

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
CONSUMER FRAUDS AND PROTECTION BUREAU**

In the Matter of

Assurance No. 14-137

**Investigation by ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York, of
Tristar Products, Inc.**

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“NYAG”) commenced an investigation pursuant to Executive Law § 63(12) and General Business Law §§ 349 and 350 into the business practices of Tristar Products, Inc. (“Tristar”). This Assurance of Discontinuance (“Assurance”) contains the findings of NYAG’s investigation and the relief agreed to by NYAG and Tristar (collectively “the parties”).

I. DEFINITIONS

1. For purposes of this Assurance, the following terms shall have the following meanings:
 - a. **“Clear and conspicuous” or “clearly and conspicuously”:**
 1. In textual communications, the disclosure must be in noticeable type, size, and location, using language and syntax comprehensible to an ordinary consumer;
 2. In communications disseminated orally or through audible means, the disclosure must be delivered in a volume, cadence, language, and syntax sufficient for an ordinary

consumer to hear and comprehend them;

3. In communication disseminated from video means: (a) written disclosures must be in a form consistent with definition a.1 and appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and be in the same language as the predominant language that is used in the communication; and (b) audio disclosures must be consistent with definition a.2; and

4. The disclosure cannot be combined with other text or information that is unrelated or immaterial to the subject matter of the disclosure. No other representation(s) may be contrary to, inconsistent with, or in mitigation of, the disclosure.

b. "Main Offer" shall mean an offer to purchase the goods that were the subject of the initial advertisement or infomercial on the terms advertised.

c. "Upsell Offer" shall mean any offer other than the Main Offer, including offers presented subsequent to the Main Offer to "upgrade" the quality, or purchase an additional quantity, of the goods that are the subject of the Main Offer.

d. "Buy One, Get One Offer" shall mean any offer where, as a condition of accepting an advertised offer to purchase any quantity of goods, consumers must also accept additional merchandise as part of the offer.

e. "New York Consumer" shall mean a consumer with a New York billing address at the time of the purchase.

II. FINDINGS OF NYAG

2. Tristar is a Pennsylvania corporation with offices at 490-492 Route 46 East, Fairfield, New Jersey.

3. Tristar is in the direct marketing business, using infomercials that are broadcast on television to advertise its products. The infomercials direct consumers to a toll free number and website where they can place an order. The orders are then forwarded electronically to a fulfillment company, which then ships the ordered goods to the consumer.

4. Tristar sells a variety of products including: Genie Bra; Montel Health Master, a blender; as well as a variety of exercise equipment, such as the Ab Coaster and Cardio Twister. As set forth more fully below, the NYAG's investigation has revealed a number of concerns regarding Tristar's advertising and sales practices, including: the inadequate disclosure of the terms and conditions of the offers advertised in its infomercials; and Tristar's failure to obtain consumers' informed consent to charges during the ordering process. In addition, the NYAG found evidence that certain of Tristar's products did not perform as advertised or malfunctioned shortly after purchase.

Infomercials

5. Tristar's infomercials typically feature one or more actors wearing, using or demonstrating the product while a voiceover or live actor touts the product's features and benefits. Many of the infomercials shared the same deceptive and misleading features. The following description of a Genie Bra infomercial is representative.

6. The Genie Bra infomercial featured a number of actresses that are first seen fidgeting uncomfortably with ostensibly ill-fitting bras. The voiceover asked: "Are you constantly struggling with your straps? Do your underwires dig into your skin? When you wear a turtleneck do you look like THIS? Isn't it time you stopped your daily struggle with uncomfortable bras that prevent you from looking your best?"

7. The voice over then announced: “Introducing the all new Genie Bra, just match you bra size with your clothing size and slip into the most comfortable, conform-fitting bra you have ever worn. Whether you are petite or a full figured woman, you will always have a bra that is comfortable, conforms to your shape and makes you look your best. No more back fat, no unsightly top bulging, just a perfect fit that molds to your body, giving you the ideal cup size every time—you’ll look lifted and younger instantly.”

8. The infomercial then featured testimonials from actors of various shapes and sizes who are wearing the Genie Bra, followed by a voiceover describing the Genie Bra’s features and benefits: “The Genie Bra’s secret is in the woven everlast stretch fabric that custom conforms to any size and NEVER loses its shape. Plus, the wide, comfort support band gives you the support you need without rolling.” The voiceover also touted the fact that the Genie Bra is easy to clean, machine washable and dryable.

9. The voiceover then encouraged consumers to “call or go online now to order your Genie Bra in Nude for only \$19.99, BUT WAIT, order in the next 20 minutes and we’ll double the offer—you’ll get a second Genie Bra in black FREE!” Neither the audio nor the video disclosed the amount of the processing and handling fees, which, in some cases, were as much as half of the amount charged for the product. Nor did the infomercial clearly disclose that consumers would be charged a separate processing and handling fee for each Genie Bra.

10. The infomercial then directed consumers to a toll free number and web address where they could place an order. Orders placed by phone or online were forwarded electronically to the fulfillment house, which then shipped the ordered goods to consumers.

Telephone Ordering Process

11. Tristar hires third party telemarketers to operate the toll free numbers through which consumers place their orders. In many cases, the telephone ordering process is automated through the use of Interactive Voice Recognition (“IVR”) technology. Unless there is some error in the consumer’s entry of data, at no point in the IVR process is the consumer informed of an option to speak with a live representative. Throughout the IVR process, consumers choose among various described options either by pressing a number on the telephone keypad, or by providing an oral response.

12. The IVR scripts contained a number of deceptive and misleading features including:

- (a) failing to provide consumers with an opportunity to confirm or edit their order at the end of the call to ensure its accuracy and therefore not obtaining consumers’ informed consent to the charges;
- (b) failing to advise consumers that Tristar will process their order even if they hang up before they fully navigate through the IVR script; and
- (c) including Upsell Offers that do not clearly and promptly provide consumers with the option to decline the offer.

13. For example, one IVR script for the Genie Bra began by advising consumers to press “1” or say “order” to place an order, press “2” or say “status” if they have questions about an order they have already placed, or press 3 or say “information” if they would like more information before placing an order.

14. If consumers chose the “order” option, they were presented with a script that advises that as part of Tristar’s “special introductory offer,” they will get “3 amazing Genie Bras in black, nude and white, all for just \$59.99 plus \$12.99 processing and handling.”¹ The script further advised that: “we know you’ll love how it instantly transforms your appearance, so we’re giving you three MORE Genie bras for FREE, just pay the \$12.99 processing and handling...”

15. Consumers were then asked to use their keypad to enter the number of “buy 3 get 3 free” sets they would like to order. After consumers entered their selection, the IVR repeated the consumer’s selection, but did not provide a means for consumers to confirm that the IVR had recorded the correct response.

16. After consumers chose the number of sets they would like to order, the IVR script prompted them to choose a size. Again, the IVR script did not provide any means for consumers to verify that the IVR has correctly recorded the size. After making a selection for the Main Offer, consumers were typically prompted to provide their shipping and billing information.

17. After providing their shipping and billing information, consumers were presented with a number of Upsell Offers. If consumers disconnected the call before navigating through all the upsells, an order was processed for any goods that they had allegedly chosen up to that point. Because consumers were not given the opportunity to review and confirm or edit the order details at any point during the IVR process and were not advised that they would not have that opportunity, some consumers may have been under the mistaken impression that if they disconnected the call before reaching the end of the IVR scripting, no order would be placed.

18. If consumers navigated through the upsells, typically, they were confronted with a number of different offers to purchase additional products, which typically included a number of

¹ Tristar has advertised a number of different Genie Bra offers. Presumably, at the time this script was in use, the
Page 6 of 32

other Genie Bra products, such as: “deluxe liner pads”; additional Genie Bra sets for “33% off”; and “Genie Bras with lace trim.” In some cases, the Upsell Offers required consumers to purchase a multiple of the offered goods, such as three.

19. As with the IVR scripts for the Main Offer, the scripts did not disclose the total cost to consumers if they accepted the offer. Instead, the scripts disclosed the cost per item and a processing and handling fee and some scripts did not make clear whether the processing and handling fee would be charged per item, or for all three of the items. For example, one upsell script for the lace Genie Bras described the offer as follows: “...with this special limited time offer you get 3 Genie Bra’s (sic) with lace trim for only \$9.99 per bra plus \$5.99 for processing and handling.”

20. As with the Main Offer, the IVR scripts did not provide any means for consumers to confirm any selection made during the upsell process.

21. In some cases, the upsell scripting did not clearly and promptly provide consumers with the option to decline the offer. For example, the scripting for one upsell advised consumers that “[b]ecause you ordered today, you qualify to get additional Buy-1-Get-1-Free Genie Bra Sets at 33% off!” After additional information about the upsell offer was provided, consumers were advised “[t]his offer will not last long, so let’s get your Additional Sets at this tremendous discount now! First I need to know how many sets you’d like, and then I’ll get your size.” At no point did the scripting instruct consumers as to how they could decline the offer.

22. After navigating the Tristar Upsell Offers, in some cases, consumers were also presented with one or more third party upsells. However, the scripts did not expressly disclose that the offers were from unaffiliated third parties.

Online Ordering Process

23. Tristar's online ordering process also had a number of misleading features. For example, The first page of one version of the ordering pages for Genie Bra contained a banner at the top with the Genie Bra logo. Below the banner was text advising consumers that they could order either by calling the toll free number provided, or by filling out the information below. Further down the page was an order form comprised of a number of sections. The first section was labeled "Step 1-Merchandise." Underneath the heading, consumers were informed that the Genie Bra includes 1 easy payment of \$39.99. Immediately below was the following text in smaller print: (+ Processing and Handling). The amount of the processing and handling was not disclosed anywhere on the page. Adjacent to the price information was a drop down menu from which consumers were required to "select size." Adjacent to the size menu and beneath a heading labeled "subtotal" was the figure of \$39.99. Further down the page the follow text appeared in eye-catching blue print: "BUY 3 GET 3 FREE!" Directly below in much smaller dark gray print was the following text: "Yes, I want an additional Free set of Genie Bra, just pay Processing and Handling." Although there was a "Yes" and "No" box to the right of the text, the "Yes" box was pre-selected.

24. Further down the page was a sizing chart that contained information to help consumers select the correct Genie Bra size. Below the sizing chart was another section of the order form labeled "DELIVERY" at the top. Along the right side of the box was a section for displaying the prices and fees for the order. Initially, no pricing information was displayed in any of the boxes, which were labeled: "Subtotal," "Processing & Handling," "3 FREE Genie Bras,

just Pay Processing & Handling” and “Order Total.” Once the consumer selected a size from the drop down menu, the “Subtotal” box was automatically populated with the \$39.99 figure.

However, no figures appeared in either of the “Processing and Handling” boxes.

25. Consumers needed to scroll further down the page, to reach a section bearing the heading “Step 2-DELIVERY AND BILLING,” where they were required to fill in a delivery and billing address. Depending on the consumer’s computer device and its screen settings, as consumers scrolled down the page, it was possible for the “Step 1” section of the form to drop out of view.

26. It was only after consumers completed the contact information requested in Step 2, that the processing and handling fees were inserted in the “DELIVERY” section further up the page. Thus, the section above that had previously displayed only the \$39.99 product charges would then also show two Processing and Handling fees of \$9.99 each, plus tax of \$2.40 and an Order Total of \$62.37, significantly more than the advertised \$39.99. However, because the order form required consumers to scroll even further down the page after completing the billing and shipping section of the form to complete “Step 3” which was labeled “Payment Options,” consumers might not have seen the added shipping and handling charges and Order Total.

27. The “Payment” section requested credit card information and also contained a bright red button labeled “Complete My Order.” If consumers clicked the “Complete My Order” button, their order was processed automatically without first displaying an order summary page that allowed consumers to review and edit their order, as is typically the case with online purchases. Thus, unless consumers scrolled back up the page to the “Delivery” section of the

form before clicking the “Complete My Order” button, they might not have seen the true cost of the Buy 3 Get 3 Free offer until after their order was processed.

28. After clicking the “Complete My Order” button, consumers were redirected to another page that contained a solicitation for another Genie Bra product. At the top of the page was the following text: “THANK YOU FOR YOUR ORDER,” as well as a reference number and a link labeled “Print a receipt.” At the bottom of the page were two clickable buttons allowing consumer to either accept or decline the upsell offer displayed on the page.

29. Whether consumers accepted or declined, they were redirected to another webpage soliciting them for another Genie Bra product. However, some of these subsequent upsell offers did not clearly and conspicuously disclose the material terms of the upsell offer. For example, one upsell offer advised consumers that “[a]s a special thank you” they have the option to purchase “[a]dditional Buy-1-Get-1-Free Genie Bra Sets at 33% off. This special limited time offer has been very popular with our customers because you get 3 more Genie Bras . . . for only \$39.99 plus processing and handling. Plus we are giving you the second set for FREE, just cover the processing and handling. That is 6 more bras for only \$39.99.” The advertisement did not disclose the amount of the processing and handling fees. At the bottom of the page, consumers were advised that “Selected items will be available for viewing at check out.” If consumers accepted the offer by selecting a size from the drop down menu and clicking the “Yes, Please!” button, they were redirected to another Tristar Upsell Offer.

30. After going through a number of such solicitations, consumers reached a page where the details of their order were displayed. If consumers had not chosen any upsells, then the details of their order for the Main Offer were displayed, including the items ordered and

amounts charged, including the processing and handling fees, tax and an order total. However, consumers did not have the option to edit their order.

31. If consumers had selected any of the upsell items, then the page was split in two, with the order details for the Main Offer at the top of the page and a second version of the order details, which included the consumer's "Main Offer" selections, as well as any selected upsells, displayed further down the page. However, the processing and handling fees were not disclosed separately for each upsell offer. Instead, a total processing and handling fee for all items was disclosed below the subtotal for all the items selected. An "order total," which included all product fees, processing and handling fees and taxes, was also displayed. Directly below the "order total" was a prominent green button labeled "UPDATE MY COMPLETE ORDER!" In much smaller print below was a link labeled "No thank you, Please take me to my original receipt." None of the items listed on the page could be edited. However, if consumers selected the "No thank you" link, only their order for the Main Offer was processed.

32. At the bottom of the page that displayed the details of the consumer's order, consumers were provided with a web address where they could "check on the status of [their] order" as well as a telephone number, which was not toll free, to contact customer service.

33. In some cases, the top of the page prominently featured a toll free number, which consumers were advised they could call to "Confirm Your Order and Claim a \$50 WalMart Gift Card." In fact, the toll free number was operated by a third party that had no information about consumers' orders. If consumers called the number, they were solicited for a \$1.95 trial membership in "Your Essentials," a third party membership program, for which they would be charged \$24.95 per month unless they canceled during the 30 day trial membership.

34. At the top left-hand side of the webpage there was also a box containing the following text: "Congratulations! Click here to claim \$20 Cash Rebate on Today's Purchase!" Below the text was a clickable blue button labeled "continue." If consumers clicked the link, they were redirected to a third party website, where they were solicited for another membership program, "Budget Source." However, consumers who clicked the link were not advised that they were being redirected to a third party website. The fact that the offer "is not affiliated with TriStar Products Inc." was only disclosed in fine print at the bottom of the landing page. Further, the offer details, including the fact that if they accepted the rebate, consumers would be charged \$24.95 per month unless they call to cancel during the trial membership, were contained in a densely worded paragraph in small print. Further below the "Offer Details" paragraph, there was a section where consumers were asked to provide their billing information. Further down the page was a bright green button that consumers would need to click to accept the offer. The button was misleadingly labeled "Click here to continue!" Further, above the button was a statement consumers presumably were required to acknowledge reading before accepting the offer, which inexplicably stated "I have read and agree to the Offer Details located below, and I authorize you to charge my credit/debit card for the trial fee and monthly payments for Budget Source. In fact, the offer details were disclosed in fine print at the top of the page.

35. As a result of the misleading features of Tristar's online and phone-based ordering system some consumers may have been charged for and/or received delivery of goods they did not intend to order, or were charged amounts that they did not authorize or intend to authorize.

Failure to Adequately Disclose its Refund Policy

36. In some cases, Tristar's solicitations misled consumers about Tristar's refund policy. For example, one infomercial for a juicer advises consumers at the end of the infomercial that there is a 60 day money back guarantee and that if consumers are not "completely satisfied, just send it back for a complete refund of the purchase price." However, if consumers returned the juicer, Tristar did not refund the processing and handling fees, which amounted to up to \$29.99.

37. Similarly, some advertisements for the Genie Bra included a prominent seal stating: "60 DAY MONEY BACK GUARANTEE." In fact, if consumers returned the bras, Tristar only refunded the amount charged for bras and did not refund the processing and handling fees, which, in some cases were as much as 50% of the cost for the product

"Priority Processing"

38. In some cases, during the online or phone-based ordering process, consumers were offered the option to pay extra for "Priority Processing." These offers created the false impression that consumers who accepted them would receive their merchandise significantly sooner than they otherwise would. For example, many consumers who have ordered the Genie Bra online were presented with a solicitation offering them "priority processing" at "50% off!" The text accompanying the offer stated that "since we know you want to get your order as soon as possible we can cut the price of Priority Processing in Half! For only \$4.99 you will receive your order in 7-10 business days instead of 3-4 weeks."

39. In fact, consumers who paid the fee had their merchandise shipped through the same methods as those who did not pay the extra fee. Further, the ordinary delivery time, if the

product was in stock, was typically significantly less than the 3 to 4 week estimate in the advertisement.

Products Not Performing as Advertised or Failing Shortly After Purchase

40. Some consumers complained that certain Tristar products did not perform as advertised or malfunctioned shortly after purchase.

Customer Service Problems

41. When consumers attempted to contact customer service for a variety of reasons, including, to report their dissatisfaction with a Tristar product or to inquire about Tristar's failure to ship merchandise, some had difficulty reaching a customer service representative. Some consumers reported repeatedly experiencing long wait times. Further, because Tristar's customer service number is not toll free, consumers were forced to possibly incur phone charges as a result of the long delays.

42. When consumers requested a refund for defective merchandise, they were told that they must first return the merchandise and that they must obtain a Return Merchandise Authorization ("RMA") from Tristar in order to do so. Some consumers have complained that Tristar failed to promptly send them the required RMA, thereby thwarting their efforts to obtain prompt refunds. Further, even after consumers obtained the RMA and returned the defective product, some complain that Tristar failed to promptly issue refunds.

43. Even when Tristar issued a refund, Tristar did not refund the processing and handling fees.

44. Further, some consumers complained that when they attempted to follow up by phone with customer service after Tristar failed to take the promised action (e.g., ship a product,

issue a refund, provide a RMA) Tristar repeatedly provided them with assurances that Tristar would address their concerns but did not follow through, as promised.

45. Further, in cases where Tristar agreed to ship replacement parts for defective merchandise that was under warranty, it required consumers to pay a fee to process, handle and ship the part. For example, if Tristar agreed to replace a defective motor for a Health Master Blender, Tristar required the consumer to first send Tristar \$29.99 for processing and handling.

46. Some consumers complained that Tristar failed to honor requests to cancel orders or continuity programs, which resulted in consumers being charged for and shipped merchandise that they did not want.

47. New York Executive Law § 63(12) prohibits persons or business entities from engaging in repeated fraudulent or illegal acts or otherwise demonstrating persistent fraud or illegality in the carrying on, conducting or transaction of business.

48. New York General Business Law (“GBL”) Article 22-A prohibits deceptive acts or practices (GBL § 349), and false advertising in the conduct of any business, trade or commerce in this State (GBL § 350).

49. NYAG finds that the business practices detailed above constitute repeated violations of GBL §§ 349 and 350 and Executive Law § 63(12).

III. PROSPECTIVE RELIEF

WHEREAS, Tristar neither admits nor denies NYAG’s Findings (2)-(46) above;

WHEREAS, NYAG is willing to accept the terms of this Assurance pursuant to Executive Law § 63(15) and to discontinue its investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are

prudent and appropriate;

IT IS HEREBY AGREED by Tristar, its principals, directors, officers, successors and assigns and on behalf of its agents, representatives, employees and by any corporation, subsidiary or division through which it acts or hereafter acts, as follows:

1. Tristar shall fully comply with Executive Law § 63(12) and GBL §§ 349 and 350.
2. In connection with its direct to consumer advertising, marketing and other dealings with New York consumers, which excludes sales to retailers and wholesalers, Tristar shall, effective 90 days after the date of this Assurance, comply with the following:
 - a. All advertisements must clearly and conspicuously disclose all material terms of any offer necessary to ensure that the advertisement is truthful and not misleading. The amount of any processing and handling or other fees (excluding taxes) is a material term that must be disclosed in the advertisement where a price for the product is advertised if the total amount of such fees exceeds the amount consumers would reasonably expect to pay for processing and handling with the applicable shipping method for a product of similar price, size and weight.
 - b. In advertising any Buy One, Get One Offer where the consumer does not have the option to decline the second product and where the price is stated, Tristar shall clearly and conspicuously disclose the amount of any processing and handling or other fee (excluding taxes) charged for the additional product(s), regardless of the amount of such fees.

- c. Notwithstanding any other provision of this Assurance, Tristar shall disclose the amount of any processing and handling or other fees including estimated taxes before the consumer is asked to confirm the purchase of any order.
- d. In advertising any Buy One, Get One Offer, Tristar shall clearly and conspicuously disclose any material conditions or limitations applicable to the offer before the consumer incurs a financial obligation (e.g., that the second product must be the same size, and/or color of the first product, if that is, in fact, the case).
- e. Tristar shall not represent that an offer is for a limited time period or that consumers must act within a certain defined time period to be eligible for the advertised offer unless that is, in fact, the case (e.g., Tristar may not advise consumers that they need to call within 20 minutes to receive the offer, if in fact, they can call at any time to receive it), but it is acceptable to advise consumers to “call now for this special offer” or “call now because there are limited quantities [or it will be available for only a limited time]” or something similar thereto, if that is, in fact, the case.
- f. Tristar shall not offer or advertise “rush delivery” or “priority processing” for an additional fee or use terms of similar import, unless Tristar uses a method of shipping for such orders that is designed to provide faster delivery than its typical shipping process.
- g. Tristar shall not misrepresent, either directly or by implication, the length of time in which consumers will receive their order without “rush delivery” or

“priority processing,” or the amount that the delivery time will be reduced by accepting the offer of “rushed delivery” or “priority processing.”

- h. Tristar shall not misrepresent, either directly or by implication, the material features or benefits of the advertised product.
- i. Tristar shall not misrepresent, either directly or by implication, the terms of its refund policy. If Tristar advertises a “money back guarantee” or makes any other affirmative representation regarding refunds in an advertisement and a consumer will not be able to receive a refund of the shipping, processing and/or handling fees paid with the original product purchase, then Tristar shall disclose clearly and conspicuously and in close proximity the fact that processing and handling fees are not refundable, which disclosure can be made through use of a tag such as “Less P & H.” Tristar shall clearly and conspicuously post its refund policies on all product websites.
- j. Tristar shall not advertise a toll free number where consumers can “confirm” their order, unless: (1) the number is operated by or on behalf of Tristar; (2) consumers can, in fact, confirm the details of their orders by calling the number; and (3) consumers who call the number will not be solicited for any third party offers.

Phone Orders

- k. For all telemarketing calls, or portions thereof, including inbound calls from consumers responding to a commercial or infomercial, that are subject to the Telemarketing Sales Rule, 16 C.F.R. Parts 310 and 435, or GBL §§ 396-m,

399-p and 399-pp, Tristar shall comply with the terms of such applicable provisions.

1. Tristar shall not mislead consumers, either directly or by implication, about the length of time it will take for consumers to complete an order by phone.
- m. Before submitting consumers' billing information for processing any order, Tristar shall obtain express, informed consent from consumers for any and all charges.
 1. Main Offer: Before an order is processed for the Main Offer, consumers shall be provided with an order summary detailing the items ordered, their cost, including any processing and handling or other fees, and the total amount of the charges, and shall be given the opportunity to either accept or cancel the order by affirmative action such as pressing a number on the keypad, or indicating "yes." to express their consent to be charged or "no" to cancel the order. If consumers choose "no" or any similar action that indicates that they want to cancel the order, Tristar shall immediately advise consumers that their order has been canceled and will not be processed. If consumers express consent to be charged, Tristar shall advise them that their order will be processed and they will be charged. Tristar may also include language inviting consumers to listen to additional offers. Tristar shall not process any order unless the consumer has expressed consent to the charges.
 2. Upsell Offers: After accepting consumers' order for the Main Offer, Tristar may present consumers with one or more Upsell Offers. However,

Tristar shall not process an order for any upsell item(s) unless and until Tristar complies with the same procedures set forth in 2(m)(1) with respect to obtaining consumers' informed consent for the Upsell Offer charges. Tristar may present the order summary either after each upsell selected by the consumer, or after all Upsell Offers have been presented. However, Tristar shall only process charges for upsell items for which the consumer has affirmatively indicated their consent, as described in 2(m)(1). If Tristar elects to provide consumers with an order summary only after all the Upsell Offers have been presented, then Tristar shall advise consumers at the beginning of the upsell process that they will be given the opportunity to confirm the order details at the end of the call and that if they hang up the phone before completing the order confirmation process, their orders for any upsell products will not be processed and they will not be charged for such upsell products.

- n. Each time consumers are offered the option to purchase an upsell item, Tristar shall explicitly provide consumers with the option to decline the offered item without any pause in the script. If a consumer declines an offer when it is initially presented, Tristar shall not present the exact same offer on the exact same terms more than one additional time.
- o. If the consumer provides a valid email address during the call, Tristar shall email an order summary to the consumer listing all items purchased, along with any processing, handling or other charges associated therewith, including

sales taxes (if any), a grand total of all charges, and methods for contacting customer service.

- p. During all telemarketing calls, Tristar shall provide consumers who place an order with a customer service telephone number through which they can cancel or amend their order or direct any other questions about their purchase.
- q. All telemarketing calls during which a purchase is made shall be recorded and stored in retrievable format for a period of two years.
- r. Before any third party upsell is presented during a call, Tristar shall disclose to the consumer that he/she is being transferred to, or the offer is being made by, another entity who may be referred to as a "marketing partner" if such a representation is, in fact, true.
- s. Tristar shall provide a copy of this Assurance or a summary of applicable terms to any third party with whom it currently has a contract for telemarketing services and shall advise such parties to comply with those terms.
- t. After the date of this Assurance, if Tristar enters into any contract with third parties for telemarketing services, Tristar shall include in such contract the commitment by such third party to comply with applicable state and federal laws. In that regard, Tristar shall provide with the contracts with such third parties a copy of the applicable operative provisions of this Assurance or a summary thereof that relate to telemarketing services and shall require the third party to comply with such provisions.

- u. Tristar shall employ commercially reasonable procedures to monitor such third parties' compliance with this Assurance. In the event that Tristar has reason to believe that any third party is not complying with these requirements, Tristar shall take appropriate action, including if necessary, but not limited to, terminating the contract in accordance with its terms and discontinuing the use of any non-compliant scripts.
- v. Tristar shall require any third party that handles customer service on its behalf to have sufficient customer service staff available to handle the reasonably anticipated volume of customer service calls.

Web Orders

- w. Tristar shall not process any order, including any upsell orders, unless and until the consumer: (1) is presented with a "checkout" or shopping cart page that (a) clearly and conspicuously discloses the amount of any purchases, fees and estimated taxes and the total cost of the goods purchased; and (b) allows the consumer to fully edit the order that is the subject of the "checkout" or shopping cart page (e.g., delete or change the quantity of products ordered); and (2) clicks a button labeled "submit order" or language of similar import that reflects the consumer's express consent to the charges detailed on the checkout or shopping cart page. Such "submit order" button shall not be presented to consumers before they have had the opportunity to review and/or edit their order, though it may be presented at the same time. Tristar shall have the option to have two "checkout" or shopping cart pages, one after the

Main Offer and the other after the Upsell Offers. Immediately after consumers click a “submit order” button, Tristar shall clearly and conspicuously disclose that their order has been submitted and will be processed. Thereafter, either before or after additional upsell products may have been offered, Tristar shall present the consumer with an order summary that clearly and conspicuously discloses: (1) an itemized list of all products ordered, any fees associated with each product, including processing and handling; (2) an order total; and (3) instructions and contact information for consumers who may have questions about their order.

- x. Any webpage displaying an upsell offer shall provide, in equal prominence, clickable buttons allowing consumers the option to accept or decline the offer and shall be labeled accordingly (e.g., “accept” or “decline”; “yes” or “no”).
- y. After the date of this Agreement, if Tristar enters into any contract with third parties, including third parties that operate ordering websites, that are responsible for and offer third party upsell offers as part of the online ordering process for a Tristar product, Tristar shall include in such contract the commitment by such third party to ensure that any such third party upsell offers are in compliance with applicable state and federal law, including the Restore Online Shoppers’ Confidence Act, 15 U.S.C. § 8401 et seq. (“ROSCA”).
- z. For all offers, Tristar may pre-select a quantity of “1” in the area where consumers are asked to select a quantity. Tristar shall allow consumers to

choose an alternate quantity from a drop down menu or other appropriate method.

- aa. Tristar shall label all hyperlinks so they accurately describe the action that will result from clicking the link. For example, Tristar may not use the text “Yes, Continue” in instances where, by clicking the link, consumers are agreeing to purchase a product.
- bb. To the extent that Tristar subcontracts with third parties to operate the administrative and technical aspects of the ordering websites for Tristar, Tristar shall remain responsible for the subcontracted services that are subject to the foregoing provisions.
- cc. Tristar shall maintain privacy policies that explain its policies for sharing consumer information. Tristar shall clearly disclose how consumers can access its policies and shall adhere to them.

Refunds/Cancellations/Customer Service

- dd. If Tristar does not maintain a toll free number for customer service, then Tristar shall maintain and prominently publish in all ordering media an email address to which consumers can direct inquiries and complaints. Tristar shall ensure that all emails receive a substantive response within three business days.
- ee. For any orders placed by phone using IVR technology, Tristar shall fully refund any shipping fees (in addition to product fees) and pay for the consumer’s return shipping expenses associated with merchandise returned by

the consumer where: (1) the merchandise received was not what was ordered; or (2) the consumer did not order the merchandise. Tristar may refute a consumer's claim that the order was processed incorrectly by producing a telephone recording that includes the order details, as well as an appropriate response from the consumer indicating his or her consent to the order.

- ff. Regardless of the method through which the order was placed, Tristar shall fully refund any shipping fees, in addition to product fees if the merchandise is returned because it is defective or does not work on receipt by the consumer, or otherwise provide to the consumer a satisfactory replacement product at no charge. Tristar shall pay the shipping costs for consumers to return any merchandise that is defective right out of the box or any other merchandise it requires consumers to return in order to receive a replacement. Tristar shall ship, at its cost, any replacement merchandise or parts covered by warranty within three weeks of receiving the returned merchandise or issue consumers a full refund, including all processing and handling or other fees, unless the consumer elects to wait for a replacement product that is on back-order.
- gg. Tristar shall not advise consumers to wait for a specified minimum time after placing an order before contacting customer service. Tristar shall instruct any third party that provides customer service or fulfillment services, that if a consumer contacts customer service to cancel or amend an order, such third party shall take reasonable steps necessary to ensure that such orders are canceled or amended, as requested, before they are shipped.

- hh. Tristar shall require any third party that provides fulfillment services to include with any shipped merchandise, or to provide separately at the same time as the shipment the following information in writing if such information has not already been provided to the consumer by e-mail or mail: (1) an itemized list of all products ordered, the fees associated with each product, as well as any other fees, including processing and handling; (2) an order total; and (3) contact information for consumers who have questions about their order or wish to return or exchange merchandise. Where such information has already been provided to the consumer by e-mail or mail, Tristar shall include with the shipped merchandise contact information for consumers who have questions about their order or wish to return or exchange merchandise, along with an RMA number, which may be the original purchase order number, and which information may be contained on the package mailing label.
- ii. Tristar shall initiate any refunds due consumers within five business days from when Tristar receives merchandise that is returned in accordance with Tristar's return procedures.
- jj. Tristar shall honor all requests to cancel orders, including any continuity programs, and shall provide consumers with a cancellation number through which the cancellation can be verified. In the event that consumers are shipped merchandise after they have cancelled an order or continuity program, Tristar shall initiate refunds of any charges within two days of being notified

of the error, and either permit the consumer to keep the merchandise free of charge, or request that consumers return it at Tristar's expense.

kk. If Tristar requires consumers to have a Return Merchandise Authorization ("RMA") in order to return or exchange merchandise, Tristar shall either include an RMA with the merchandise or email, mail, or provide by phone the RMA within five business days of receiving the consumer's request. This subdivision does not prohibit Tristar from offering consumers who request an RMA an alternative means of resolving their concern.

ll. Tristar shall ensure that customer service lines are adequately staffed (hold times no longer than 5 minutes except when unusual intervening factors arise) and are operational for a reasonable number of hours per day and days of the week.

mm. Customer Service representatives shall not mislead consumers on any matter, including, but not limited to, whether or when consumers' orders have or will be shipped and whether consumers' merchandise is on backorder.

Warranties

nn. TriStar shall honor all warranties.

IV. MONETARY PAYMENT

3. In consideration of the making and execution of this Assurance, and within five (5) business days thereafter, Tristar agrees that it will pay by wire transfer payable to the State of New York \$700,000 to be used for consumer redress, penalties, costs and fees. Any payments and all correspondence related to this Assurance must reference Assurance #14-137.

Tristar shall cooperate with the NYAG by timely providing any information necessary for the NYAG to effectuate restitution.

V. MISCELLANEOUS

4. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by Tristar and its counsel and NYAG's own factual investigation as set forth in Findings (2)-(46) above. To the extent that any material representations are later found to be inaccurate or misleading, including representations contained in Tristar's financial disclosures, this Assurance is voidable by the NYAG in its sole discretion.

5. If the Assurance is voided or breached, Tristar agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, Tristar expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude NYAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against Tristar, or from using in any way any statements, documents or other materials produced or provided by Tristar prior to or after the date of this Assurance.

6. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Tristar in agreeing to this Assurance.

7. Tristar represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly

authorized. Tristar shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Tristar's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of claims, litigation or other legal proceedings to which NYAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by Tristar.

8. To the extent that any changes in Tristar's business, advertising and/or customer service practices are made to achieve or to facilitate conformance with the terms of this Assurance, such changes shall not constitute any form of admission by Tristar, and the NYAG shall not take the position that it constitutes evidence, explicit or implicit, or wrongdoing or failure to comply with any federal or state statute, regulation or the common law.

9. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

11. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of NYAG.

12. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the NYAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

13. To the extent not already provided under this Assurance, Tristar shall, upon request by NYAG, provide all documentation and information necessary for NYAG to verify compliance with this Assurance.

14. Tristar shall submit to the NYAG, no later than 180 days following the execution of this Assurance and every six months thereafter for a period of two years, a sworn statement by an officer of the company certifying that it is in compliance with the provisions of this Assurance and setting forth the manner and extent of its compliance, Attention: Amy Schallop, Assistant Attorney General.

15. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the Firm to:

President
Tristar Products, Inc.
490-492 Route 46 East
Fairfield, New Jersey 07004

and to:

Jeffrey D. Knowles
or Chairman, Government Division
Venable LLP
Counsel to Tristar Products, Inc.
575 7th Street, N.W.
Washington, D.C. 20004
Tel. (202) 344-4860
Fax. (202) 344-8300

If to the NYAG, to:

Amy Schallop, Assistant Attorney General
Office of the New York State Attorney General
Bureau of Consumer Frauds and Protection
The Capitol
Albany, New York 12224-0341

Tel. (518) 776-2338
Fax. (518) 915-7736
Amy.Schallop@ag.ny.gov

16. Acceptance of this Assurance by NYAG shall not be deemed approval by NYAG of any of the practices or procedures referenced herein, and Tristar shall make no representation to the contrary.

17. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by NYAG.

18. If a court of competent jurisdiction determines that Tristar has breached this Assurance, Tristar shall pay to NYAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

19. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The NYAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

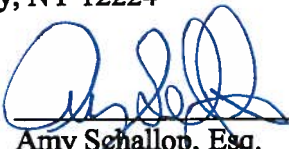
20. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

21. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. This Assurance shall not be effective unless and until fully executed by all proposed parties hereto. This Assurance may be executed and delivered by electronic facsimile (including scanning) transmission with the same force and effect as if it were executed and delivered by the

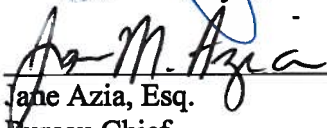
parties simultaneously in the presence of one another, and signatures on a facsimile or scanned copy hereof shall be deemed authorized signatures.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto to be effective on the last date indicated below.

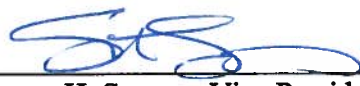
ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
The Capitol
Albany, NY 12224

By:  7/20/16

Amy Schallop, Esq.
Assistant Attorney General

By:  7/19/16

Jane Azia, Esq.
Bureau Chief
Consumer Frauds and Protection Bureau

By: 

Steven H. Sowers, Vice President and Chief
Financial Officer
Tristar Products, Inc.