

VIRGINIA:

IN THE CIRCUIT COURT FOR FREDERICK COUNTY

COMMONWEALTH OF VIRGINIA,)
EX REL. MARK R. HERRING,)
ATTORNEY GENERAL,)
)
Plaintiff,)
)
v.)
)
CAPITAL MEATS, INC.,)
a Virginia corporation,)
)
Defendant.)
)

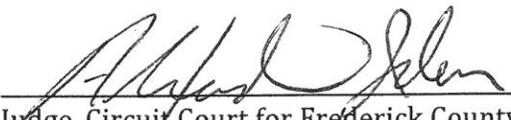
CIVIL ACTION NO. CL16-758

ORDER APPROVING AND ADOPTING ASSURANCE OF VOLUNTARY COMPLIANCE

Upon review of the Complaint and the Assurance of Voluntary Compliance (the "Assurance") entered into between Plaintiff Commonwealth of Virginia, *ex rel.* Mark R. Herring, Attorney General and Defendant Capital Meats, Inc., and with the consent of the parties, it is hereby ADJUDGED, ORDERED, and DECREED that:

1. The attached Assurance is hereby approved and adopted as an Order of this Court; and
2. The Clerk of this Court shall mail a certified copy of this Order to Mark S. Kubiak, Assistant Attorney General, Consumer Protection Section, 202 North 9th Street, Richmond, Virginia 23219, and to John C. Trent, Esquire, Putbrese, Hunsaker & Trent, P.C., 200 South Church Street, Woodstock, Virginia 22664.

Enter: 12/9/2016



Judge, Circuit Court for Frederick County
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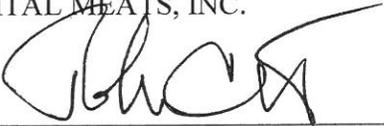
WE ASK FOR THIS:

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By: 
Mark S. Kubiak (VSB No. 73119)
Assistant Attorney General
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
Phone: (804) 786-7364
Fax: (804) 786-0122

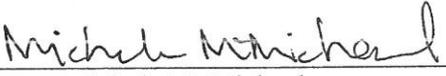
Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

CAPITAL MEATS, INC.

By: 
John C. Trent, Esquire (VSB No. 31431)
Putbrese, Hunsaker & Trent, P.C.
200 South Church Street
Woodstock, Virginia 22664
Phone: (540) 459-7646
Fax: (540) 459-7656

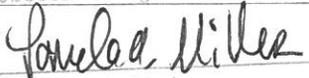
Counsel for Capital Meats, Inc.

CAPITAL MEATS, INC.

By: 
Michele McMichael

Its: Vice President

A Copy Attest:
Frederick County Circuit Court
Rebecca P. Hogan, Clerk

by 
Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT FOR FREDERICK COUNTY

_____)
 COMMONWEALTH OF VIRGINIA,)
 EX REL. MARK R. HERRING,)
 ATTORNEY GENERAL,)
)
 Plaintiff,)
)
 v.)
)
 CAPITAL MEATS, INC.,)
 a Virginia corporation,)
)
 Defendant.)
 _____)

CIVIL ACTION NO. _____

ASSURANCE OF VOLUNTARY COMPLIANCE

1. This Assurance of Voluntary Compliance (“Assurance”), arising under and pursuant to the Virginia Consumer Protection Act (“VCPA”), Virginia Code §§ 59.1-196 through 59.1-207, is entered into by the Commonwealth of Virginia, by, through and at the relation of its Attorney General, Mark R. Herring (the “Attorney General” or the “Commonwealth”), and Capital Meats, Inc. (“CMI” or the “Defendant”).

Purpose

2. The execution of this Assurance is for purposes of settlement and does not constitute an admission by the Defendant that it has violated the VCPA, the Virginia Home Solicitation Sales Act (“VHSSA”), Virginia Code §§ 59.1-21.1 through 59.1-21.7:1, or any other statute. The entry of this Assurance shall not be deemed an admission of any wrongdoing, and shall in no way be deemed an approval, endorsement or release by the Commonwealth, or by any of its agencies or employees, of any advertising or practice, or claims relating thereto, which are not specifically addressed by this Assurance or the Complaint filed simultaneously herewith.

Parties

3. The Plaintiff is the Commonwealth of Virginia, by, through and at the relation of Mark R. Herring, Attorney General of Virginia.

4. CMI is a Virginia corporation having its principal office at 351 North Maple Avenue, Martinsburg, West Virginia, 25402. CMI operates as an online and door-to-door seller of wholesale meat products to consumers in Virginia, among other locations. CMI previously was headquartered in Stephens City, Virginia (Frederick County).

Jurisdiction and Venue

5. CMI consents to and waives all objections to this Court's jurisdiction for all matters relating to this Assurance's entry, execution, monitoring, and enforcement. CMI further waives all objections it may have to venue in this Court for all matters relating to this Assurance's entry, execution, monitoring, and enforcement.

General Provisions

6. This Assurance shall be governed by the laws of the Commonwealth of Virginia.

7. This Assurance does not constitute an approval by the Attorney General of any of CMI's services or practices and CMI shall not make any representations to the contrary.

8. Nothing in this Assurance shall be construed as a waiver of whatever, if any, private rights of action any affected person may have relating to the conduct at issue.

9. Nothing in this Assurance shall permit any person or entity not a signatory hereto to enforce or rely upon any provision of this Assurance.

10. CMI agrees that this Assurance constitutes a legally-enforceable obligation of CMI in accordance with its terms.

11. Apart from this Assurance and the Complaint filed in this action, the Commonwealth shall not institute any civil proceeding or take any civil action against CMI, its

officers, directors, managers, employees, assigns, and agents, under the VCPA or the VHSSA for any conduct that occurred prior to the date this Assurance is signed by all parties and approved and adopted as an Order of the Court (the "Effective Date" of this Assurance) that is based on any service or practice addressed in this Assurance. The Parties agree that if CMI, or its officers, directors, managers, employees, assigns, and agents, provided any materially-false information to the Commonwealth during any settlement negotiations between the Parties, this release shall be null and void. The parties agree that, if CMI files for bankruptcy within ninety (90) days of any required payment under this Assurance, this release shall be null and void.

12. This Assurance applies to CMI, together with its officers, directors, managers, employees, assigns, and agents who are engaged in any aspect of the Defendant's advertising and sales activities.

13. This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the subject matter hereof. Any amendment or modification to this Assurance must be in writing and signed by a duly authorized representative of all parties hereto.

Terms

14. CMI voluntarily agrees to this Assurance without trial or adjudication of any issue of fact or law.

15. CMI shall hereafter advertise, offer, and sell goods and services to consumers only in compliance with the terms set forth below.

16. CMI, in its own name or doing business under any other trade name, and its officers, directors, managers, employees, assigns, and agents, with either actual or constructive knowledge of this Assurance shall be permanently enjoined from:

A. Violating the Virginia Consumer Protection Act, Virginia Code §§ 59.1-196 through 59.1-207;

B. Misrepresenting to consumers that the goods offered by CMI have certain quantities or characteristics, including representations that the goods are of a certain weight or quantity, when that is not the case;

C. Misrepresenting to consumers that the goods offered by CMI are of a particular standard or quality, including representations that the goods are good quality and non-processed, when that is not the case;

D. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction;

E. Violating the Virginia Home Solicitation Sales Act, Virginia Code §§ 59.1-21.1 through 59.1-21.7:1; and

F. Failing to provide consumers with a sales receipt that complies with Virginia Code §§ 59.1-21.3 and 59.1-21.4.

17. CMI shall provide consumers with notice of a right to cancel and a sales receipt with the content and in the form required by Virginia Code § 59.1-21.4. Such sales receipt shall include, at a minimum, the following language in ten-point bold-face type:

BUYER'S RIGHT TO CANCEL: If this agreement was solicited at a residence and you do not want the goods or services, you, the buyer, may cancel this transaction, without any penalty or obligation, at any time prior to midnight of the third business day after the date of this transaction.

Notice of Cancellation

Date of Transaction: _____

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice to Capital Meats, Inc., 351 N. Maple Avenue, Martinsburg, WV, 25401, not later than midnight of _____ (Date).

I hereby cancel this transaction.

Date: _____

Buyer's Signature: _____

18. If CMI provides any information on its website, or in any other manner, regarding a consumer's ability to cancel an order, such language shall be consistent with the requirements of Virginia Code § 59.1-21.4

19. Within thirty (30) days of the Effective Date, CMI shall provide a copy of this Assurance to its management, employees, and independent contractors, and take appropriate steps to ensure compliance with the terms of this Assurance. For a period of one (1) year from entry of this Assurance, CMI shall provide a copy of this Assurance to its new employees and independent contractors.

Civil Penalties and Attorney's Fees

20. The Commonwealth shall have judgment against, and shall recover from, the Defendant, the sum of Two Thousand Five Hundred Dollars (\$2,500.00) pursuant to § 59.1-206(A) of the VCPA, as a civil penalty for alleged violations of the VCPA and the VHSSA. The amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

21. The Commonwealth shall have judgment against, and shall recover from, the Defendant, the sum of One Thousand Five Hundred Dollars (\$1,500.00) pursuant to § 59.1-206(C) of the VCPA, for reimbursement of the Commonwealth's reasonable expenses, costs, and attorneys' fees in investigating and preparing this action. The amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

22. The Defendant shall make payment of the total Four Thousand Dollars (\$4,000.00) referenced in Paragraphs 20 and 21 above in the following manner:

a. Simultaneously with the execution of this Assurance, the Defendant shall deliver to the Commonwealth a certified or cashier's check, in the amount of One Thousand Dollars (\$1,000.00), made payable to "Treasurer of Virginia," and remitted to: Mark S. Kubiak, Assistant Attorney General, Consumer Protection Section, 202 North 9th Street, Richmond, Virginia, 23219.

b. The Defendant shall make payment of the remaining Three Thousand Dollars (\$3,000.00) in six (6) equal installments in the amount of Five Hundred Dollars (\$500.00) each, in the form of a certified or cashier's check, made payable to "Treasurer of Virginia," and remitted to: Mark S. Kubiak, Assistant Attorney General, Consumer Protection Section, 202 North 9th Street, Richmond, Virginia, 23219. Such installment payments shall be received by the Attorney General by no later than thirty (30), sixty (60), ninety (90), one hundred twenty (120), one hundred fifty (150), and one hundred eighty (180) days from the Effective Date.

23. If Defendant does not make any individual payment in the time and manner required in paragraph 22(b) of this Assurance, the entire remaining balance shall be due and immediately owing from CMI to the Commonwealth. In such event, the Commonwealth may exercise all rights and remedies available to it as a judgment creditor. Any such remaining balance shall be due and immediately owing from CMI to the Commonwealth with interest at the judgment rate of six percent (6%) per annum from the date of default until such remaining balance and interest are paid in full.

Signatures

24. Each undersigned individual represents that he or she is fully authorized by the Party he or she represents to enter into this Assurance and to legally bind such Party to the terms and conditions herein.

FOR THE PLAINTIFF:

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By: 

Dated: 12/7/16

Mark S. Kubiak (VSB No. 73119)
Assistant Attorney General
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
Phone: (804) 786-7364
Fax: (804) 786-0122

Counsel for Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General

FOR THE DEFENDANT:

CAPITAL MEATS, INC

By: 

Dated: 11/28/2016

John C. Trent, Esquire (VSB No. 31431)
Putbren, Hunsaker & Trent, P.C.
200 South Church Street
Woodstock, Virginia 22664
Phone: (540) 459-7646
Fax: (540) 459-7656

Counsel for Capital Meats, Inc.

CAPITAL MEATS, INC.

By: Michele McMichael
Michele McMichael

Dated: 11/22/2016

Its: Vice President