

**QUESTION 11 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV**

Sticker, Inc. is a Michigan company that designs and manufactures adhesive labels for a variety of purposes. Organics, LLC, is a Michigan company that produces organic fruit for distribution to independent local produce markets throughout the state of Michigan. Organics sought to expand its distribution by selling its produce to chain grocery stores. Organics learned that to sell produce in grocery stores, its fruit had to be identified by type, size and how it was grown.

A representative of Organics inquired into whether Sticker could provide labels that Organics could attach to its fruit and/or its fruit containers. The representative phoned Sticker and spoke to a salesman, who indicated that Sticker had previously provided such labels to other companies. The two generally discussed the number of labels required, price, and shipping arrangements. The representative of Organics said that he would discuss the conversation with his superiors, and if they agreed to the terms discussed, he would provide Sticker a written offer memorializing those terms for a yearly contract. Sticker received the offer, reviewed it, and filled in the agreed terms on a Sticker's purchase order form. The reverse side of the purchase form included a conspicuous statement expressly disclaiming any warranty of merchantability and further indicating that the product was sold "as is" and that there are no warranties which extend beyond the description on the face of the document. Organics received the purchase order form, read the handwritten terms on the front page, and simply filed it.

In May, Organics informed Sticker that it required labels for the upcoming blackberry and raspberry season. Sticker produced the labels and shipped the required amount to Organics. The labels were attached to the plastic berry containers, the produce was successfully shipped, and Organics received no complaints from the grocery stores about its product. In late August, Organics informed Sticker that it required labels for the upcoming plum and apple season. Sticker again produced the labels and shipped the required amount to Organics. Organics' employees attached the labels directly to the plums but soon discovered that many of the labels they attached had fallen off. Organics called Sticker and complained about the problem and a Sticker's representative indicated that sometimes the adhesive did not bond directly to some fruits. He also told Organics that it had purchased the labels "as is" and that there would be no refund or any replacement labels. Organics expressed concern that the labels would not be suitable for other large orders, including apples, its largest crop, which soon needed to be distributed. Organics cancelled payment to Sticker for

the shipment of plum and apple labels and refused to order any more of their labels from Sticker.

Can Sticker recover the payment for the plum and apple labels that Organics cancelled? Explain your answer.

Can Organics refuse to order any further labels from Sticker within the one-year contract period? Explain your answer.

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