

**STATE OF FLORIDA  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LEGAL AFFAIRS**

In the Matter of:  
**LANE BRYANT, INC.**

AG Case Number: L11-3-1083

Respondent.

\_\_\_\_\_ /

**ASSURANCE OF VOLUNTARY COMPLIANCE**

**PURSUANT TO** Chapter 501, Part II, “The Florida Deceptive and Unfair Trade Practices Act,” Florida Statutes (2012), the STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS (“Department”) investigated the advertising and marketing practices of LANE BRYANT, INC. (“Respondent”).

Respondent enters into this Assurance of Voluntary Compliance (“AVC”) with the Department without an admission of wrongdoing and for the limited purpose of resolving this matter only. Pursuant to Section 501.207(6), Florida Statutes (2012), the Department accepts this AVC in termination of its investigation into certain of Respondent’s advertising and marketing practices.

**A. STIPULATED FACTS**

1.1 Respondent, Lane Bryant, Inc. is a Delaware corporation with its principal place of business located at 3344 Morse Crossing Road, Columbus, Ohio 43219. Respondent, Lane Bryant, Inc. is a Florida registered foreign corporation with the same principal place of business.

1.2 Respondent is a multi-brand specialty apparel retailer primarily focused on women's plus-size apparel.

1.3 The Department initiated its investigation of Respondent in May 2011 based upon an industry review of retailers’ marketing and advertising practices.

1.4 Respondent advertises and markets through sales flyers, emails, store-front signage, direct mailers, and via the Internet.

1.5 During the Department's investigation, Respondent advertised on its website, "40% OFF ENTIRE STORE! ON ABSOLUTELY EVERYTHING!" with a five to six point font disclaimer and Hyperlink titled, "get details." After a consumer clicked on the Hyperlink, it stated "except select handbags, Seven7, DKNY Jeans items, Spanxs, and Assets." Also, Respondent, Lane Bryant, Inc. advertised through in-store signs, "40% off entire store! On absolutely everything!" with exclusions.

## **B. GENERAL PROVISIONS**

### **JURISDICTION AND VENUE**

2.1 The parties agree that the State of Florida possesses jurisdiction over Respondent for the purposes of entering into this AVC and any enforcement actions arising out of this AVC.

2.2 It is further agreed by the parties that venue for any matter relating to or arising out of this AVC shall lie solely in Orange County, Florida.

### **DEFINITIONS**

2.3 **"Advertising" (including "Advertisement" and "Advertise")** shall mean a commercial message in any medium that directly or indirectly promotes a consumer transaction within the state of Florida.

2.4 **"Clear and Conspicuous" (including "Clearly and Conspicuously")** shall mean that a statement, representation, claim or term is readily noticeable and reasonably understandable by the person(s) to whom it is directed. The following shall be considered in determining whether a statement, representation, claim or term is clear or conspicuous:

- a. Whether it is presented in a coherent and meaningful sequence with respect to other statements, representations, claims, or terms being conveyed;
- b. Whether it is in close proximity to the statement, representation, claim or term it clarifies, modifies, explains, or to which it otherwise relates;
- c. Whether it is contradictory to any statement, representation, claim or term it purports to clarify, modify, or explain, or is otherwise contradictory or confusing in relation to any other statement, representation claim or term being conveyed;
- d. Whether it is conveyed by means of an abbreviation and, if so, whether the abbreviation is commonly understood by the public, or approved by federal or state law;
- e. Whether it is legible;
- f. Whether it is of sufficient prominence in terms of print, size and contrast, as compared with accompanying statements, representations, claims or terms, so as to be readily noticeable and reasonably understandable by the person(s) to whom it is directed;
- g. Whether it is at a decibel level and speed so as to be readily noticeable and reasonably understandable by the person(s) to whom it is directed; and
- h. Whether it appears for a duration of time sufficient to allow a listener or viewer to have reasonable opportunity to notice, read, and understand.

2.5 “**Material**” shall mean likely to affect a person’s choice of, or conduct regarding, goods or services.

2.6 **“Hyperlink”** shall mean an element on a Web page featuring a word, phrase or graphic, that when clicked on, takes the user to another part of the same website or a different website.

2.7 **“Respondent”** shall mean Lane Bryant, Inc., its subsidiaries, affiliated entities, partners, successors, assigns and each of their respective officers, directors, agents, and employees.

### **C. AGREEMENT OF COMPLIANCE**

#### **GENERAL COMPLIANCE PROVISIONS**

3.1 Respondent shall not violate any applicable law, rule, and/or regulation, including, but not limited to, the following:

- a. The Florida Deceptive and Unfair Trade Practices Act as contained in Chapter 501, Part II, Florida Statute (2012);
- b. Section 817.41, Misleading Advertising, Florida Statutes (2012); and
- c. Section 5 and 12, Federal Trade Commission Act, 15 U.S.C. § 45, § 52.

#### **Disclaimers and Disclosures**

3.2 Any disclaimer used by the Respondent in its Advertisements to inform consumers of additional information about advertised offers must not contradict, confuse, unreasonably limit or materially modify a principal message of the Advertisement.

3.3 Asterisks, Hyperlinks, or other words or symbols used to draw the consumer’s attention to the accompanying disclaimer or footnote must be Clear and Conspicuous and in close proximity to the offer which is supplemented by a disclaimer or footnote.

3.4 Respondent shall not use print in type so small that it is not reasonably readable.

3.5 Respondent shall not use the words “any,” “everything,” or other words of similar import or meaning, when advertising a promotion which contain exclusions within the advertised group unless the disclaimer complies with paragraph 3.2.

3.6 Respondent shall make the terms and conditions of this Agreement known to those persons or entities associated with Respondent who are responsible for the implementation, monitoring, and continuation of the obligations set forth in this Agreement.

**D. MONETARY TERMS**

4.1 Upon execution of this AVC, Respondent shall pay to the Department the total sum of Forty Thousand and No/100 Dollars (\$40,000.00) for investigative costs, attorneys’ fees and future monitoring. Payment shall be made by corporate check payable to the Department of Legal Affairs Revolving Trust Fund and shall be sent to Denise Kim, Assistant Attorney General, 135 West Central Blvd, Suite 1000, Orlando, FL 32801.

4.2 In the event that Respondent fails to timely pay any of the above amounts, Respondent shall be in default of this AVC and Respondent stipulates to entry of a final judgment in favor of the Department for the outstanding amounts due.

**E. CONSTRUCTION AND INTERPRETATION**

**EFFECTIVE UPON ACCEPTANCE**

5.1 The Department’s Director of Economic Crimes may refuse to accept this AVC at his discretion, and the AVC shall only become effective upon its acceptance and signature. The receipt of or deposit by the Department of any monies pursuant to this AVC does not constitute acceptance by said Department, and monies received will be returned if this AVC is not accepted.

5.2 This AVC may be signed in multiple counterparts, each of which shall be considered an original, and all of which together will constitute one and the same agreement.

### **BUSINESS RECORDS**

5.3 In connection with the Department's future monitoring of Respondent, Respondent agrees to retain documents and other information reasonably sufficient to establish compliance with the provisions herein, and shall provide the Department reasonable access to such documents and information upon request.

### **CONSTRUCTION OF AVC**

5.4 This AVC is the result of negotiations between the parties and shall be deemed to have been drafted by the Department and the Respondent. In the event of a dispute, this AVC shall not be construed against either party.

5.5 Respondent shall in no way represent that the Department has approved any of the Respondent's business practices, and shall not use the existence of this AVC to in any way imply such approval.

### **APPLICABILITY**

5.6 This AVC shall apply to and continuously bind Respondent and its employees, directors, officers, agents, successors, assignees, affiliated entities and subsidiaries.

5.7 Respondent acknowledges and agrees that any failure to comply with the terms and conditions of this AVC is by statute prima facie evidence of a violation of Chapter 501, Part II, Florida Statutes (2012), and may subject Respondent to any and all civil penalties and sanctions provided by law, including awarding of attorneys' fees and costs.

**CHANGES IN LAW OR BUSINESS PRACTICES**

5.8 It is further agreed by the parties that if any statutes change due to amendment, repeal, or disposition by the legislature, an agency, or court so that they would permit any action prohibited by any section of this AVC, that section of this AVC shall no longer have any force or effect.

5.9 If any clause, provision, or section of the AVC 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 AVC, and this AVC shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

IN WITNESS WHEREOF, Respondent has executed this AVC in the County and State listed below, as of the date affixed thereon.

**LANE BRYANT, INC.,**



By: G. Scott Glaser

Its: SVP-CFO

Date: September 5, 2012

November

STATE OF OHIO  
COUNTY OF Franklin

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Ohio, personally appeared G. Scott Glaser, as authorized representative of Lane Bryant, Inc., and individually, he/~~she~~ acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this 5<sup>th</sup> day of November, 2012.

Sworn to and subscribed before me this 5<sup>th</sup> day of November, 2012.



ROBERTA MORGAN  
Notary Public, State of Ohio  
My Commission Expires 01-03-2015

NOTARY PUBLIC  
(print, type or stamp commissioned name of  
Notary Public)

Personally known  or  
Produced identification \_\_\_\_\_ (check one)  
Type of Identification Produced: \_\_\_\_\_

Denise Kim  
Assistant Attorney General  
Office of the Attorney General  
Department of Legal Affairs  
135 West Central Blvd., Suite 1000  
Orlando, Florida 32801  
(407) 245-0833 phone, (407) 245-0365 Fax

Accepted this 26 day of November, 2012.

Richard Lawson  
Director of Economic Crimes  
Office of the Attorney General  
Department of Legal Affairs  
The Capitol  
Tallahassee, Florida 32399-1050