

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

In the matter of:

CI 15- 2646

VITAMIN SHOPPE, INC.,

Respondent.

ASSURANCE OF  
VOLUNTARY COMPLIANCE

PREAMBLE

This Assurance of Voluntary Compliance (hereinafter "Assurance") is entered into by the State of Nebraska by and through Douglas J. Peterson, the Attorney General, and the undersigned Assistant Attorney General, and Vitamin Shoppe, Inc., acting pursuant to the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. (hereinafter "Consumer Protection Act"), and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq. (hereinafter "Uniform Deceptive Trade Practices Act".)

PARTIES

1. **Respondent:** Vitamin Shoppe, Inc. is incorporated under the laws of Delaware with its principal place of business located at 2101 91<sup>st</sup> Street, North Bergen, New Jersey 07047. Vitamin Shoppe, Inc. is a leading multi-channel specialty retailer and contract manufacturer of nutritional products. It conducts business through company-operated retail stores in various states, including Nebraska, and through its website. It has transacted and intends to transact

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business in the State of Nebraska. Respondent Vitamin Shoppe, Inc. includes its principals, officers, directors, agents, employees, representatives, successors and assigns, jointly and severally, while acting personally, or through any corporation or other business entities, whose acts, practices or policies are directed, formulated or controlled by Vitamin Shoppe, Inc.

2. **Relator:** Douglas J. Peterson is the duly elected, qualified, and acting Attorney General of the State of Nebraska. Relator is responsible for enforcing the Consumer Protection Act and the Uniform Deceptive Trade Practices Act.

3. **Parties:** Relator and Respondent shall be collectively referred to as “the Parties” throughout this Assurance.

#### **VENUE, JURISDICTION, AND CHOICE OF LAW**

4. The Parties hereby agree that venue regarding the interpretation or enforcement of this Assurance is before the District Court of Lancaster County, Nebraska (hereinafter “Court”); that the Court has subject matter jurisdiction over this matter; that the Parties herein submit to the personal jurisdiction of the Court; that the Court retains jurisdiction regarding the interpretation and enforcement of this Assurance; and that the laws of the State of Nebraska control and apply to the interpretation and enforcement of this Assurance.

#### **BACKGROUND**

5. On April 8, 2015, Respondent announced that in light of the April 7, 2015, publication of an article in *Drug Testing and Analysis*, it was “immediately removing all acacia rigidula containing products, due to the concern that some of them may contain BMPEA, from our stores and website. BMPEA is a synthetic drug-like substance that should not be used in dietary supplements.”

6. The Attorney General alleges that continuing sales of such products would be a

violation of the Consumer Protection Act and the Uniform Deceptive Trade Practices Act.

### **RECITALS**

7. IT NOW APPEARS THAT, for the sake of judicial efficiency and preservation of resources, the Parties are willing to voluntarily enter into this Assurance in order to avoid the costs and uncertainty of litigation.

8. IT FURTHER APPEARS THAT, Relator, acting on behalf of the general welfare of the public and citizenry of the State of Nebraska, is willing to accept this Assurance in lieu of bringing formal action against Respondent, provided the following provisions contained herein are fully complied with and met by Respondent.

9. THEREFORE, IT IS HEREBY AGREED by the Respondent that the following assurances are made and will be complied herewith as of the date of Court approval of this Assurance:

### **ASSURANCES**

10. Respondent shall not sell products that contain BMPEA. BMPEA is also known as:

- $\beta$ MePE
- R-beta-methylphenethylamine
- R-beta-methylphenethylamine HCl
- Beta-methylphenethylamine
- $\beta$ -methylphenethylamine
- 1-amino-2-phenylpropane
- 2-phenylpropan-1-amine
- 2-phenylpropylamine
- alpha-benzylethylamine
- 1-phenyl-1methyl-2-aminoethane

- Beta-methylbenzeneethanamine
- Beta-phenylpropylamine
- 2-phenyl-1-propanamine

11. Respondent shall not sell products which are at risk of containing BMPEA unless Respondent first conducts adequate testing to confirm that the product at risk does not, in fact, contain BMPEA. A “product at risk of containing BMPEA” shall mean: 1) a product that is labeled as containing acacia rigidula or which the Respondent otherwise knows to contain the botanical acacia rigidula; or 2) that there has been a public announcement, warning, alert, publication, notice, or report by a governmental agency/entity in the United States, Australia, Canada, Britain, or the European Union that a product may contain BMPEA. Respondent will use its best efforts to promptly effectuate a market withdrawal of the product at risk until such time as adequate testing has determined that the product does not contain BMPEA.

12. “Adequate testing” shall mean using recognized, robust industrial sampling technique (e.g., the square root plus 1) to identify samples for testing and then testing the identified samples using a methodology accepted by experts qualified by training and experience to conduct such testing as sufficiently robust to detect the presence of BMPEA.

#### **OTHER TERMS**

13. This Assurance is a compromise of a disputed matter, and it does not constitute or imply an admission of a violation of any law, rule or regulation. It shall not be considered an admission of a violation for any purpose. Respondent and Relator agree that neither the fact that the Parties entered into this Assurance nor anything contained in this Assurance is or implies an admission that the Respondent has violated any federal or state law, administrative rule or regulation.

14. Respondent acknowledges that although no monetary sanctions are being imposed

in connection with this Assurance, pursuant to Neb. Rev. Stat. § 59-1610 and §87-303.05(2), proof of failure to comply with this Assurance shall be prima facie evidence of a violation of applicable Nebraska statutes in any civil action or proceeding hereafter commenced by Relator against Respondent. Except for an action brought by Relator for failure to comply with this Assurance or by either of the Parties regarding interpretation or application of this Assurance, this Assurance shall be inadmissible in any case for any purpose, or used to support any claim, cause of action, right asserted or request for relief of any kind in any action against Respondent. This Assurance shall not create a private cause of action or confer any right to any third party for violation of any federal or state statute except that Relator may file an action to enforce the terms of this Assurance.

15. Respondent shall not represent or imply that the Relator acquiesces or approves of Respondent's past business practices, current efforts to reform its practices, or any future practices which Respondent may adopt or consider adopting. The decision of the Relator to settle this matter or to otherwise unilaterally limit current or future enforcement does not constitute approval or imply authorization for any past, present or future business practice.

16. If any portion, provision, or part of this Assurance is held to be invalid, unenforceable or void for any reason whatsoever, that portion, provision, or part shall be severed from the remainder and shall not affect the validity or enforceability of the remaining portions, provisions or parts.

**WHEREFORE**, each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Assurance and legally bind such party to its terms. The following signatures are affixed hereto as of the dates written below in agreement hereof.

**JOINTLY APPROVED FOR ENTRY AND SUBMITTED BY:**

**FOR RELATOR:**

THE STATE OF NEBRASKA, ex rel.  
DOUGLAS J. PETERSON, Attorney General

By: Douglas J. Peterson, Attorney General, No. 18146

By: Abigail M. Stempson  
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Date

*Counsel for the State of Nebraska*


**FOR RESPONDENT:**

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7/16/15  
Date

*Interim General Counsel for Vitamin Shoppe, Inc.*

By:



Cheri MacArthur

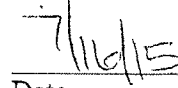
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Date

*Counsel for Vitamin Shoppe, Inc.*