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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
HUDSON COUNTY
DOCKET NO. C-166-09

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

Plaintiffs,

v.

RHODE ISLAND NOVELTY, INC., JANE and
JOHN DOES 1-20, individually and as owners,
officers, directors, shareholders, founders,
managers, agents, servants, employees,
representatives and/or independent contractors of
RHODE ISLAND NOVELTY, INC., and XYZ
CORPORATIONS 1-20,

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 this Complaint state:

PRELIMINARY STATEMENT

1. At times, the most innocuous toys to adults can pose significant hazards to the health, safety, and well-being of younger children. Yo-Yo Waterballs, also known as water yo-yos, are inexpensive toys containing a rubber ball filled with liquid attached to a rubber cord. Among other things, the United States Consumer Product Safety Commission has determined that Yo-Yo Waterballs pose a potential risk of strangulation. As such, the legislature of the State of New Jersey ("State" or "New Jersey") enacted the Yo-Yo Waterballs Act, N.J.S.A. 2A:65B-1, et seq. ("Yo-Yo Waterballs Act") which prohibits the sale or offer for sale of Yo-Yo Waterballs in the State, effective April 1, 2008.

2. Nevertheless, from April 1, 2008 to September 9, 2008, defendant Rhode Island Novelty, Inc. ("RINCO" or "Defendant") sold and offered for sale various types of banned Yo-Yo Waterballs to consumers within the State. Such consumers included individuals, schools, an arcade, library and dentist office. Defendant's sale of Yo-Yo Waterballs constitutes multiple violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. ("Advertising Regulations"), and the Yo-Yo Waterballs Act, N.J.S.A. 2A:65B-1 et seq.

JURISDICTION AND PARTIES

3. The Attorney General is charged with the responsibility of enforcing the CFA, Advertising Regulations and the Yo-Yo Waterballs Act. The Director is charged with the responsibility of administering the CFA, Advertising Regulations and Yo-Yo Waterballs Act on behalf of the Attorney General.

4. By this action, the Attorney General and the Director (collectively, "Plaintiffs") seek injunctive and other relief for violations of the CFA, Advertising Regulations and Yo-Yo Waterballs Act. 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, and the Yo-Yo Waterballs Act, specifically N.J.S.A. 2A:65B-3. Venue is proper in Hudson County, pursuant to R. 4:3-2, because it is a county in which the cause of action arose.

5. Defendant RINCO is a Rhode Island corporation established on June 18, 1985. Upon information and belief, RINCO maintains a main business address of 19 Industrial Lane, Johnston, Rhode Island 02919.

6. Upon information and belief, John and Jane Does 1 through 20 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of RINCO who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

7. Upon information and belief, XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional corporations that have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

8. At all relevant times, RINCO has been engaged in the offer for sale, sale and shipment of Yo-Yo Waterballs to consumers within New Jersey and elsewhere including, but not limited to: (a) 8" Water Ball Fish Yo-Yo; (b) 2" Yo-Yo Waterball; and (c) 1.5" Smile Face Water Ball Yo-Yo.

9. At all relevant times, RINCO offered for sale and sold merchandise, including Yo-Yo Waterballs, to consumers within New Jersey through its website, www.rinovelty.com ("RINCO Website").

10. Upon information and belief, at all relevant times, RINCO has owned and/or maintained the RINCO Website.

11. Upon information and belief, at all relevant times, the RINCO Website offers consumers within New Jersey and elsewhere the ability to create an account through RINCO before they make purchases on the RINCO Website. Among other things, RINCO account users enter a range of personal information including their billing address, shipping address, e-mail address, telephone numbers and/or company information.

12. At all relevant times, the RINCO Website purchase screen included a field for consumers to enter the State where RINCO merchandise, including Yo-Yo Waterballs, could be shipped and billed. At all relevant times, New Jersey was included as a State in which RINCO merchandise, including Yo-Yo Waterballs, could be shipped and billed.

13. At all relevant times, RINCO also offered for sale and sold merchandise, including Yo-Yo Waterballs, to consumers within New Jersey through direct mail catalogs delivered to New Jersey addresses ("RINCO Direct Mail Catalogs").

14. Both the RINCO Website and RINCO Direct Mail Catalogs provided that consumers in New Jersey and elsewhere could order merchandise, including Yo-Yo Waterballs, in several ways, which include the following: (a) RINCO Website; and (b) RINCO's toll-free telephone number, 800-528-5599 ("RINCO Toll-Free Number")

15. During the period of April 1, 2008 to September 9, 2008, RINCO sold Yo-Yo Waterballs to consumers within the State, including, Evesham Branch Library in Marlton, New Jersey, St. Anthony's High School in Jersey City, New Jersey, Learning Community Charter School in Jersey City, New Jersey, Rabbi Pesach Raymon Yeshiva in Edison, New Jersey, Action Zone Arcade in Northfield, New Jersey, and Jackson Orthodontics in Jackson, New Jersey

COUNT I

VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES)

16. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 15 as if more fully set forth herein.

17. 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

18. In the operation of its business, Defendant has engaged in the use of unconscionable commercial practices, which include:

- a. Advertising, selling and offering for sale Yo-Yo Waterballs to consumers in New Jersey through the RINCO Website when the sale and offer for sale of such merchandise is illegal;

- b. Advertising, selling and offering for sale Yo-Yo Waterballs to consumers in New Jersey through RINCO Direct Mail Catalogs when the sale and offer for sale of such merchandise is illegal; and
 - c. Selling Yo-Yo Waterballs to consumers in New Jersey through the RINCO Toll-Free Number when the sale of such merchandise is illegal.
19. Each unconscionable commercial practice constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT II

VIOLATION OF THE ADVERTISING REGULATIONS BY DEFENDANT

20. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 19 above as if more fully set forth herein.

21. The Advertising Regulations promulgated pursuant to the CFA, address, among other issues, general advertising practices.

22. Specifically, the Advertising Regulations provide, in relevant part:

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

.....

9. The making of false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.

[N.J.A.C. 13:45A-9.2(a)(9).]

23. In its advertisement, offer for sale and sale of Yo-Yo Waterballs, Defendant has violated the Advertising Regulations by engaging in certain conduct including, but not limited to:

- a. Advertising Yo-Yo Waterballs through the RINCO Direct Mail Catalogs sent to consumers in New Jersey, thereby leading those consumers to believe that the offer for sale and sale of Yo-Yo Waterballs in the State is legal; and
- b. Advertising Yo-Yo Waterballs through the RINCO Website where New Jersey as a state in which merchandise can be shipped and billed, thereby leading consumers in New Jersey to believe that the offer for sale and sale of Yo-Yo Waterballs in the State is legal.

24. Each violation of the Advertising Regulations by Defendant constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATION OF THE YO-YO WATERBALLS ACT BY DEFENDANT

25. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 24 above as if more fully set forth herein.

26. The Yo-Yo Waterballs Act, N.J.S.A. 2A:65B-1 et seq., prohibits the sale and offer for sale of Yo-Yo Waterballs in New Jersey.

27. The Yo-Yo Waterballs Act, N.J.S.A. 2A:65B-2(b), defines a Yo-Yo Waterball as “a toy marketed and sold under the name of ‘Yo-Yo Waterball’ and any similar fluid yo-yo toy that contains a rubber ball filled with liquid attached to a rubber cord.

28. At all relevant times, Defendant sold Yo-Yo Waterballs within the meaning of the Yo-Yo Waterballs Act, N.J.S.A. 2A:65B-1 et seq., including, but not limited to: (a) 8” Water Ball Fish Yo-Yo; (b) 2” Yo-Yo Waterball; and (c) 1.5” Smile Face Water Ball Yo-Yo.

29. Additionally, the Yo-Yo Waterballs Act, N.J.S.A. 2A:65B-2(a) provides that: “A person shall not sell or offer for sale a Yo-Yo Waterball.”

30. Defendant's conduct in violation of the Yo-Yo Waterballs Act includes, but is not limited to:
- a. Selling and offering for sale Yo-Yo Waterballs to consumers in New Jersey through the RINCO Website when the sale and offer for sale of such merchandise is illegal;
 - b. Selling and offering for sale Yo-Yo Waterballs to consumers in New Jersey through RINCO Direct Mail Catalogs when the sale and offer for sale of such merchandise is illegal; and
 - c. Selling Yo-Yo Waterballs to consumers in New Jersey through the RINCO Toll-Free Number when the sale of such merchandise is illegal.
31. Each prohibited sale and/or offer for sale of Yo-Yo Waterballs constitutes a separate violation under the Yo-Yo Waterballs Act, N.J.S.A. 2A:65B-2.

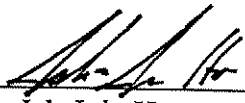
PRAYER FOR RELIEF

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

- (a) Finding that the acts and omissions of the Defendant constitutes multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., and the Yo-Yo Waterballs Act, N.J.S.A. 2A:65B-1;
- (b) Permanently enjoining Defendant and its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors and all other persons or entities directly under their 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 Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., and the Yo-Yo Waterballs Act, N.J.S.A. 2A:65B-1;
- (c) Directing the assessment of restitution amounts against Defendant 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 Defendant for each and every violation of the CFA and Advertising Regulations, in accordance with N.J.S.A. 56:8-13;
- (e) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the Yo-Yo Waterballs Act, in accordance with N.J.S.A. 2A:65B-3;
- (f) Directing the assessment of costs and fees, including attorneys' fees, against Defendant 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
- (g) Granting such other relief as the interests of justice may require.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

Jah-Juin Ho
Deputy Attorney General

Dated: December 11, 2009
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

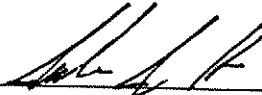
I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq., and the Yo-Yo Waterballs Act, N.J.S.A. 2A:65B-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: _____

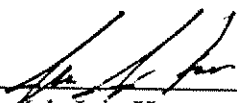

Jah-Juin Ho
Deputy Attorney General

Dated: December 11, 2009
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Jah-Juin Ho, 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: 

Jah-Juin Ho
Deputy Attorney General

Dated: December 11, 2009
Newark, New Jersey