

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

2011 OCT 25 A 11:57

CIVIL DIVISION
Docket No. 475-6-12 Wnev

In re FABRI-KAL CORPORATION)

ASSURANCE OF DISCONTINUANCE

WHEREAS Fabri-Kal Corporation ("Fabri-Kal") is a Michigan corporation with offices at 600 Plastics Place, Kalamazoo, Michigan 49001;

WHEREAS Fabri-Kal is a supplier to retail businesses of "Greenware" products, including Greenware drinking cups, which are made of the bioplastic polylactic acid or PLA;

WHEREAS Fabri-Kal sold over \$2.4 million worth of these products in Vermont between March 2005 and August 2011;

WHEREAS Fabri-Kal consistently advertised and labeled its Greenware products as "100% compostable";

WHEREAS Fabri-Kal acknowledges that due to variability in conditions, home composting of its products is not recommended;

WHEREAS many, but not all, of Fabri-Kal's marketing and product materials contained a "compostability" disclaimer that noted that Greenware products could only be composted in a municipal or commercial facility, such as, "100% compostable in actively managed municipal or commercial composting facilities, where they exist," "100% compostable in municipal and industrial composting facilities," and "100% Compostable [i]n a commercial compost facility";

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WHEREAS most Vermonters, and most of Vermont, are not served by municipal or commercial composting facilities that accept products such as Fabri-Kal's;

WHEREAS the Fabri-Kal disclaimers did not disclose the lack of such facilities in the state;

WHEREAS other Fabri-Kal marketing and product materials contained no disclaimer at all, stating only, for example, "This cup is made from corn, environmentally sustainable, and 100% compostable," or simply, "100% compostable."

WHEREAS the Vermont Attorney General alleges that because the compostability of products is important to Vermont consumers' purchasing decisions, and because Fabri-Kal's marketing and product materials did not note the absence of appropriate composting facilities for its products for most Vermonters, Fabri-Kal violated the Vermont Consumer Fraud Act, 9 V.S.A. § 2453(a), by advertising its products as compostable when, for most Vermont consumers, there was no practical way of composting them.

WHEREAS Fabri-Kal does not admit any violation of Vermont law;

WHEREAS the Attorney General is willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459; and

THEREFORE the parties agree as follows:

1. Fabri-Kal shall comply strictly with the Vermont Consumer Fraud Act, 9 V.S.A. chapter 63, and all regulations promulgated thereunder.
2. Fabri-Kal shall not offer, sell, or distribute for offer or sale, any product in or into the State of Vermont that is represented, directly or indirectly, to be "compostable" unless:
 - a. The product packaging bears a clear and conspicuous statement, if true, that the product is not suitable for backyard composting, or words to that effect; and

b. Either (i) there are municipal or commercial facilities reasonably and practically available to a substantial majority of Vermont consumers, which facilities accept the product for composting, or (ii) there is a clear and conspicuous disclosure on the product packaging of the absence of such facilities (such as, “Commercial facilities may not exist in your area.”).

Provided that (a) with respect to drinking cups bearing the word “compostable” engraved on the bottom surface of the cup, the above required disclosures may appear on a label in the form of a green band or ribbon around the lower exterior of the cup; and (b) the above required disclosures shall apply to those products that are within the control of Fabri-Kal as of July 16, 2012.

For the purpose of this paragraph, “clear and conspicuous” means that a disclosure is proximate to the compostability claim and not significantly smaller or less visible than the claim itself.

3. As *cy pres* relief, within fifteen (15) business days of signing this Assurance of Discontinuance, Fabri-Kal shall pay the sum of twenty thousand dollars (\$20,000.00) to the Central Vermont Solid Waste Management District, 137 Barre Street, Montpelier, Vermont 05602, to develop a residential composting pilot project consistent with its proposal dated April 13, 2012, and shall, at the same time, notify the Vermont Attorney General’s Office in writing of the payment.

4. Also within fifteen (15) business days of signing this Assurance of Discontinuance, Fabri-Kal shall pay to the State of Vermont, in care of the Vermont Attorney General’s Office, the sum of eighty thousand dollars (\$80,000.00) in civil penalties and costs.

5. The undersigned represent that they are authorized to enter into this Assurance and to bind their respective parties to its terms.

6. This Assurance of Discontinuance resolves all claims by the State of Vermont relating to the matters described herein.

Date: 6/4/12

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: *Elliot Burg*
Elliot Burg
Assistant Attorney General

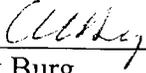
Date: 6/18/12

FABRI-KAL COPORATION

By: *Gary C Galia*
Its Authorized Agent

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APPROVED AS TO FORM:



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