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SUPERIOR COURT OF N.J.
MERCER COUNTY
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By: Cathleen O'Donnell
Deputy Attorney General
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MERCER COUNTY
DOCKET NO. MER-C _____-08

ANNE MILGRAM, Attorney General of the State
of New Jersey, and DAVID M. SZUCHMAN,
Director of the New Jersey Division of Consumer
Affairs,

Plaintiffs,

v.

MATTEL, INC. and FISHER-PRICE, INC.,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Anne Milgram, Attorney General of the State of New Jersey ("Attorney General"),
with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and David M. Szuchman,
Director of the New Jersey Division of Consumer Affairs ("Director"), with offices located at 124
Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

JURISDICTION AND PARTIES

1. The Attorney General is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act (“CFA”), N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder, (“CFA Regulations”), N.J.A.C. 13:45A-1.1 et seq. The Director is charged with the responsibility of administering the CFA and the CFA Regulations on behalf of the Attorney General.

2. By this action, the Attorney General and the Director (collectively, “Plaintiffs”) seek injunctive and other relief for violations of the CFA. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and 56:8-19. Venue is proper in Mercer County, pursuant to R. 4:3-2, because it is a county in which Defendants have advertised and conducted business.

3. Defendant Mattel, Inc. (“Mattel”) is a Delaware corporation regularly conducting business within the State of New Jersey (“State”). Mattel maintains a principal place of business at 333 Continental Boulevard, El Segundo, California 90245-5012.

4. Defendant Fisher-Price, Inc. (“Fisher-Price”) is a Delaware corporation regularly conducting business within the State. Fisher-Price maintains a principal place of business at 636 Girard Avenue, East Aurora, New York 14052-1824.

5. Mattel and Fisher-Price are collectively referred to as “Defendants.”

6. At all relevant times, Defendants solicited consumers and businesses with the State.

STATEMENT OF FACTS

7. Lead is highly toxic, particularly to young children.

8. There is no safe level of lead in the body.
9. Even very small amounts of lead can cause serious neurological damage, including drops in IQ and, in the long term, behavioral problems.
10. Higher exposures to lead cause acute effects, including seizures, coma or death.
11. Lead exposure is cumulative such that multiple sources of exposure compound the negative health effects in children.
12. One of the sources of exposure to lead is in products, or pieces of products, containing lead, which young children can mouth or swallow.
13. The amount of lead in a product is measured in parts per million (ppm) of total lead content, which can also be expressed as a percentage.
14. At the time the recalled products at issue in the Complaint were manufactured, distributed, and otherwise introduced into commerce in the State, a Federal standard for lead content in surface coatings of children's products set the maximum allowable lead level at 600 ppm.
15. Even the 600 ppm is high, given the fact that it was originally premised on outmoded assumptions about how much lead can be present in children's blood without significant health effects, and did not take into account the existence of multiple sources of exposure to lead, such as housing, soil and children's products.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

16. On August 2, 2007, Defendant Fisher-Price voluntarily recalled in the United States approximately 967,000 units of Fisher-Price children's toys manufactured in China between April 19, 2007 and July 6, 2007, for excessive levels of lead in surface paints.

17. On August 14, 2007, Defendant Mattel voluntarily recalled in the United States approximately 253,000 units of children's toys manufactured in China for excessive levels of lead on the product surface.

18. On September 4, 2007, Defendant Mattel voluntarily recalled in the United States approximately 675,000 units of children's toys manufactured in China between September 30, 2006 and August 20, 2007, for excessive levels of lead on the product surface.

19. Also on September 4, 2007, Defendant Fisher-Price voluntarily recalled in the United States almost 100,000 units of children's toys manufactured in China for excessive levels of lead on the product surface.

20. On October 25, 2007, Defendant Fisher-Price voluntarily recalled in the United States approximately 38,000 units of children's toys manufactured in China for excessive levels of lead on the product surface.

21. Defendants manufactured and caused to be introduced into commerce in the State children's toys with surface coatings of lead-based/lead-containing paint that posed an unreasonable risk of injury to children. Levels detected in samples of concern for this case exceeded 600 ppm. Many samples were over 1000 ppm, several samples tested at over 10,000 ppm, and some over 50,000 ppm.

22. Defendants caused or allowed "Certificate[s] of Compliance" to be issued by testing laboratories for the recalled toys that were marked as valid for periods of time up to 12 months. In general, each Certificate of Compliance, indicating compliance with standards for lead and other heavy metals, as well as other safety requirements, appears to be based on a single product testing event. The Certificates of Compliance were deceptive and/or misleading in that they purported to be valid for a future period of time for which Defendants did not have adequate auditing and process control of manufacturing facilities and/or testing of surface coatings and/or finished products to assure compliance for that period.

COUNT I

VIOLATION OF THE CFA BY DEFENDANTS **UNCONSCIONABLE COMMERCIAL PRACTICES**

23. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 22 as if more fully set forth herein.

24. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise

25. In the advertisement and operation of their businesses, Defendants have engaged in the use of unconscionable commercial practices.

26. Defendants' conduct in violation of the CFA includes, but is not limited to, the following unconscionable commercial practices:

- a. Introducing merchandise they manufactured into commerce in the State without adequate safeguards and testing to ensure product safety;
- b. Failing to adequately investigate circumstances indicating a lack of process control in the manufacturing and testing of children's products; and
- c. Causing or allowing Certificates of Compliance to be issued concerning lead levels in surface coatings of children's products without sufficient basis to ensure compliance.

27. Each unconscionable commercial practice constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT II

VIOLATION OF THE BANNED HAZARDOUS PRODUCTS REGULATION BY DEFENDANTS

28. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 27 above as if more fully set forth herein.

29. The Regulations Governing Banned Hazardous Products, N.J.A.C. 13:45A-4.1 et seq., ("Banned Products Regulations") promulgated pursuant to the CFA, address, among other things, the advertisement and/or sale of products subject to a recall by the Consumer Product Safety Commission ("CPSC").

30. Specifically, N.J.A.C. 13:45A-4.1 provides, in relevant part:

- (a) It shall be an unconscionable commercial practice for any person, including any business entity, to manufacture, distribute, sell or offer for sale any

consumer product contrary to any order of the Consumer Product Safety Commission

[N.J.A.C. 13:45A-4.1(a).]

31. Defendants violated the Banned Products Regulations by: Manufacturing, distributing, selling or offering to sell children's toys contrary to an order of the CPSC.

32. Each violation of the Banned Products Regulations constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATION OF TOY AND BICYCLE SAFETY REGULATIONS BY DEFENDANTS

33. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 32 above as if more fully set forth herein.

34. The Regulations Governing Toy and Bicycle Safety, N.J.A.C. 13:45A-24.1 et seq., promulgated pursuant to the CFA ("Toy and Bicycle Safety Regulations"), set forth, among other things, regulations for disseminating notice of defective or hazardous toys.

35. Specifically, N.J.A.C. 13:45A-24.1 provides:

(a) The purpose of this subchapter is:

...

2. ...setting forth regulations for disseminating notice of defective or hazardous toys or other articles intended for use by children;

...

- (b) The sections of this subchapter shall apply as follows:

...

2. N.J.A.C. 13:45a-24.3 applies to manufacturers, importers, and distributors of toys or other articles intended for use by children, and to all dealers who offer to sell or sell such items to consumers in the State of New Jersey.

...

[N.J.A.C. 13:45A-24-1(a)(2), (b)(2).]

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36. Furthermore, N.J.A.C. 13:45A-24.3 concerns toy recall notices and provides, in pertinent part:

- (b) Any manufacturer, distributor or dealer who, pursuant to any law or any regulation of the U.S. Consumer Product Safety Commission, is required to give public notice or who voluntarily gives such notice, with regard to a defect or hazard in any toy or other article intended for use by children, shall at the same time notify the Director, in writing at the following address:

Executive Director
Office of Consumer Protection
P.O. Box 45025
124 Halsey Street
Newark, New Jersey 07101
Tel. [973]-504-6257

37. Defendants have violated the Toy and Bicycle Safety Regulations by engaging in certain conduct including, but not limited to: Failing to provide notice to the Director in writing of the recalls of children's toys referenced in paragraphs 16 to 20 above.

38. Each violation of the Toy and Bicycle Safety Regulations constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

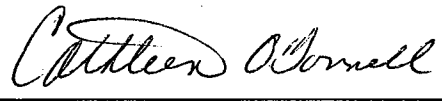
PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment:

- (a) Finding that the acts and omissions of the Defendants, constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the CFA Regulations, specifically the Banned Products Regulations, N.J.A.C. 13:45A-4.1 et seq., and the Toy and Bicycle Safety Regulations, N.J.A.C. 13:45A-24.1 et seq.;
- (b) Permanently enjoining the Defendants and their owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors and all other persons or entities directly under its control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Banned Products Regulations, N.J.A.C. 13:45A-4.1 et seq., and the Toy and Bicycle Safety Regulations, N.J.A.C. 13:45A-24.1 et seq.;
- (c) Directing the assessment of restitution amounts against the Defendants, jointly and severally, to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against the Defendants jointly and severally, for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing the assessment of costs and fees, including attorneys' fees, against the Defendants, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and

- (f) Granting such other relief as the interests of justice may require.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Cathleen O'Donnell
Deputy Attorney General

Dated: December 15, 2008
Newark, New Jersey


RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the CFA, N.J.S.A. 56:8-1 et seq., the Banned Products Regulations, N.J.A.C. 13:45A-4.1 et seq., and/or the Toy and Bicycle Safety Regulations, N.J.A.C. 13:45A-24.1 et seq., is not the subject of any other action pending in any other court of this State.

I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated.

I certify that there is no other party who should be joined in this action at this time.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Cathleen O'Donnell
Deputy Attorney General

Dated: December 15, 2008
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Cathleen O'Donnell, Deputy Attorney General, is hereby designated as trial counsel on behalf of Plaintiffs in this action.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

Cathleen O'Donnell
Deputy Attorney General

Dated: December 15, 2008
Newark, New Jersey