

ATTORNEY GENERAL OF THE STATE OF NEW YORK
WESTCHESTER REGIONAL OFFICE

In the Matter of

CVS CORPORATION,

Respondent

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of General Business law § 821 and Executive Law §63(12), Eliot Spitzer, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of Respondent, **CVS CORPORATION**, regarding the sale of over-the-counter medicines after the expiration dates listed on their packaging. Based upon that inquiry the Attorney General has made the following findings:

1. Respondent is a corporation located in Woonsocket, Rhode Island. Respondent operates numerous retail stores located in New York State.
2. In the regular course of business, Respondent stocks and sells, among other things, over-the counter (non-prescription) medicines to the general public.
3. As a retailer of over-the -counter medicines, Respondent is subject to the terms of General Business Law § 820 which provides that such medications can not be sold after the date "marked upon the label as indicative of the date beyond which the contents cannot be expected beyond reasonable doubt to be safe and effective".
3. The Attorney General conducted an investigation to determine whether

Respondent was selling non-prescription medicines after the expiration dates contained on the products' packaging.

4. The Attorney General's investigation involved visiting various retail stores and looking at the expiration dates on over-the-counter medicines for the following ten product groups:

Aspirin

Non-Aspirin Pain Reliever

Children's Pain Reliever (Aspirin or Non-Aspirin)

Night Time Cold Medicine

Children's Night Time Cold Medicine

Children's Cough Syrup

Allergy (Hay Fever) Medicine (Tablets or Syrup)

Nasal Spray

Topical Anti-Infection Ointment or Cream

Topical Anti-Itch Ointment or Cream

5. For each product listed above, the Attorney General randomly selected any available brand that the store sold and then examined the product packaging to determine if the expiration date had passed.

6. On July 31, 2003, a representative of the Attorney General's Office visited Respondent's store located at 101 East Lake Drive, Mahopac, NY.

7. The representative observed the following products being offered for sale past their expiration dates:

PRODUCT	BRAND	EXPIRATION DATE	CONTROL NUMBER
Non-Aspirin Pain Reliever (Allergy/Sinus)	CVS	6/03	0JE0062
Aspirin (Pain Reliever)	Vanquish	3/03	229111F
Allergy Medicine	Tavist	4/03	313445
Nighttime Cold Medicine	Alka Seltzer Plus (Cold and Sinus)	11/02	T147171F
	Sudafed Cold and Sinus	5/03	1H5240
Topical Anti-Infection Ointment	CVS	5/03	AN186

8. On August 1, 2003, a representative of the Attorney General's Office visited Respondent's store located at 452 Mamaroneck Avenue, White Plains, NY

9. The representative observed the following product being offered for sale past its expiration date:

PRODUCT	BRAND	EXPIRATION DATE	CONTROL NUMBER
Nighttime Cold Medicine	Sudafed	7/03	1J5187

10. On August, 21, 2003, a representative of the Attorney General's Office visited Respondent's store located at 115 West 125th Street, New York, NY.

11. The representative observed the following products being offered for sale past their expiration dates:

PRODUCT	BRAND	EXPIRATION DATE	CONTROL NUMBER
Non-Aspirin Pain Reliever (Ibuprofen Tablets)	CVS	12/02	1DE0431

12. The Attorney General asserts that Respondent's actions as set forth above constitute a violation of General Business Law § 820 and Executive Law §63(12).

13. Respondent neither admits nor denies the Attorney General's assertion that its actions violated the statutory provisions cited above.

14. It now appears that Respondent and the Attorney General are willing to enter into this Assurance of Discontinuance pursuant to Executive Law §63(15) in lieu of commencing a statutory proceeding.

IT IS HEREBY AGREED, by and between the parties that this Assurance shall be binding on and apply to Respondent, its officers, directors, agents, employees, assignees, and any individual or entity through which Respondent may now or hereafter act and shall apply to every retail store that Respondent now, or in the future, operates in New York State.

1. PROHIBITED PRACTICES

Respondent shall comply fully with General Business Law § 820, including but not limited to the following:

(1) Respondent shall refrain from selling or offering for sale over-the-counter medicines after the expiration dates listed on the products' packaging.

(2) Respondent will institute procedures to ensure that expired over-the-counter medicines will be identified and removed no later than the expiration dates listed on the packaging.

(3) Respondent shall also direct all employees involved in the stocking of

over-the-counter medicines of the procedures referred to in paragraph 2 hereof and shall instruct all such employees to remove any over-the-counter medicines if they determine that they have passed their expiration dates.

2. PENALTIES

It is further agreed that Respondent will pay to the Attorney General, upon the signing of this Assurance, the sum of \$3,500 as and for a civil penalty.

3. MISCELLANEOUS PROVISIONS

Respondent shall submit to the Attorney General, no later than sixty (60) days following the execution of this Assurance, a sworn statement certifying that it has complied with the provisions of this Assurance.

Respondent shall deliver all penalties and reports required by this Assurance to Attorney General Eliot Spitzer, in care of Gary S. Brown, Assistant Attorney General, Office of the Attorney General of the State of New York, 101 East Post Road, White Plains, New York 10601.

Nothing herein shall be construed to deprive any consumer or other person or entity of any private right under the law.

It is further understood and agreed that the acceptance of this Assurance by the Attorney General of the State of New York shall not be deemed or construed as an approval by the Attorney General of any of the activities of Respondent, its successors, agents or assigns, and none of them shall make any representation to the contrary.

Pursuant to Executive Law §63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of a violation of the applicable statutes in any civil action or proceeding hereafter commenced by the Attorney General.

The effective date of this agreement is September ____, 2003.

IN WITNESS THEREOF, the undersigned subscribe their names:

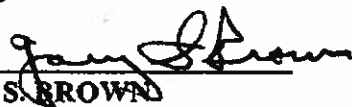
Dated: September 18, 2003
Providence, New York Rhulo Island

CVS CORPORATION

By: 
Lenon P. Bankowski
General Counsel and Secretary

CONSENTED TO:
Dated: 9/22, 2003
White Plains, New York

ELIOT SPITZER
Attorney General of the State of New York

By: 
GARY S. BROWN
Assistant Attorney General in Charge
Westchester Regional Office
101 East Post Road
White Plains, N.Y. 10601

CORPORATE ACKNOWLEDGMENT

STATE OF RHODE ISLAND)
COUNTY OF *providence*)ss.:


Zeron B. Lankowsky, being duly sworn, deposes and says:

I am the *General Counsel* of CVS Corporation, respondent herein, and which executed the foregoing Assurance of Discontinuance. I have executed the foregoing instrument with the consent and authority of CVS Corporation and those responsible for the acts of said entity duly acknowledge the same.

It and secretary



Sworn to before me this *15th* day
of September, 2003.



Notary Public

Ellen E. Putnam
State of Rhode Island
My Commission Expires 07/28/06