

FILED

AUG 12 2010

Division of Consumer Affairs

AGREEMENT

The Parties to this Agreement entered into by and between the New Jersey Division of Consumer Affairs, Office of Consumer Protection (“Division”), and Home Depot U.S.A., Inc. (“Home Depot”), (collectively, the “Parties”) agree and state that:

WHEREAS this matter having been opened by the Division as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), the Contractors’ Registration Act, N.J.S.A. 56:8-136 et seq., the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. (“Advertising Regulations”), the Regulations Governing Home Improvement Contractor Registration, N.J.A.C. 13:45A-17.1 et seq. (“Contractor Registration Regulations”), and the Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. (“Home Improvement Regulations”), have been or are being committed by Home Depot (hereinafter referred to as the “Investigation”);

WHEREAS Home Depot has voluntarily and fully cooperated with the Investigation; and

WHEREAS Home Depot denies that it has committed any violation of law including, but not limited to, the CFA, the Contractors’ Registration Act, the Advertising Regulations, the Contractor Registration Regulations and the Home Improvement Regulations.

NOW THEREFORE, in consideration of the mutual promises and commitments made in this Agreement, the Parties hereby agree as follows:

1. EFFECTIVE DATE

1.1 This Agreement is effective on the date that it is filed with the Division (“Effective Date”).

2. NO ADMISSION OF LIABILITY

2.1 The Parties enter into this Agreement to settle disputed claims and to avoid the cost, expense, distraction, uncertainty, delay and inconvenience that would be associated with the continuation of the Investigation and the potential litigation of the issues. Neither the fact of, nor any provision contained in, this Agreement nor any action taken hereunder shall constitute, or be construed as: (a) an admission by Home Depot that any of its acts or practices described in this Agreement are unfair or deceptive or violate the CFA, the Contractors' Registration Act, the Advertising Regulations, the Contractor Registration Regulations and/or the Home Improvement Regulations; (b) a concession by Home Depot as to the validity of the Investigation; or (c) an approval, sanction or authorization by the Division of any act or practice of Home Depot. Neither the existence of, nor the terms of this Agreement shall be deemed to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement any or all of the terms herein; or (b) any action or proceeding involving a Released Claim (as defined in Section 9) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

3. DEFINITIONS

As used in this Agreement, the following words or terms shall have the following meanings, which meanings shall apply wherever the words and terms appear in this Agreement:

3.1 "Additional Consumer" shall refer to any Consumer who submits to the Division directly or through another agency, a written Consumer complaint concerning Home Depot's business practices after the Effective Date.

3.2 “ADR Unit” shall refer to the Alternative Dispute Resolution Unit of the Division.

3.3 “Affected Consumer” shall refer to any Consumer who directly or indirectly submitted to the Division up to the Effective Date a written complaint concerning Home Depot’s business practices.

3.4 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

3.5 “Consumer” shall refer to any Person who is offered Merchandise for Sale.

3.6 “Home Improvement” means the remodeling, altering, renovating, repairing, restoring, modernizing, moving, demolishing, or otherwise improving or modifying of the whole or any part of any residential or non-commercial property.

3.7 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c).

3.8 “Person[s]” shall be defined in accordance with N.J.S.A. 56:8-1(d).

3.9 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).

3.10 “State” shall refer to the State of New Jersey.

4. CONSUMER CARE COMMITMENT AND BUSINESS PRACTICES

4.1 Home Depot shall comply with the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the Contractors Registration Act, N.J.S.A. 56:8-136 et seq., the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq., the Regulations Governing Home Improvement Contractor Registration, N.J.A.C. 13:45A-17.1 et seq., and the Regulations Governing Home Improvement Practices, N.J.A.C. 13: 45A-16.1 et seq.

4.2 Home Depot will maintain Consumer complaints within its corporate computer system, in an accurate and up-to-date manner that will include: (a) a record of all contact

between the Consumer and Home Depot, whether at the Customer Care and/or corporate level;

(b) a description of the resolution sought by the Consumer and that offered by Home Depot; and

(c) any actual resolution of the complaint.

4.3 Unless such action or referral will clearly assist in the resolution of the Consumer's complaint, Home Depot shall not advise a Consumer to resolve a complaint directly with a subcontractor or Person who performs Home Improvements on behalf of Home Depot. Should such Consumer complaint be referred to a subcontractor or Person who performs Home Improvements on behalf of Home Depot, Home Depot shall still retain ultimate responsibility for resolution of the Consumer complaint.

5. AFFECTED CONSUMER COMPLAINT RESOLUTION

5.1 Attached hereto as Exhibit A is a list prepared by the Division that identifies each Affected Consumer complaint that has been resolved prior to the Effective Date.

5.2 Attached hereto as Exhibit B is a list of Affected Consumer complaints that remain unresolved. The Affected Consumer complaints listed in Exhibit B shall be forwarded to the ADR Unit to reach a resolution of the complaint through binding arbitration. Home Depot agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Home Depot further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify in writing the Affected Consumer of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached hereto as Exhibit C).

5.3 If Home Depot fails or refuses to participate in the ADR program, the arbitrator may enter a default against Home Depot. Unless otherwise specified in the arbitration award,

Home Depot shall pay all arbitration awards within forty-five (45) days of the arbitrator's decision. Home Depot's failure to pay an arbitration award timely shall constitute a violation of this Agreement.

5.4 If an Affected Consumer fails or refuses to participate in the ADR program, that Affected Consumer's complaint shall be deemed closed for purposes of this Agreement.

5.5 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

6. ADDITIONAL CONSUMER COMPLAINTS

6.1 Beginning on the Effective Date, the Division shall forward to Home Depot copies of any Additional Consumer complaints. The Division shall forward to Home Depot the Additional Consumer complaint within thirty (30) days of the Division's receipt thereof. Such Additional Consumer complaints shall be sent to Home Depot via one (1) of the following methods: (a) via e-mail to thdcccagency@homedepot.com; (b) by regular mail to The Home Depot-Customer Care (B3), Agency Complaint Contact, 2455 Paces Ferry Road, NW, Atlanta, Georgia 30339; or (c) by facsimile to 678-556-7614.

6.2 The Division shall notify the Additional Consumer, in writing, of the following: (a) that the Additional Consumer's complaint has been forwarded to Home Depot; (b) that he/she should expect a communication from Home Depot within thirty (30) days; and (c) the right to refer the Additional Consumer's complaint to the ADR Unit for binding arbitration if Home Depot disputes the Additional Consumer's complaint and/or requested relief.

6.3 Within thirty (30) days of receiving the Additional Consumer's complaint from the Division, Home Depot shall send a written communication to each Additional Consumer, with a copy to one of the following: (a) The New Jersey Division of Consumer Affairs, Office

of Consumer Protection, Attention: Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101; or (b) to cmt@dca.lps.state.nj.us.

6.4 If Home Depot does not dispute the Additional Consumer's complaint and requested relief, Home Depot's written response shall so inform the Additional Consumer. Home Depot shall contemporaneously forward to such Additional Consumer the appropriate monetary relief if applicable. Where the requested relief concerns the reversal of credit or debit card charges, Home Depot shall provide documentation to the Additional Consumer evidencing that such adjustments have been directed. Where the requested relief concerns a refund or other payment, such shall be made by check, made payable to the Additional Consumer. Home Depot may, in its sole discretion, require that the Additional Consumer execute a Settlement and Release Agreement prior to providing any of the requested relief. (The format to be used for the Settlement and Release Agreement is attached as Exhibit D.)

6.5 Within sixty (60) days of Home Depot's receipt of the Additional Consumer's complaint, Home Depot shall notify the Division as to whether such Additional Consumer's complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Additional Consumer;
- (b) Whether or not the Additional Consumer's complaint has been resolved;
- (c) An identification of any the requested relief provided to the Additional Consumer;
- (d) Copies of all documents evidencing any requested relief;
- (e) In the event Home Depot's written communication was returned as undeliverable, the efforts Home Depot had undertaken to locate the Additional Consumer; and
- (f) Confirmation that Home Depot sent all mailings to the Additional Consumer as required by this Section.

Following the Division's receipt and verification that an Additional Consumer's complaint has been resolved, the Additional Consumer's complaint shall be deemed closed for purposes of this Agreement.

6.6 If within sixty (60) days of Home Depot's receipt of the Additional Consumer's complaint: (a) Home Depot has not notified the Division that the Additional Consumer's complaint has been resolved; (b) Home Depot has notified the Division that the Additional Consumer's complaint has not been resolved; or (c) Home Depot has notified the Division that the Additional Consumer refuses Home Depot's proposed resolution, the Division shall forward such Additional Consumer's complaint to the ADR Unit to reach a resolution of the complaint through binding arbitration. Home Depot agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Home Depot further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify in writing the Additional Consumer of the referral of the complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines.

6.7 If Home Depot refuses to participate in the ADR program, the arbitrator may enter a default against Home Depot. Unless otherwise specified in the arbitration award, Home Depot shall pay all arbitration awards within forty-five (45) days of the arbitrator's decision. Home Depot's failure to pay an arbitration award timely shall constitute a violation of this Agreement.

6.8 If an Additional Consumer refuses to participate in the ADR program, that Additional Consumer's complaint shall be deemed closed for the purposes of this Agreement.

6.9 The Additional Consumer complaint resolution process described in this Section may be terminated upon thirty (30) days written notice by either Home Depot or the Division.

6.10 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

7. PAYMENT

7.1 On or before the Effective Date, Home Depot shall make a payment in the amount of Fifty Thousand and 00/100 Dollars (\$50,000.00) ("Payment") to the Division, in accordance with the CFA, N.J.S.A. 56:8-11, 56:8-13 and 56:8-19. The Division shall apply the Payment as reimbursement for its attorneys' fees and investigative costs and/or for future Consumer protection purposes, at the sole discretion of the Division.

7.2 Home Depot shall make the Payment by check made payable to "New Jersey Division of Consumer Affairs" and forward to the undersigned:

Nicholas Kant, Deputy Attorney General
Consumer Fraud Prosecution Section
State of New Jersey
Department of Law and Public Safety
Division of Law
124 Halsey Street- 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

7.3 Upon making the Payment, Home Depot shall immediately be fully divested of any interest in, or ownership of, the moneys paid. All interest in the moneys, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

8. GENERAL PROVISIONS

8.1 This Agreement is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Agreement.

8.2 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State.

8.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Agreement and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Agreement.

8.4 This Agreement contains the entire agreement among the Parties. Except as otherwise provided herein, this Agreement shall be modified only by a written instrument signed by or on behalf of the Parties.

8.5 Except as otherwise explicitly provided in this Agreement, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

8.6 If any portion of this Agreement is held invalid or unenforceable by operation of law, the remaining terms of this Agreement shall not be affected.

8.7 This Agreement shall be binding upon Home Depot as well as its owners, officers, directors, founders, managers, agents, employees, representatives, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any persons who have authority to control or who, in fact, control and direct its business.

8.8 This Agreement shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Agreement avoid compliance with this Agreement.

8.9 This Agreement is a public document subject to the New Jersey Open Public Records Act.

8.10 This Agreement constitutes a final agency action and shall be effective upon filing.

8.11 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Agreement.

8.12 The Parties Represent that an authorized representative of each has signed this Agreement with full knowledge, understanding and acceptance of its terms and that this person has done so with authority to legally bind the respective party.

9. RELEASE

9.1 In consideration of the undertakings, mutual promises and obligations provided for in this Agreement and conditioned on Home Depot making the Payment referenced in Section 7, the Division hereby agrees to release Home Depot from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Home Depot for violations of the CFA, the Contractor's Registration Act, the Advertising Regulations, the Contractor Registration Regulations and/or the Home Improvement Regulations arising out of the Investigation, as well as the matters addressed in this Agreement (the "Released Claims").

9.2 Notwithstanding any term of this Agreement, the following do not comprise Released Claims: (a) private rights of action; (b) actions to enforce this Agreement; (c) any claims against Home Depot by any other agency or subdivision of the State; and (d) any claims against Home Depot concerning Stainmaster brand carpet.

10. ADDITIONAL PROVISIONS

- 10.1 Except as provided in this Agreement, no provision herein shall be construed as:
- a. Relieving Home Depot of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
 - b. Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Home Depot pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Home Depot may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

11. NOTICES UNDER THIS AGREEMENT

11.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Home Depot pursuant to this Agreement shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents.

The notices and/or documents shall be sent to the following addresses:

For the Division:

Bureau Chief, Office of Consumer Protection
Division of Consumer Affairs, State of New Jersey
Office of the Attorney General, Department of Law and Public Safety
124 Halsey Street - 7TH Floor
P.O. Box 45028
Newark, New Jersey 07101

For Home Depot:

David P. Wadyka, Esq.
DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis & Lehrer, P.C.
15 Mountain Boulevard
Warren, New Jersey 07059

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS AGREEMENT ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: 

Thomas R. Calcagni, Acting Director
Division of Consumer Affairs

Dated: 8/12/10, 2010

FOR THE DIVISION

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: 

Nicholas Kant
Deputy Attorney General
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-4584

Dated: August 9th, 2010

FOR HOME DEPOT:

DIFRANCESCO, BATEMAN, COLEY,
YOSPIN, KUNZMAN, DAVIS & LEHRER, P.C.

By:



David P. Wadyka, Esq.
DiFrancesco, Bateman, Coley,
Yospin, Kunzman, Davis & Lehrer, P.C.
15 Mountain Boulevard
Warren, New Jersey 07059

Dated:

4 - 2

, 2010

FOR HOME DEPOT:

HOME DEPOT U.S.A., INC.

By:



Tom Bohan, Esq.
Vice President-Legal
Home Depot U.S.A., Inc.
2455 Paces Ferry Road
Atlanta, Georgia 30339

Dated:

8 - 2

, 2010