

STATE OF VERMONT
WASHINGTON COUNTY, SS.

2010 FEB - 4 A 10:54

IN RE RUSSELL STOVER CANDIES, INC.,) Washington Superior Court
and WHITMAN'S CANDIES, INC.) Docket No. 77-2-10 W/AV

ASSURANCE OF DISCONTINUANCE

WHEREAS Russell Stover Candies, Inc. ("Russell Stover") is a Missouri corporation with offices at 4900 Oak Street, Kansas City, Missouri 64112-2702;

WHEREAS Whitman's Candies, Inc. ("Whitman's") is a Missouri corporation that is owned by Russell Stover and has offices located at the same address;

WHEREAS Russell Stover and Whitman's sell packaged and boxed candies at wholesale to stores in Vermont, among other states, and directly to consumers over the Internet;

WHEREAS some of the products of Russell Stover and Whitman's have borne the name "Vermont" on their packaging—specifically, Russell Stover's "Vermont Fudge Pecan Roll" and Whitman's "Vermont Fudge" (one of several products in the "Whitman's Sampler" box);

WHEREAS none of the ingredients in these products are known to come from Vermont, nor are the products manufactured in Vermont;

WHEREAS, effective January 5, 2006, the State of Vermont began to limit the use of the word "Vermont" in connection with the advertising and marketing of certain consumer products to ensure that consumers are not misled about the products' geographic origin, through the promulgation of the Vermont Attorney General's Consumer Fraud Rule (CF) 120, available at [http://www.atg.state.vt.us/upload/1186586537 Rule CF120 - Adopted Rule.pdf](http://www.atg.state.vt.us/upload/1186586537_Rule_CF120_-_Adopted_Rule.pdf);

Office of the
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GENERAL
Montpelier,
Vermont 05609

WHEREAS CF 120.04 prohibits the unqualified use of the word “Vermont” to describe a food product unless the product is in fact a “Vermont product,” which in turn requires, among other things, that the product be made in Vermont and its primary ingredients (if indigenous to the state) originate in Vermont;

WHEREAS it is an unfair and deceptive trade act and practice in commerce under the Consumer Fraud Act, 9 V.S.A. § 2453(a), to violate Rule 120;

WHEREAS because the Russell Stover and Whitman’s “Vermont”-labeled products described above were manufactured outside of Vermont and contained no primary ingredients known to have originated in Vermont, the Vermont Attorney General alleges that both companies violated the Vermont Consumer Fraud Act, 9 V.S.A. § 2453(a), by failing to comply with Rule 120.04;

WHEREAS following the promulgation of CF 120 in January 2006, Russell Stover and Whitman’s sold approximately \$10,000 (retail) worth of products in Vermont whose packaging was not in compliance with CF 120;

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

THEREFORE, the parties agree as follows:

1. *Injunctive relief.* Russell Stover and Whitman’s, themselves and through their officers, directors, employees and other agents, shall comply strictly with CF 120, including, but not limited to, the provisions of CF 120 relating to the use of the word “Vermont” to describe a food product.

2. *Civil Penalties and costs.* Within 10 (ten) business days of signing this Assurance of Discontinuance, Russell Stover and Whitman's shall together pay to the State of Vermont, in care of the Vermont Attorney General's Office, the total sum of \$10,000.00 (ten thousand dollars) in civil penalties and costs. Russell Stover and Whitman's shall be jointly and severally liable for the payment of this sum.

3. *Final resolution.* This Assurance of Discontinuance resolves all existing claims the State of Vermont may have against Russell Stover and/or Whitman's stemming from the facts described in this Assurance of Discontinuance.

Date: 1/27/10

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: Elliot Burg
Elliot Burg
Assistant Attorney General

Date: 2/2/10

RUSSELL STOVER CANDIES, INC.

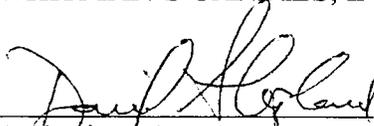
by: David Shapland
Authorized Agent

David Shapland
Name

Chief Financial Officer
Title

Date: 2/2/10

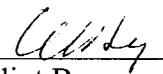
WHITMAN'S CANDIES, INC.

by: 
Authorized Agent

David Shapland
Name

Vice President
Title

APPROVED AS TO FORM:


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