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Attorney General

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DEPARTMENT OF JUSTICE

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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.[1] 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."[2]

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[1] 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.

[2] 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

NFl 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

David Campisi
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

David A. Rivers
1460 Military Road, Rear Building
Kenmore, NY 14217

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

Steve Wasserman
6132 Deerhill Rd.
Oak Park, CA 91377

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

Playboy Enterprises
International, Inc.
C T Corporation System
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Chicago, IL 60604

Head Rush Products, Inc.
Aaron Buttaccio
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Arcadia, CA 91302

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Santa Barbara, CA 93101

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San Diego, CA 92101

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Fresno, CA 93721

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Ukiah, CA 95482

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Modesto, CA 95353

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