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October 12, 2011

VIA FAX AND U.S. MAIL

David R. Bush  
Law Offices of Bush & Chaput  
755 Baywood Drive, 2nd Floor  
Petaluma, CA 94954

RE: Proposition 65 Notices of Violation for Alcoholic Drinking Games and Novelties

Dear Mr. Bush:

We are in receipt of the 21 Proposition 65 notices of violation, dated September 20, 2011, you served on behalf of your client Michael DiPirro.<sup>1</sup> The notices concern products that you apparently believe are associated with alcohol abuse. It is our view that these notices do not properly allege violations of Proposition 65. Therefore, we urge you to withdraw these notices by October 19, 2011, and notify all notice recipients that you have done so.

Your notices allege that various businesses have exposed individuals to "alcoholic beverages, when associated with alcohol abuse," a chemical listed under Proposition 65 as a carcinogen, when these businesses sold "alcoholic drinking games and novelties." Examples of products you allege cause this exposure include "beer pong" game sets, folding tables decorated with the logos of sports teams, containers from which to drink liquids, and ping pong balls. You allege that the businesses that sold these products are in violation of Proposition 65 because they failed to provide a Proposition 65 cancer warning. You do not allege that these products actually contain alcoholic beverages but instead allege that individuals are exposed to the listed chemical by "buying, acquiring or utilizing" the products and that the exposure occurs through the "normal, foreseeable, and intended use of the products."<sup>2</sup>

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<sup>1</sup> The Attorney General's Office has designated these notices as numbers 2011-846 through 2011-866. They are available on the Attorney General's website at <http://proposition65.doj.ca.gov/PDF/2011/2011-00846.pdf> though <http://proposition65.doj.ca.gov/PDF/2011/2011-00866.pdf>.

<sup>2</sup> In addition to exposures to consumers, your notices also allege "occupational" exposures from the "alcoholic drinking games and novelties." The notices are legally deficient because they fail to satisfy the requirement that occupational exposure notices specify the geographic location of the exposure to employees or a description of the occupations or tasks

(continued...)

We recognize that alcohol abuse is a serious problem. Proposition 65 does not, however, require that consumers receive a cancer warning prior to purchasing or using an object just because that object is commonly used to hold alcoholic beverages or may be used at the time individuals are consuming alcoholic beverages.

Where a product is merely a passive object used in or associated with the consumption of another product containing a listed chemical, the provider of the object is not responsible for the resulting exposure. For example, the provider of a champagne glass is not responsible for exposure to alcoholic beverages consumed from the glass, even though such exposure is the foreseeable result of the known and intended use of the champagne glass. The provider of the champagne glass has simply provided a receptacle for the product that contains the listed chemical.

For these reasons, we urge you to send a written statement to the Attorney General's Office, by October 19, 2011, withdrawing each of the above-referenced notices. A copy of this withdrawal statement should be served on each entity that received one of the notices, including the noticed businesses and public prosecutors.

Sincerely,



TIMOTHY E. SULLIVAN  
Deputy Attorney General

For KAMALA D. HARRIS  
Attorney General

cc: See attached distribution list

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*(...continued)*

performed by exposed persons. (Cal. Code Regs., tit. 27, § 25903, subd. (b)(2)(E).) We are not aware of any evidence that these products are used as part of anyone's occupation.

## Distribution List

Pong Star, LLC  
123 Saratoga Rd., Suite 329  
Glenville, NY 12302

Neel Grover  
85 Enterprise Ste. 100  
Aliso Viejo, CA 92656

Shopzilla, Inc.  
C T Corporation System  
818 West 7th Street  
Los Angeles, CA 90017

Spirit Halloween Superstores, LLC  
Spencer's Gifts, LLC  
C T Corporation System (c0168406)  
The Corporation Trust Company  
820 Bear Tavern Rd. 3rd Floor  
West Trenton, NJ 08628

Tony Pellham  
1415 NW 52nd St.  
Seattle, WA 98107

Mitchell Mortaza  
8335 Sunset Blvd.  
West Hollywood, CA 90069

Steven Silverstein, President,  
Spencer's Gifts, LLC  
Spirit Halloween Superstores, LLC  
6826 Black Horse Pike  
Egg Harbor Township, NJ 08234

Richard A. Hayne, President  
Urban Outfitters, Inc.  
5000 S. Broad Street  
Philadelphia, PA 19019

Pong 360  
3350 Wilshire Blvd.  
Los Angeles, CA 90010

Sports Unlimited, Inc.  
2374 Plymouth Meeting Mall,  
Plymouth Meeting, PA 19147

Porter C. McKinnon  
273 Canal Street, Suite 222  
Shelton, CT 06484

Flipping Hippies, LLC  
130 West Pleasant Ave. #221  
Maywood, New Jersey 07607

Donald M. Ball  
1500 Industry Rd. STE P  
Hatfield, PA 19440-46

Mark Emmert, President, N.C.A.A.  
700 W. Washington Street  
P.O. Box 6222  
Indianapolis, Indiana 46206-6222;

Pressman Toy Corporation  
121 New England Ave.  
Piscataway, New Jersey 08854-4126

NFI Enterprises, LLC  
C T Corporation System  
111 Eighth Avenue  
New York, NY 10011

Michael Rubin, President  
GSI Commerce, Inc.,  
935 First Avenue  
King of Prussia, PA 19406

James Pressman  
200 Fifth Ave.  
New York, New York 10010

Jack Queally, President  
Wild Sales, LLC  
17401 Tiller Ct, STE A  
Westfield, In 46074

GSI Commerce, Inc.  
NRAI Corporate Services  
590 Park Street, Suite 6  
St. Paul, MN 55103

Franklin Sports, Inc.  
CT Corporation System  
155 Federal St., Suite 700  
Boston, MA 02110

Amazon.com, Inc.  
Corporation Service Company  
300 Deschutes Way SW, STE 304  
Tumwater, WA 98501

Pro Pong, Inc.  
National Registered Agents, Inc.  
875 Ave. of the Americas, Suite 501,  
New York, NY, 10001

Larry J. Franklin  
17 Campanelli Parkway  
Stoughton, MA 02072

Adam H. Stitesh  
1212 West Fourth Plain Blvd.  
Vancouver, WA 98660

Michael H. Clinton, Esq.  
212A New London Turnpike  
Glastonbury, CT 06033

TSA Stores, Inc.  
The Corporation Company  
1675 Broadway, Suite 1200  
Denver, CO 80202

BPONG, LLC  
Incorp Services, Inc.  
2360 Corporate Circle, STE 400,  
Henderson, NV 89074-7722

Robert A. Dupuy, C.E.O.  
Major League Baseball Enterprises, Inc.  
245 Park Avenue  
New York, NY 10167

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1050 W. Hampden Ave.  
Englewood, CO 80110

Brent Wagner  
20 Joliet  
Coto De Caza, CA 92679

Niraj Shah  
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Boston, MA 02115

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Kenmore, NY 14217

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3150 West Prospect Rd., Ste. 350  
Fort Lauderdale, FL 33309

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Oak Park, CA 91377

Amazon.com, Inc.  
Corporation Service Company  
300 Deschutes Way SW, STE 304  
Tumwater, WA 98501

Playboy Enterprises  
International, Inc.  
C T Corporation System  
208 So. Lasalle St. Suite 814  
Chicago, IL 60604

Head Rush Products, Inc.  
Aaron Buttaccio  
150 E. Grand View Ave.  
Arcadia, CA 91302

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Los Angeles, CA 90012

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Sacramento, CA 95812-1948

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City Hall, Room 234  
San Francisco, CA 94102

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San Jose, CA 95113

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Hollister, CA 95023

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Napa, CA 94559

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Modoc County District Attorney  
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Redding, CA 96001

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