

At a Special Term of the Supreme Court, State of New York, held in and for the County of Albany, at Albany County Court-house in Albany, New York, on the ____ day of _____, 2004

P R E S E N T:

Honorable Bernard J. Malone, Jr.,
Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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PEOPLE OF THE STATE OF NEW YORK, by	:	
ELIOT SPITZER, Attorney General of the	:	
State of New York,	:	
	:	SUPPLEMENTAL
Petitioners,	:	CONSENT ORDER
	:	<u>AND JUDGMENT</u>
-against-	:	
	:	Index No. 3966-98
JENNIFER CONVERTIBLES, INC.,	:	
	:	
Respondent.	:	
-----X	:	

THE PEOPLE OF THE STATE OF NEW YORK, by ELIOT SPITZER, Attorney General of the State of New York, having commenced this proceeding by filing a Verified Petition dated May 18, 1998, a Consent Order and Judgment having been entered on June 3, 1999, pursuant to which the Court retained jurisdiction of this proceeding, and the Attorney General having moved for an Order to punish respondent, Jennifer Convertibles, Inc, for civil and criminal contempt of court,

Upon the Notice of Motion for an Order to punish respondent, Jennifer Convertibles, Inc., for civil and criminal contempt of court, the Affirmation of Assistant Attorney General, Victoria L. Safran, dated March 31, 2004 in support of the motion, and the exhibits thereto, and upon the

Stipulation and Consent dated July 8, 2004 in which respondent, Jennifer Convertibles, Inc., acknowledges service of the Notice of Motion and supporting papers, consents to the entry of this Supplemental Consent Order and Judgment, and waives notice thereof;

NOW, on motion of the Attorney General, it is

PARTIES SUBJECT TO JUDGMENT

ORDERED, ADJUDGED AND DECREED that:

1. This Supplemental Consent Order and Judgment shall extend to Jennifer Convertibles, Inc., its agents, servants, employees, successors, heirs and assigns, or any other person under its direction and control, whether acting individually or in concert with others, or through any corporate or other entity or device through which it may now or hereafter act or conduct business (hereinafter "respondent"); and it is further

INJUNCTIVE RELIEF

ORDERED, ADJUDGED AND DECREED that:

2. Respondent is permanently enjoined from engaging in any deceptive, fraudulent or illegal business acts or practices in violation of General Business Law §§ 349 and 396-u and Executive Law § 63(12). GBL § 396-u applies to respondent because its products are not in substantial part custom made. Such violations include, but are not limited to:

- (a) delivering furniture or other merchandise which does not conform to the contract or to the showroom model selected by the consumer;
- (b) failing to provide a full refund within two weeks to any consumer who rejects or revokes acceptance of damaged, defective or non-conforming goods;
- (c) if the consumer elects to permit respondent to repair or replace

damaged, defective or non-conforming goods, rather than rejecting or revoking acceptance pursuant to 2(b), failing to repair or replace such goods within 60 days after receipt of notification by the consumer, or 120 days in the case of a foreign manufacturer;

- (d) failing to refund within two weeks all monies paid by consumers for damaged, defective or non-conforming furniture or other merchandise which is not repaired or replaced, once the opportunity to cure has expired, as described in 2(c) above;
- (e) failing to permit consumers to fully inspect furniture or other merchandise upon delivery or prior to removing furniture or merchandise from respondent's showroom;
- (f) failing to honor all guarantees or warranties, express or implied;
- (g) making any misrepresentations in the sale of merchandise including, but not limited to:
 - 1) misrepresenting the terms or conditions of any warranty;
 - 2) representing that a product is fit for a particular use unless such is the case;
 - 3) misrepresenting availability of a certain product or a delivery date;
 - 4) misrepresenting the quality of the products sold;
- (h) failing to disclose an estimated delivery date, or an estimated range of delivery dates, conspicuously and in writing on the consumer's copy of the

contract entered into for the sale of furniture or other merchandise, at the time an order for such merchandise is taken;

(i) failing to deliver furniture or other merchandise by the latest date stated in the contract for delivery, unless the consumer is notified:

- 1) of the delay and the revised anticipated delivery date or range of delivery dates; and
- 2) of the fact that, upon the expiration of the latest date stated for delivery in the original contract, such consumer will have the option of:
 - a) canceling the contract and receiving a full refund; or
 - b) canceling and receiving a credit from the dealer in an amount equal to any deposit made by the consumer; or
 - c) negotiating a new delivery date or range of delivery dates with the dealer which date or range of dates shall thereafter be the latest date stated for delivery in the contract;
 - d) modifying the contract by making a new selection of furniture or merchandise;

Notwithstanding this provision, where a delay in delivery as determined from the original contract is caused by a strike or by an act of God, the applicable delivery date shall be extended by an amount of time equal to the duration of the strike or condition giving rise to the delay or 30 days,

whichever is less, as provided in GBL § 396-u(3);

- (j) failing to honor a consumer's election from among the four options set forth in paragraph 2(j)(2). In the event the consumer elects to cancel the contract and receive a refund, such refund will be issued and mailed within two weeks of such demand;
- (k) failing to satisfy court judgments obtained by consumers against respondent within thirty days;

3. Respondent will, within thirty days of the signing of this Supplemental Consent Order and Judgment, implement the following policies which shall be followed in the offer and sale of all furniture and other merchandise:

- (a) prior to delivery, consumers will receive written notice of their right to refuse delivery of damaged, defective or non-conforming goods without penalty;
- (b) respondent will provide each purchaser a contract that, in addition to all statutory requirements, contains:
 - 1) a description of all merchandise, including model number, measurements and color;
 - 2) a description and account of all charges including, but not limited to, delivery, walk-up charges and assembly/disassembly fees;
 - 3) a notice that consumers have a right to reject within a reasonable time period, and without penalty, non-conforming, damaged or

- defective goods and get a full refund of all monies paid, within two weeks of rejecting the goods or revoking acceptance;
- 4) a notice of the consumer's right to elect to have defective or non-conforming merchandise repaired or replaced, which repair or replacement must be completed within 60 days after receipt of notification by the consumer, or in the case of foreign manufacturers, within 120 days.
 - 5) a notice that once the time to cure, as described in 3(b)4 above, has expired and Jennifer has not repaired or replaced the merchandise successfully, a refund of all monies paid must be made to the consumer within two weeks;
- (c) respondent will unwrap all furniture or other merchandise upon delivery and provide the consumer with sufficient time to fully inspect the furniture or merchandise before accepting delivery, unless it is accepted by a third party who does not make that request;
 - (d) respondent will accept final payments in all forms of payment which it accepts during the ordinary course of business, including, but not limited to credit cards as long as payment is made at least 24 hours prior to delivery;
 - (e) respondent will clearly and conspicuously disclose, in writing, all guarantees and any restrictions on such guarantees; no warranty or guaranty shall contain a provision that the warranty or guaranty is void

if the product is moved, except a move outside the continental U.S. may be excluded. Respondent may exclude damage caused by a move from warranty or guaranty coverage. In the case of consumers who have moved to a location which is more than 50 miles from a Jennifer Convertibles, Inc. store, respondent shall send the consumer whatever components are necessary to make repairs for defects covered by the warranty or guaranty and shall, at respondent's election: i) arrange for a repair person to install the components; or ii) have the consumer arrange for his own furniture repair person, and reimburse the consumer for reasonable costs paid to the repair person, but, in any event, not to exceed \$120.00;

(f) respondent will make all repairs covered under any warranty or guaranty within 60 days of notification by the consumer, or 120 days in the case of foreign manufactures, or refund the consumer's purchase price within the two weeks following the expiration of the period to cure;

(g) Respondent will improve its customer service operations, including but not limited to taking the following measures:

1) respondent will maintain a toll-free telephone number during normal business hours to respond to consumer inquiries and complaints, will allow consumers the opportunity to speak with a live customer service representative, and will ensure that the average time to be connected to a live person does not exceed five

minutes;

- 2) respondent will ensure that customer service representatives are properly trained to handle consumer inquiries and complaints appropriately, and to treat consumers with courtesy and respect;
- 3) respondent will train all sales staff to refer consumer inquiries and complaints to customer service representatives, when appropriate;
- 4) respondent will ensure that all consumers receive initial responses to complaints made by telephone, in writing or in person, within 12 days; and it is further

RESTITUTION

ORDERED, ADJUDGED AND DECREED that:

4. Respondent will make restitution in the following manner to each consumer who: a) has previously filed a complaint with the Attorney General which complaint remains unresolved; or b) subsequently files a complaint, together with proper supporting documentation, with the Attorney General within 180 days of entry of this Supplemental Consent Order and Judgment. Respondent will evaluate all complaints in its possession (including all complaints annexed as exhibits to the Affirmation of Assistant Attorney General, Victoria Safran dated March 31, 2004 in support of the motion to punish respondent for contempt, and all complaints thereafter received by the Attorney General and forwarded to respondent prior to the date of entry of this Supplemental Consent Order and Judgment). Within 30 days of entry of this Supplemental Consent Order and Judgment, respondent will notify the Attorney General in

writing, with respect to each complaint, whether restitution is proposed, and the amount proposed. With respect to complaints subsequently filed within 180 days of entry of this Supplemental Consent Order and Judgment, the Attorney General will provide respondent with a copy of each complaint, and within 30 days of receipt, respondent will notify the Attorney General, in writing, whether restitution is proposed, and the amount proposed. With respect to all complaints, if the Attorney General agrees with respondent's proposed restitution, the proposed restitution amount will be the amount to which the consumer is entitled. Respondent will pay such amount by check payable to the State of New York within 20 days of notice by the Attorney General. The Attorney General will, in turn, as appropriate, distribute such restitution to the consumer. If the Attorney General does not agree with respondent's proposed restitution, the Attorney General and respondent will attempt to reach agreement within 14 days of the Attorney General's receipt of respondent's proposed restitution, but, in all cases, the Attorney General will be the final arbiter and will notify respondent in writing of the amount due. Restitution will not exceed the total amount paid by the consumer. Within 20 days of notice by the Attorney General, respondent will send the Attorney General a check in the amount specified. The Attorney General will, in turn, as appropriate, distribute those funds to the consumer; and it is further

COSTS AND PENALTIES

ORDERED, ADJUDGED AND DECREED that:

5. Upon signing of the Stipulation consenting to this Supplemental Consent Order and Judgment, respondent will pay, by check payable to the State of New York, a penalty in the sum of \$275,000, pursuant to Judiciary Law § 751(4), such sum to be paid in four payments: \$71,000 at the time of signing, and three equal payments at two, four and six months from the

date of signing, of \$68,000 each;

6. Upon signing of the Stipulation consenting to this Supplemental Consent Order and Judgment, respondent will pay, by check payable to the State of New York, statutory costs in the amount of \$2,000;

7. Respondent will deliver all restitution, costs, penalties and sworn statements of compliance required under paragraphs 3, 4, 5, 6 and 8 to Attorney General Eliot Spitzer, in care of Victoria L. Safran, Assistant Attorney General, New York State Office of the Attorney General, Nassau Regional Office, 200 Old Country Road, Suite 460, Mineola, New York 11501 **(or such other place as she may designate)**; and it is further

COMPLIANCE

ORDERED, ADJUDGED AND DECREED that:

8. Respondent will submit to the Attorney General no later than 60 days after entry of this Supplemental Consent Order and Judgment, a sworn statement by an officer of Jennifer Convertibles, Inc., certifying that the provisions of paragraph 3 of this Supplemental Consent Order and Judgment have been satisfied and setting forth the manner and extent of its compliance, together with exhibits and supporting documentation. Respondent will submit to the Attorney General no later than 250 days after entry of this Supplemental Consent Order and Judgment, a sworn statement by an officer of Jennifer Convertibles, Inc., certifying that all other provisions of this Supplemental Consent Order and Judgment have been satisfied and setting forth the manner and extent of its compliance, together with exhibits and supporting documentation.; and it is further

ENFORCEMENT

ORDERED, ADJUDGED AND DECREED that:

9. Upon application by the Attorney General, on five days notice to respondent's attorneys, Wincig & Wincig, showing that respondent has violated any provision of this Supplemental Consent Order and Judgment, the Court will enter a money judgment in the amount of the unpaid balance due pursuant to paragraphs 5 and 6 above, plus statutory interest from the date of signing of this Supplemental Consent Order and Judgment, against respondent, and the Attorney General will have execution thereof. In addition, the Court shall enter an Order permanently enjoining respondent from engaging in the retail or wholesale business in the State of New York. In addition, the Attorney General may take any and all other steps available to him, including contempt, to enforce this Supplemental Consent Order and Judgment;

10. In any application by petitioners, pursuant to paragraph 9 above, the Attorney General may request an allowance for costs under CPLR § 8303(a)(6) and § 8303(b);

11. In any application by petitioners, pursuant to paragraph 9 above, respondent agrees, that the venue of this action may, at petitioner's option and without further notice, be changed from Albany County to Nassau County; and it is further

PRIVATE RIGHT OF ACTION

ORDERED, ADJUDGED AND DECREED that:

12. Nothing in this Supplemental Consent Order and Judgment shall be construed to deprive any person of any right or remedy under the law; and it is further

CHANGE OF ADDRESS

ORDERED, ADJUDGED AND DECREED that:

13. Respondent shall notify the Attorney General of any change of address within five (5) days of such change; and it is further

CONTINUING JURISDICTION

ORDERED, ADJUDGED AND DECREED that:

14. The Court will retain jurisdiction of this proceeding for the purpose of carrying out the terms of this Supplemental Consent Order and Judgment, or modifying it in accordance with a request from respondent or the Attorney General of the State of New York, or granting such further relief as to the Court seems just and proper.

DATED: Albany, New York
_____, 2004

Hon. _____
J.S.C.