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ALAMEDA COUNTY

FEB 19 2014 ^{KN}

CLERK OF THE SUPERIOR COURT
By:  ^{KN}
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

**PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff,

vs.

OVERSTOCK.COM, INC.,

Defendant.

No. RG10-546833

JUDGMENT

Dept: 21
Judge: Hon. Wynne S. Carvill
Action Filed: November 17, 2010

This equitable action brought pursuant to Business and Professions Code sections 17200, et seq., 17500, et seq. and Civil Code Section 1770 was tried before the Honorable Wynne S. Carvill in Department 21 of the above-entitled Court. Plaintiff, the People of the State of California (the "People") appeared and were represented by Nancy E. O'Malley, District Attorney of Alameda County, by Matthew L. Beltramo, Deputy District Attorney; Edward S. Berberian, District Attorney of Marin County, by Andres H.

Perez, Deputy District Attorney; Dean D. Flippo, District Attorney of Monterey County, by James R. Burlison, Deputy District Attorney; Gary Lieberstein, District Attorney of Napa County, by Catherine C. Borsetto, Deputy District Attorney; Jeffrey F. Rosen, District Attorney of Santa Clara County, by Tina Nunes Ober, Deputy District Attorney; Bob Lee, District Attorney of Santa Cruz County, by Kelly J. Walker, Assistant District Attorney; Stephen S. Carlton, District Attorney of Shasta County, by Anand "Lucky" Jesrani, Deputy District Attorney; and Jill R. Ravitch, District Attorney of Sonoma County, by Matthew T. Cheever, Deputy District Attorney. Defendant Overstock.com, Inc. (hereinafter "Overstock") appeared and was represented by Robert Feldman, Dane Reinstedt, John Pierce and Meredith Shaw of Quinn Emanuel Urquhart & Sullivan, LLP.

Evidence, both oral and documentary, having been presented by the parties, the cause having been fully brief, argued and submitted for decision, and the Court having made and filed a final Statement of Decision on February 5, 2014:

IT IS ORDERED, ADJUDGED AND DECREED that the Motions for Judgment by Overstock, filed on or about September 16, 2013, are denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Overstock violated Business and Professions Code sections 17200 et seq. and 17500 et seq. as alleged by the People in the First and Fifth Causes of Action of the First Amended Complaint, as set forth more fully in the Statement of Decision, filed on February 5, 2014.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Overstock shall pay civil penalties to the People pursuant to Business and Professions Code sections 17206 and 17536 in the amount of \$6,828,000, to be paid pursuant to Government Code

section 26506, as follows: \$853,500 payable to the Treasurer of Alameda County; \$853,500 payable to the Treasurer of Marin County; \$853,500 payable to the Treasurer of Monterey County; \$853,500 payable to the Treasurer of Napa County; \$853,500 payable to the Treasurer of Santa Clara County; \$853,500 payable to the Treasurer of Santa Cruz County; \$853,500 payable to the Treasurer of Shasta County; and \$853,500 payable to the Treasurer of Sonoma County. Said payments shall be delivered to the Alameda County District Attorney's Office, Consumer and Environmental Protection Division, c/o Matthew Beltramo, 7677 Oakport Street, Suite 650, Oakland, California 94621, for distribution to the various counties. Pursuant to Business and Professions Code Sections 17206(c) and 17536(c), the aforementioned funds shall be for the exclusive use of the district attorneys of those counties for the enforcement of consumer protection laws.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Business and Professions Code sections 17203 and 17535 and with respect to reference prices advertised by Overstock, Overstock and each of its agents, employees, officers, directors, representatives, successors, assignees, partners and any person, partnerships, corporations, and other entities acting under, by, through, on behalf of, or in concert or in participation with Overstock, are for a period of five (5) years from entry of this Judgment enjoined and prohibited from engaging in, committing or performing any of the following acts:

1. Advertising an advertised reference price ("ARP") based on a formula, multiplier or other method – except as otherwise permitted by the provisions below – that would set the ARP on any basis other than an actual price offered in the marketplace at or about the time the advertisement is first placed;

2. Advertising an ARP based on a similar but non-identical product than the one advertised for sale unless the use of a similar product as the basis for the ARP is disclosed on the web page in which the product is offered for sale (the “product page”) in a manner reasonably designed to alert consumers – e.g., “compare similar,” “like product at,” “similar product at,” etc.;
3. Advertising an ARP based on the highest price that may be found anywhere without regard to whether the ARP reflects a substantial volume of recent sales unless the basis of such a comparison is disclosed on the product page in a manner reasonably designed to alert readers to the context or nature of the comparison – e.g., “compare MSRP,” “compare department store retail,” “compare original price,” “compare at some retailers,” etc.;
4. Using an unmodified term such as “compare” as the ARP nomenclature unless the ARP reflects a good faith effort to determine the “prevailing market price” of the identical product;

(The “good faith effort requirement” shall be deemed to have been met if any one of the following criteria are satisfied: (a) the ARP is a range of prices (i.e., “\$X to \$Y”) and that range reflects a range that is in fact identified in the validation process; (b) the ARP is a price from one of the five (5) largest internet shopping sites as identified by any third-party or industry source (or an average of such sites) and that method is identified by a clear and conspicuous hyperlink to the ARP label; or (c) the ARP is a price from one of the three (3) largest shopping sites for the category of product being sold (e.g., furniture, jewelry, etc.) as identified by any third-party or industry source (or an average of such sites) and

that method is identified by a clear and conspicuous hyperlink to the ARP label.

These three alternatives are *not* meant to be the exclusive means of satisfying the “good faith effort requirement” but are only defined “safe harbors” that Overstock may utilize if it so chooses.)

5. Using the ARP nomenclature “MSRP” or some other marketing term or acronym unless a clear and conspicuous hyperlink defines that term or acronym – e.g., “MSRP” refers to the “manufacturer’s suggested retail/resale price” – *and* state that that term or acronym may not be the prevailing market price (or, alternatively, may not be the regular retail price);

(When hyperlinks are used to define terms, the definitions must state what the term means rather than list alternatives without providing the consumer with any basis for determining which alternative is being used in a particular instance. The disclosures in any such hyperlink shall be in plain English rather than the “legalese” characteristic of that found in Trial Exhibit 961, attached to and made a part of this Order.)

6. Advertising an ARP that was set by adding to the price identified by the validation process an amount to reflect the costs of shipping the product from the source of the ARP unless (a) adding shipping cost is necessary to achieve an “apples-to-apples” comparison to the Overstock price *and* (b) the addition of shipping costs is identified either in the nomenclature (e.g., “compare with shipping”) or by a clear and conspicuous hyperlink;

(If shipping charges are added to arrive at the ARP, the method used to factor in the shipping cost to the ARP must be clearly explained in text connected to the ARP by a clear and conspicuous hyperlink.)

7. Advertising an ARP for longer than 90 days from the date on which the ARP was verified as a posted price, unless the ARP is re-verified after that period;
8. Advertising an ARP unless the timeframe parameter for when the ARP was last verified (i.e., within 90 days, 30 days, etc.) is noted either on the product page (e.g., "compare \$999.01 as of 12/27/2013") or by a clear and conspicuous hyperlink connected to the ARP nomenclature; and
9. Advertising an ARP unless Overstock first verifies that the reference price complies with this order by taking a screen shot or obtaining and maintaining some equally verifiable record of the product offering(s) and currently advertised price(s) that is relied upon to set the ARP.

(Such screenshot or record may be received from a third party data vendor.

The verification documentation shall be maintained for two years from the date the ad containing the ARP is initially posted, and the People may have reasonable access to such documentation throughout the five year period during which this injunction shall be in place.)

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as it may take Overstock sometime to determine the best way to bring its website into compliance with the terms of this injunction, Overstock shall have a period of 60 days after entry of judgment to come into compliance, and thereafter Overstock shall file and serve a declaration of compliance detailing the steps taken to ensure compliance.

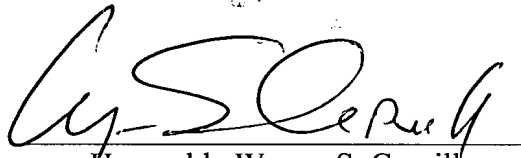
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Overstock shall take nothing from the People.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the People, as the prevailing party, shall recover their costs from Overstock as provided by Code of Civil Procedure section 1032 et. seq., and California Rule of Court 3.1700 in an amount to be determined by the Court at a later date, said amount to be made payable to the People of the State of California and to be delivered to the Alameda County District Attorney's Office, Consumer and Environmental Protection Division, c/o Matthew Beltramo, 7677 Oakport Street, Suite 650, Oakland, California 94621.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to Government Code Section 6103.5, Overstock shall pay to the Alameda County Superior Court Clerk of Court fees in the amount of \$1185.00, which constitute the total scheduled costs of official services rendered by the Clerk of the Court that were not paid by the People as a result of Government Code section 6103.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that jurisdiction shall be retained by the Court for the purpose of enabling either party to apply to the Court for such further orders and directions as may be necessary or appropriate for carrying out this Judgment or enforcement of its terms, including imposition of costs.

Dated: February 19, 2014


Honorable Wynne S. Carvill
Judge of the Superior Court

What is "Compare at?"

The term "Compare at" means the price at which, in the reasonable judgment of our experienced buyers, manufacturers or suppliers, the item may be sold on an everyday basis. Other vendors sometimes refer to this as the "retail price" exclusive of special promotions or sale prices, at which the item might be offered at retail stores and at customary retail mark-up. In many instances, though not all, the "Compare at" price reflects a price suggested by the manufacturer or supplier of these goods, without reference to actual retail sales and may amount to an estimation of a retail offer price in accordance with standard industry practices. It may also include a reasonable average estimated shipping cost, if ordinary shipping costs have been discounted or eliminated. We make no representation that the products have been sold or offered at the "Compare at" price, and the price may or may not reflect the average or prevailing market price in any area on any particular day. For some items listed as a set, the "Compare at" price may be an aggregate of the suggested or estimated prices for all items included in the set. Actual retail sales in your area may substantially differ from the "Compare at" price. Moreover, the nature of internet sales on a national or international basis, and the fact that we deal in overstocks, closeouts, end-of-season, and unique items that may be sold only on Overstock.com, precludes our ability to know whether our products are sold at the "Compare at" price at any particular location or time by other vendors. You may choose to use the "Compare at" price as an approximate guide to what you would or could pay for these items in other locations, at other times, or under other conditions, including full retail price.

[Close Window](#)

**Superior Court of California
Alameda County**

Case # RG10 546833
Case Name: People vs. Overstock.com
Document: Judgment

**CLERK'S CERTIFICATE OF
MAILING
(CCP 1013a)**

I certify that the following is true and correct:

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 1221 Oak St. Oakland, California. I served this **Judgment** by placing copies in envelope(s) addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at **Oakland**, California, following standard court practices.

Matthew L. Beltramo, Esq.
Alameda County District Attorney's Office
7677 Oakport St., Ste.650
Oakland, CA 94621

Robert Feldman, Esq.
Dane Reinstedt, Esq.
Quinn Emanuel
555 Twin Dolphin Dr., 5th Floor
Redwood City, CA 94065

Andres H. Perez, Esq.
Marin County District Attorney's Office
3501 Civic Center Dr., Rm 130
San Rafael, CA 94903

James R. Burlison, Esq.
Monterey County District Attorney's Office
1200 Aguajito Rd., Rm 301
Monterey, CA 93940

Catherine Borsett, Esq.
Napa County District Attorney's Office
931 Parkway Mall
Napa, CA 94559

Tina Nunes-Ober, Esq.
Santa Clara County District Attorney's Office
70 W. Hedding St., West Wing
San Jose, CA 95110

Anand Jesrani, Esq.
Shasta County District Attorney's Office
1355 West St.
Redding, CA 96001

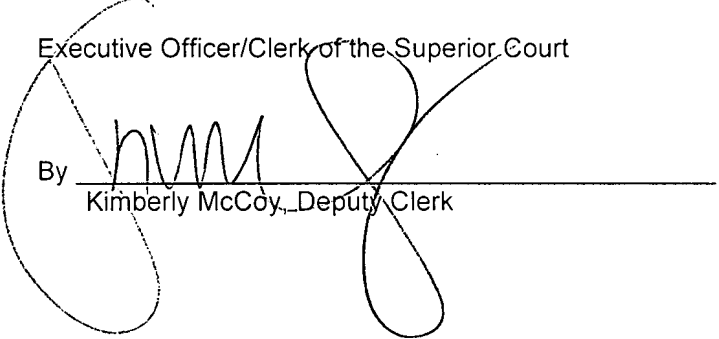
Matthew T. Cheever, Esq.
Sonoma County District Attorney's Office
2300 County Center Dr., Ste. B-170
Santa Rosa, CA 95403

Kelly Walker, Esq.
Santa Cruz County District Attorney's Office
701 Ocean St., Rm 200
Santa Cruz, CA 95060

Meredith M. Shaw, Esq.
Quinn Emanuel Urquhart & Sullivan, LLP
50 California St., 22nd Floor
San Francisco, CA 94111

Date: 02/19/14

Executive Officer/Clerk of the Superior Court

By  _____
Kimberly McCoy, Deputy Clerk