ATTORNEY GENERAL OF THE STATE OF NEW YORK
CONSUMER FRAUDS AND PROTECTION BUREAU

In the Matter of

Assurance No. 22-067

Investigation by LETITIA JAMES,
Attorney General of the State of New York, of

Hy Cite Enterprises, LLC

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York ("OAG") commenced an investigation pursuant to Exec. Law § 63(12), Gen. Bus. Law § 349 and Article 10-a of New York's Personal Property Law ("Door-to-Door Sales Protection Act"), into the practices of Hy Cite Enterprises, LLC ("Hy Cite" or "Respondent"). This Assurance of Discontinuance ("Assurance") contains the findings of the OAG's investigation and the relief agreed to by the OAG and Hy Cite (collectively, the "Parties").

THE OAG's FINDINGS

1. Hy Cite is a business entity headquartered in Madison, Wisconsin.

2. Hy Cite works with distributors to sell cookware and other kitchen-related goods to consumers. Hy Cite supplies distributors with sales order forms allowing the consumer to purchase goods from either its Royal Prestige or Kitchen Charm brands of cookware.

3. Distributors sell the products through door-to-door sales. The distributors take orders from consumers, and Hy Cite ships the vast majority of goods directly to the consumer.

The distributor, rather than Hy Cite, sets the price for the products purchased by consumers. The products are often sold in sets, such as a set of 8 pots and pans.

4. Consumers can finance their purchase(s) through financing offered by the distributor. Hy Cite typically purchases the financing agreement from the distributor. The financing agreement is between the distributor and the consumer, but Hy Cite assumes the position of the distributor when the agreement is assigned to it. Over two-thirds of purchases by New York state consumers are financed in this manner.

5. Hy Cite's consumer contracts properly include a "Notice of Cancellation," which allows a consumer to cancel the transaction "without any penalty or obligation," within three business days from the date the contract was signed. In practice, Hy Cite represents that it has also allowed later cancellations if requested before the product has shipped. When consumers have attempted to return a product beyond the three-day cancellation period and after the product has already shipped, absent extenuating circumstances, Hy Cite usually tells consumers that it can no longer accept the return.

6. The OAG finds that the contracts did not contain a conspicuous refund policy as required by New York's Door-to-Door Sales Protection Act, Personal Property Law Article Art. 10-A, a separate legal obligation from the Notice of Cancellation. The OAG further finds that, under section 428(4), the absence of such a refund policy obligated Hy Cite to provide consumers with twenty days to return products for either a cash refund or credit of the total price so long as the products were in substantially as good condition as when received by the consumer, which Hy Cite did not always do.

7. The OAG finds that Hy Cite's practices as described in paragraph 6 above constitute repeated violations of Executive Law § 63(12), General Business Law (GBL) § 349; and N.Y. Personal Property Law, Art. 10-A, §§ 425-43.

8. Hy Cite neither admits nor denies the OAG's findings in paragraphs 2-7.

9. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law 63(15) in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12), GBL § 349, and N.Y. Personal Property Law, Art. 10-A, §§ 425-43.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

10. Injunctive Relief for New York Consumers: Hy Cite must comply with Executive Law § 63(12); General Business Law (GBL) § 349; N.Y. Personal Property Law, Art. 10-A, §§ 425-431; the Fair Debt Collection Practices Act (FDCPA), 15. U.S.C. § 1692 *et seq*., and the Rules of the City of New York (NYC Admin. Code).

11. Affirmative Obligations in New York

a. Hy Cite's obligations under this Assurance apply only within the State of New York.

b. Return Policy: Hy Cite must comply with New York's Door-to-Door Sales Protection Act by including clear and conspicuous language describing its return policy which shall be separate from the legally-mandated three business day cancellation policy in the sales order form. In addition to its obligation to comply with the Door-to-Door Sales Protection Act, Hy Cite agrees to, within 10 days of the effective date of the Assurance (the "Effective Date") and for at least three years, provide 20 days for returns of unopened goods from the date the goods were received by the New York consumer. Hy Cite may, in its discretion, provide that distributors shall pay the costs of shipping or restocking fees, but in no event shall Hy Cite hold consumers responsible for those costs or fees.

i. The return policy will be clearly and conspicuously stated on both the English and Spanish sales order forms in New York in a manner substantially similar to Exhibit A to this Assurance.

ii. The distributor must verbally, and in the language of the consumer, inform the New York consumer at the time of sale of the 20-day return policy, including that the goods must remain unopened in order for consumers to receive a full refund, and must report to Hy Cite in writing that this disclosure took place.

iii. When goods are delivered in New York, they must include a sheet that clearly and conspicuously states in both English and Spanish that consumers have 20 days to return the unopened goods and where to send the return.

c. Cancellation Policy: Hy Cite shall maintain a cancellation policy under which a New York consumer may cancel within three business days of placing an order *or* if the New York consumer has not yet received the product, whichever is longer. This language shall be clearly and conspicuously disclosed on the sales order form.

d. Exchange Policy: Hy Cite shall allow a New York consumer to exchange opened and undamaged goods within 60 days of receipt for goods of similar value (i.e., goods priced similarly by Hy Cite), with language on the sales order form substantially similar to Exhibit A of the Assurance. Hy Cite shall adopt and implement this policy within 10 days of the Effective Date of the AOD.

e. Debt Collection: Hy Cite shall explicitly prohibit distributors from engaging in any collection efforts in New York concerning accounts owned by Hy Cite.

i. Hy Cite shall ensure the written materials it provides to New York distributors include a comprehensive explanation of debt collection laws and direct distributors to comply with those laws, including but not limited to New York General Business Law Section 601. Within 20 days of the Effective Date, Hy Cite shall submit the updated materials to the OAG for its review, and shall respond to any concerns the OAG raises concerning the materials within 10 days of Hy Cite's receipt of those concerns.

ii. In furtherance of the above, Hy Cite shall remove any language in its distributor agreements and its financing manual (or any similar documents), to the extent such language exists, representing explicitly or implicitly that the New York distributor may collect any payments on accounts assigned to Hy Cite, or that distributors can partner with Hy Cite's collections department to collect on past-due accounts.

iii. Within 10 days of receiving OAG approval for the updated material in section 10.e.i., Hy Cite shall make available to and provide notice to current New York distributors of the revised material, distributor agreements and financing manuals. These documents shall also be timely provided to all new distributors.

iv. If in the course of an appointment a New York consumer asks a distributor to forward a payment to Hy Cite, the distributor may do so at their discretion and such activity shall not be considered debt collection on behalf of Hy Cite. Such requests shall be documented in writing by the distributor. Hy Cite shall issue a written warning to a distributor if the distributor fails to comply with this section, and shall take further disciplinary action, up to and including termination of the relationship, if the distributor fails to comply with this section after receiving a written warning.

12. <u>Restitution for New York Consumers</u>

a. Consumers Eligible for Restitution: "Eligible Consumers" shall consist of New York consumers who purchased products in the 51-month period leading up to the Effective Date and attempted to return those products, either by contacting Hy Cite directly or by contacting the distributor who facilitated the sale of the products, within 20 days of purchase, but were denied because they were outside the three-day cancellation window.

b. Eligible Consumers shall include either consumers identified by Hy Cite's analysis of its own records or who submit a request for restitution to Hy Cite within 60 days of the Effective Date, provided that consumers who submit a request for restitution will be required to confirm in writing that: (1) they are New York consumers who purchased products in the 51-month period leading up to the Effective Date; (2) they attempted to return those products within 20 days of purchase; and (3) their return was denied because they were outside the three-day cancellation window. Such products purchased by Eligible Consumers are referred to herein as "Eligible Products." If a consumer contacts the OAG concerning whether they are an Eligible Consumer, the OAG will forward the consumer's information to Hy Cite by providing notice pursuant to paragraph 24.

c. Determining Restitution

i. Within 60 days of the Effective Date, Hy Cite shall review its records to identify Eligible Consumers.

ii. Within 90 days of the Effective Date, based on its review of its records or restitution requests submitted within 60 days of the Effective Date, Hy Cite shall notify Eligible Consumers via mail to their last known address and via email to their last known email address of the following restitution options:

(1) restitution of 100% of the amount paid for Eligible Products that are returned unopened (either the cash price or the amount paid in financing, as applicable);

(2) restitution of 50% of the amount paid (either the cash price or the amount paid in financing, as applicable) for Eligible Products that are returned opened; or

(3) an exchange for goods of similar value for Eligible Products that are returned opened.

Eligible Consumers who desire to return Eligible Products as part of this restitution program will have 45 days from mailing of the notice to select their preferred form of restitution as specified in 12(b)(ii)(1)-(3), and must return the Eligible Products to Hy Cite within 90 days of the selection date in order to participate.

iii. Where an Eligible Consumer seeks restitution for an Eligible Product that is part of a multi-product order and the sales order does not include itemized prices, Hy Cite will make a good faith estimate of the amount paid for the Eligible Product. Where possible, the estimate will be based on the proportionate cost to the distributor. Restitution will be based on that estimated amount. The "amount paid" will be based on the money received by Hy Cite from a consumer associated with the Eligible Product. Where basing the estimate on the proportionate cost to the distributor is not possible, the OAG reserves the right to object to the "amount paid."

d. Review and Approval: An exemplar notice to be sent to Eligible Consumers is attached hereto as Exhibit B. This notice has been reviewed and approved by OAG.

e. Reporting: Hy Cite shall report the following to the OAG nine months from the Effective Date: the number of Eligible Consumers notified, the number of consumers who submitted complaints 60 days after the Effective Date who were eligible for restitution, the number of consumers who chose to participate in the restitution program, the names of the consumers who participated, and how much each consumer received in restitution or what goods were exchanged if the consumer opted to return opened goods.

13. Penalties

a. Hy Cite shall remit to the OAG $300,000 in penalties.

b. Payment shall be made by wire transfer, ACH transfer, attorney check, corporate or certified check, or bank draft, which shall be made payable to the "State of New York," and shall reference Assurance No. 22-067. Any payment by check shall be addressed to the attention of Dami Obaro, Assistant Attorney General, Bureau of Consumer Frauds and Protection, 28 Liberty Street, 20th Floor, New York, New York, 10005. Any payment by wire transfer shall be sent pursuant to wire transfer instructions that the OAG will provide to Hy Cite in writing prior to payment.

MISCELLANEOUS

Subsequent Proceedings.

14. Respondent expressly agrees and acknowledges that a default in the performance of any obligation under paragraphs 10-13 would violate the Assurance, and that the OAG thereafter may commence a civil action or proceeding, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall

constitute prima facie proof of one or more of the statutory violations described in paragraph 7, pursuant to Executive Law § 63(15).

15. In any subsequent investigation, civil action, or proceeding by the OAG to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 14, the Respondent expressly agrees and acknowledges:

a. That, for conduct prior to the Effective Date, any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;

b. that the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;

c. that any civil action or proceeding to enforce the Assurance must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

16. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

17. To the extent not already provided under this Assurance, the Respondents shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance and to effectuate the terms of this Assurance.

Effects of Assurance:

18. Acceptance of this Assurance by the OAG is not an approval or endorsement by the OAG of any of Respondent's practices or procedures; however, Respondents may represent that the relief imposed by the AOD is an OAG requirement.

19. This Assurance is not intended for use by any third party in any other proceeding.

20. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall cause this Assurance to be adopted in any such transfer agreement. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

21. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

22. This Assurance resolves and releases all claims by the OAG against Respondent for the alleged conduct described in the Findings from the commencement of the OAG's investigation to the Effective Date; provided, however, that nothing in this Assurance shall be deemed to preclude the OAG's review of conduct that occurs after the Effective Date, or any claims that may be brought by the OAG to enforce Respondent's compliance with this Assurance.

23. Any failure by the Attorney General to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the Attorney General, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications:

24. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 22-067, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at the address below or another address designated in writing by the recipient, and shall be addressed as follows:

If to the Respondent, to:

Jonathan Friedman
Foley & Lardner LLP
90 Park Avenue
New York, NY 10016
jfriedman@foley.com
Counsel for Hy Cite

or in his absence, to the person holding the title of General Counsel of Hy Cite.

If to the OAG, to:

Assistant Attorney General Dami Obaro
Bureau of Consumer Frauds and Protection
28 Liberty Street, New York, NY 10005
dami.obaro@ag.ny.gov

or in her absence, to the person holding the title of Bureau Chief, Consumer Frauds and Protection Bureau.

Representations and Warranties:

25. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by the Respondent and their counsel and OAG's own factual investigation as set forth in Findings, paragraphs (1)-(9) above. The Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are

inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG.

26. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

27. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Respondent shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance, or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Respondent's (i) testimonial obligations or (ii) right or ability to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party.

General Principles:

28. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

29. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its Effective Date.

30. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

31. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

32. Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

33. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

34. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

35. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

36. The Effective Date of this Assurance shall be November 1, 2022.

HY CITE ENTERPRISES, LLC

By: ______________________________

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