that the filing of this Assurance of Voluntary

Compliance with the Court may be delayed. The parties agree that that this Assurance of Voluntary Compliance will be filed within thirty (30) days of resumption of normal courthouse functions in Allegheny County.

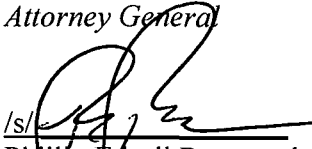
WHEREFORE, Respondent agrees by the signing of this Assurance of Voluntary Compliance to abide by each and every one of the aforementioned provisions and that breach of any of the terms of this Assurance of Voluntary Compliance shall be sufficient warrant for the Commonwealth of Pennsylvania to petition the Court, to assess penalties including but not limited to civil and other penalties as provided for under Sections 201-8, 201-9 and 201-9.1 of the Consumer Protection Law, and to order any other relief which the Court deems necessary or proper in accordance with the Consumer Protection Law.

Signatures on following page.

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

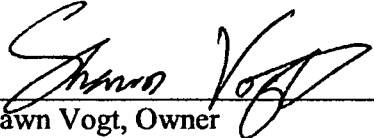
FOR THE PETITIONER:
COMMONWEALTH OF PENNSYLVANIA
JOSH SHAPIRO
Attorney General

Date: 7/8/2020

By: 
Phillip Edsall Raymond, Esq.
Deputy Attorney General
Attorney ID # 325734
Office of Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, Pennsylvania 15222

**FOR THE RESPONDENT:
SHAWN VOGT D/B/A VOGT TRUE
VALUE**

Date: 4/30/20

By 
Shawn Vogt, Owner
Vogt True Value
1308 E. Carson St.
Pittsburgh, Pennsylvania 15203

CERTIFICATE OF COMPLIANCE

I 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.

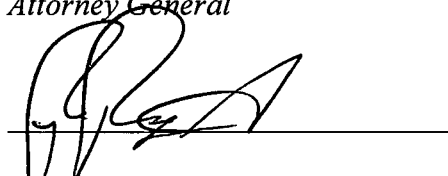
Submitted by:

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
Attorney General

Date: 7/8/2020

By:



Phillip Edsall Raymond
Deputy Attorney General
PA Attorney ID. No. 325734

Bureau of Consumer Protection
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222
Telephone: 412-880-0520
Facsimile: 412-880-0196
praymond@attorneygeneral.gov

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Allegheny County



For Prothonotary Use Only:

Docket No:

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint
 Writ of Summons
 Petition
 Transfer from Another Jurisdiction
 Declaration of Taking

(NA)

Lead Plaintiff's Name:
Commonwealth of PA by Attny. Gen. Shapiro

Lead Defendant's Name:
Shawn Vogt d/b/a Vogt True Value

Are money damages requested? Yes No

Dollar Amount Requested: within arbitration limits
(check one) outside arbitration limits

Is this a *Class Action Suit*? Yes No

Is this an *MDJ Appeal*? Yes No

Name of Plaintiff/Appellant's Attorney: Phillip E. Raymond

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other:

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other

 Employment Dispute: Discrimination
 Employment Dispute: Other

 Other:

CIVIL APPEALS

- Administrative Agencies
- Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other

 Zoning Board
 Other:

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other:

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other:

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations
 Restraining Order
 Quo Warranto
 Replevin
 Other: Assurance of Voluntary Compliance 73 P.S. 201-5

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional: