

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
ANTITRUST BUREAU**

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In the Matter of Tabletop Investigation :

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**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)**

WHEREAS, pursuant to the provisions of the Donnelly Act (Article 22 of the General Business Law), Eliot Spitzer, Attorney General of the State of New York, commenced an investigation in January 2002, which has included investigating certain practices and conduct of The May Department Stores Company ("May Co.") during 2001, regarding the channels of distribution of tabletop products¹ sold to consumers (the "Investigation");

WHEREAS, May Co. is a corporation organized under the laws of New York, with its principal place of business in St. Louis, Missouri;

WHEREAS, May Co. is one of the nation's leading department store retailers;

WHEREAS, among other items, May Co. sells tabletop products in New York and throughout the United States;

WHEREAS, in the course of the Investigation witnesses were interviewed and/or examined under oath, and documentary evidence was reviewed;

¹Tabletop products consist generally of dinnerware (china), crystal stemware, glassware, flatware (sterling and stainless), and giftware. Tabletop products are sold to consumers nationwide through such outlets as: (a) department stores; (b) chain-home specialty stores; (c) high end specialty stores; and (d) mass merchants. Tabletop products also are sold to consumers using direct marketing, which includes catalogue and Internet sales.

WHEREAS, May Co. produced documentary evidence and witnesses in the Investigation;

WHEREAS, the Attorney General has jurisdiction over this matter pursuant to the Donnelly Act and Executive Law § 63.

WHEREAS, May Co. has agreed to resolve the Investigation as set forth further below;

WHEREAS, based on matters adduced in the Investigation, the Attorney General has elected to proceed with a civil action seeking civil penalties under the Donnelly Act, specifically Gen. Bus. L. § 342-a, and under Exec. L. § 63(12), and, in lieu of instituting such a civil action, has elected to accept this Assurance of Discontinuance.

NOW THEREFORE, the Attorney General, based upon the Investigation makes the following contentions:

SUMMARY

The Attorney General contends that beginning in or about May 2001 and continuing for at least one month, May Co. and Federated Department Stores, Inc. (“Federated”) – two significant retailers of tabletop products – conspired among themselves and with Lenox, Inc. (“Lenox”) and Waterford Wedgwood U.S.A., Inc (“Waterford”) – both suppliers of tabletop products – to restrain the sale of certain tabletop products intended to be offered by Bed Bath & Beyond (“BBB”), a competing retailer of May Co. and Federated. As a result, according to the Attorney General, BBB was unable to offer to consumers certain tabletop products supplied by Lenox and Waterford, beginning in the fall of 2001, as it had planned to do. This subject is referred to in this Assurance as the “BBB Matter.”

AGREEMENT

It now appearing that May Co. desires to settle and resolve the Investigation and BBB Matter without admitting the Attorney General's Summary, the Attorney General and May Co. hereby enter into this Assurance of Discontinuance, pursuant to Executive Law § 63(15), and agree as follows:

I. AFFIRMATIVE RELIEF

A. GENERAL

1. May Co. shall not engage in any acts respecting tabletop products in violation of the Donnelly Act, and will comply with the Donnelly Act.
2. Evidence of a violation of this Assurance of Discontinuance by May Co. shall constitute prima facie proof of violation of the Donnelly Act and Executive Law § 63(12) in any civil action or proceeding hereafter commenced by the Attorney General.
3. On or before thirty (30) days from the date that this Assurance is executed, May Co. shall pay, by certified or bank check, the amount of \$800,000 as a civil penalty pursuant to General Business Law § 342-a.

B. FUTURE CONDUCT

For the purposes of this Section and Subsections, the following terms shall have the meanings set forth below:

1. Definitions:
 - a. "Agreement" means any contract, agreement, arrangement, or combination pursuant to General Business Law § 340(1).

- b. "Person" means any individual, partnership, corporation, or other legal, business or governmental entity.
- 2. From the date of execution of this Assurance, and for three years thereafter, May Co. shall not enter any Agreement with, or that includes as a party to the Agreement, any other retailer:
 - a. To refuse to purchase, cease to purchase, suspend purchases from, or otherwise to restrict the purchases of tabletop products to any supplier;
 - b. To refuse to order, to cease to order, suspend orders to, or otherwise restrict the orders of tabletop products from any supplier; or
 - c. Encouraging, suggesting, advising, pressuring, inducing, or otherwise attempting to secure any person to engage in any action that would be prohibited by subparagraphs (a) and (b) of this subsection.
- 3. Nothing in this Assurance shall:
 - a. prohibit unilateral action on the part of May Co.; or
 - b. authorize any conduct otherwise prohibited by law.

II. COOPERATION

May Co. agrees to cooperate fully and promptly with the Attorney General with regard to any proceeding, including any investigation, grand jury appearance, litigation, meeting, interview, deposition, hearing, trial or appellate proceeding initiated by or against the Attorney

General (pending or subsequently initiated) that relates to or arises out of, in whole or in part, either (a) the BBB Matter, or (b) the conduct in the Investigation of any other person² (collectively the “Relevant Subjects”) (hereinafter “Proceeding”).

A. Cooperation shall include without limitation:

1. production, voluntarily and without the necessity of a procedurally-prescribed notice or subpoena,³ of all documents or other evidence reasonably requested by the Attorney General and any compilation or summaries of information or data that the Attorney General reasonably requests May Co. to prepare, unless such production is privileged or otherwise protected from disclosure under state or federal law (including under the attorney-client and work-product protections);
2. without the necessity of a procedurally-prescribed notice or subpoena, having the officers, directors and employees of May Co. and those of its wholly owned subsidiaries attend any Proceeding at which the presence of any such persons is requested by the Attorney General, and using its best efforts to cause such officers, directors and employees to answer truthfully and completely any and all inquiries that may be put by to any of them at any Proceeding, unless such answers are privileged or otherwise protected

²“Other person” means any person other than the signatory company.

³Where any part of Section II requires cooperation “without the necessity of a procedurally-prescribed notice or subpoena,” notice that is reasonable in fact shall be given.

from disclosure under state or federal law (including under the attorney-client and work-product protections);

3. using its best efforts to secure production, voluntarily and without the necessity of a procedurally-prescribed notice or subpoena, of all documents or other evidence reasonably requested by the Attorney General from former officers, directors and employees of May Co., unless such production is privileged or otherwise protected from disclosure under state or federal law (including under the attorney-client and work-product protections); and
4. without the necessity of a procedurally-prescribed notice or subpoena, using its best efforts to have the former officers, directors and employees of May Co. and those of its wholly owned subsidiaries attend any Proceeding at which the presence of any such persons is requested by the Attorney General, and using its best efforts to cause such former officers, directors and employees to answer truthfully and completely any and all inquiries that may be put to any of them at any Proceeding, unless such answers are privileged or otherwise protected from disclosure under state or federal law (including under the attorney-client and work-product protections).
5. providing to the Attorney General, within three days of the event (as to the period from the date of this Assurance forward), written notice of:

- a. receipt of any subpoena, notice or other writing to testify or to produce documents or other materials in any Proceeding, or any oral request for information or documents, relating to the Relevant Subjects; or
 - b. entry into any agreement regarding testimony or production of documents in connection with any Proceeding relating to the Relevant Subjects.
- B. In the event a subpoena, notice or other paper shall be necessary, such service shall be made on Ronald J. Dolan, Office of Legal Counsel, The May Department Stores Company, 611 Olive Street, St. Louis, MO 63101.
- C. In the event May Co. withholds or redacts any document requested by the Attorney General on grounds of privilege, work-product or other legal doctrine, it shall submit a statement in writing, indicating: (a) the type of document; (b) the date of the document; (c) the author(s) and recipient(s) of the document; (d) the general subject matter of the document; (e) the legal grounds for withholding of the document; and (f) the bates number or page range of the withheld document.

III. NO CIVIL ACTION

The Attorney General agrees not to commence a civil action against May Co. or its current and former directors, officers and employees for any act regarding the Relevant Subjects that occurred prior to the date of this Assurance.

IV. REPORTING REQUIREMENTS

From the date of execution of this Assurance, and for three years thereafter:

- A. May Co. shall report, in writing, to the Attorney General any act prohibited by Section I of this Assurance within seven (7) days of acquiring knowledge of the act;
- B. On each anniversary of the execution of this Assurance, May Co. shall certify to the Attorney General, in writing, that, other than as to events reported under subsection IV.A., to May Co.'s knowledge, information and belief there has been no act prohibited by Section I of this Assurance;
- C. May Co. shall notify the Attorney General in writing, within seven (7) days of:
 - (1) any change in their principal address; (2) as to any change in corporate name and any merger, dissolution, or sale of all or substantially all of the corporation's assets; and (3) any other change that may affect the ability of May Co. to comply with the obligations of this Assurance.

V. ASSURING COMPLIANCE

From the date of execution of this Assurance and for three years and 90 days thereafter, for the purpose of determining or securing compliance with this Assurance, and subject to any legally recognized privilege, May Co. shall permit any duly authorized representative of the Attorney General:

- A. On reasonable written notice, access during office hours and in the presence of counsel to inspect and copy all records and documents in the possession, custody or control of May Co. relating to May Co.'s obligations under this Assurance; and
- B. On reasonable written notice, and without restraint or interference from May Co., to interview, under oath and on a transcribed record, any person employed by

May Co., who may have counsel present, relating to May Co.'s obligations under this Assurance.

VI. VIOLATIONS OF THE ASSURANCE

If May Co. shall violate any material provision of this Assurance and fails to cure said violation within ten (10) business days of receipt of written notice from the Attorney General:

- A. The Attorney General may commence any action authorized by law against May Co. for anticompetitive conduct it has engaged in, or for any crime it has committed, as authorized by law, relating to the Relevant Subjects.
- B. As to any action brought pursuant to Section VI for any act or offense committed within three years prior to May 28, 2004, May Co. shall not assert as a defense the statute of limitations, laches, or any other defense based on the timeliness of suit.
- C. As to any action brought pursuant to Section VI, service on Ronald J. Dolan, Office of Legal Counsel, The May Department Stores Company, 611 Olive Street, St. Louis, MO 63101, of the summons and complaint, the accusatory instrument, and any other document required or permitted to be served by New York State law shall constitute good and sufficient service of process on May Co. in such action.

VII. OTHER PROVISIONS

- A. No failure or delay by the Attorney General in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of

any other right, power or privilege. The rights and remedies provided herein shall be cumulative.

- B. May Co. enters into this Assurance voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Attorney General or any member, officer, employee, agent, or representative of the Attorney General to induce May Co. to enter into this Assurance.
- C. May Co. agrees not to take any action or to make or permit to be made any public statement denying that this Assurance is without factual basis. Nothing in this paragraph shall affect May Co.'s: (1) testimonial obligations; or (2) right to take legal or factual positions in defense of litigation or in defense of other legal proceedings.
- D. This Assurance shall be binding upon May Co. and its successors and assigns.
- E. This Assurance contains the entire agreement of the Parties.
- F. This Assurance shall be governed by and construed under the laws of the State of New York. Any action to enforce this Assurance may be brought in the Supreme Court of the State of New York, County of New York.
- G. This Assurance shall not be modified except in a writing, signed by all the Parties to this Assurance or by their authorized representatives.
- H. The Attorney General may use any documents, testimony and other information provided by May Co. in the Investigation ("May Co. Material"), subject to the rules of evidence, where applicable, in: (1) any Proceeding (as defined in Section

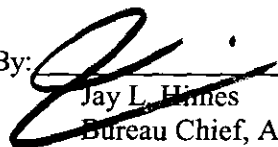
II) that the Attorney General may pursue, and (2) for any other law enforcement purpose authorized by the laws of the State of New York.

- I. If a protective order is negotiated or entered in any Proceeding, the Attorney General shall either: (1) seek to have all May Co. Material included within the disclosure and use provisions of that Protective Order; or (2) give May Co. reasonable notice of negotiations of such a Protective Order so that May Co. may seek such relief as it deems appropriate as to May Co. Material.
- J. A non-signatory to this Assurance who shall fail to comply with a material provision of this Assurance shall not be entitled to enforce any part of this Assurance against the Attorney General, or otherwise be afforded any benefit under this Assurance. Any statements or other information provided by such non-signatory to the Attorney General pursuant to this Assurance may be used against them in any Proceeding brought by the Attorney General.
- K. Each person who executes this document shall, by his or her signature, expressly represent that he or she is fully authorized by the party he or she represents to execute this Assurance. This Assurance may be executed on separate signature pages, in counterparts or by facsimile, with the same effect as if all parties had signed the same physical page of this Assurance.
- L. Except in an action by the Attorney General to enforce May Co.'s obligations in this Assurance or as otherwise provided by law, neither this Assurance nor any acts performed or documents executed in furtherance of this Assurance (1) may be deemed or used as an admission of, or evidence of, the validity of any alleged

wrongdoing, liability or lack of wrongdoing or liability; or (2) may be deemed or used as an admission of or evidence of any such alleged fault or omission of May Co. in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

Dated: July 29, 2004

ELIOT SPITZER
Attorney General of
the State of New York

By: _____
Jay L. Himes
Bureau Chief, Antitrust Bureau

Gary P. Weinstein
Peter D. Bernstein
Assistant Attorneys General

The May Department Stores Company

By: _____
Name: John L. Dunham
Title: President

The May Department Stores Company

By: _____
Name: Ronald J. Dolan
Title: Senior Counsel

Skadden, Arps, Slate, Meagher & Flom
LLP, Attorneys for The May Department
Stores Company

By: _____
Name: Michael L. Weiner

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Dated: July ³⁰~~29~~, 2004

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Attorney General of
the State of New York

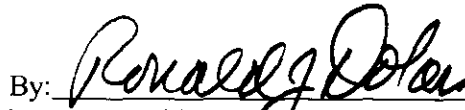
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