

1 EDMUND G. BROWN JR.,
Attorney General of the State of California
2 FRANCES T. GRUNDER,
Senior Assistant Attorney General
3 MICHELE VAN GELDEREN, State Bar No. 171931
Deputy Attorney General
4 300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-6027
Fax Number: (213) 897-4951
6

7 Attorneys for Plaintiff,
People of the State of California

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11 PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13
14 v.

15 HY CITE CORPORATION, a Wisconsin
16 corporation, ERIK JOHNSON, an individual,
17 PETER O. JOHNSON, JR., an individual,
18 JAMES D. MARTIN, an individual, and
LAWRENCE SCHAUFF, an individual,

19 Defendants.
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NO.

**COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES, AND OTHER
RELIEF FOR VIOLATIONS OF
BUSINESS AND PROFESSIONS
CODE SECTIONS 17200 AND 17500
(UNFAIR COMPETITION AND
FALSE ADVERTISING LAWS)**

VERIFIED ANSWER REQUIRED
PURSUANT TO CALIFORNIA CODE
OF CIVIL PROCEDURE SECTION 446

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103

The People of the State of California (“the People” or “Plaintiff”), by and through Edmund G. Brown Jr., Attorney General of the State of California, allege on information and belief as follows:

PARTIES

1. Defendant Hy Cite Corporation (“Hy Cite”) is a Wisconsin corporation with its principal place of business in Madison, Wisconsin. Hy Cite does business as “Royal Prestige.” Hy Cite is, and at all relevant times was, engaged in the business of selling housewares, including cookware, tableware and water filters, to the public, and providing financing to its customers for the purchase of Defendants’ products. Hy Cite and/or its direct and indirect subsidiaries, affiliates, officers, directors, employees, agents, related entities, successors, and assigns, at all times mentioned herein, have transacted, and continue to transact, business within the State of California, including in the County of Los Angeles.

2. Defendant Erik Johnson is, and at all relevant times was, the chairman and chief executive officer of Hy Cite. In such capacity and as an individual, Johnson controls, manages, supervises and directs the operations and activities of Hy Cite.

3. Defendant Peter O. Johnson, Jr. is, and at all relevant times was, the president and chief operating officer of Hy Cite. In such capacity and as an individual, Johnson controls, manages, supervises and directs the operations and activities of Hy Cite.

4. Defendant James D. Martin is, and at all relevant times was, the vice president of sales and marketing. In such capacity and as an individual, Martin controls, manages, supervises and directs the operations and activities of Hy Cite.

5. Defendant Lawrence Schauff is, and at all relevant times was, the senior vice president of consumer credit. In such capacity and as an individual, Schauff controls, manages, supervises and directs the operations and activities of Hy Cite.

6. Whenever reference is made in this Complaint to “Defendants,” such reference shall include Hy Cite, Erik Johnson, Peter O. Johnson, Jr., James D. Martin and Lawrence Schauff.

7. Whenever reference in this complaint is made to any act of Defendant(s), that allegation shall be deemed to mean the act of each Defendant acting individually and jointly.

8. Whenever reference in this complaint is made to any act or transaction of any corporation, partnership, business or other organization, that allegation shall be deemed to mean that the corporation, partnership, business or other organization did or authorized the acts alleged in this complaint through its principals, officers, directors, employees, members, agents and representatives while they were acting within the actual or ostensible scope of their authority.

9. Defendants have engaged in a conspiracy, common enterprise, and common course of conduct the purpose of which was to commit acts and practices of unfair competition and make untrue or misleading statements as alleged in this complaint.

10. Defendants each knew or realized that others, including the other Defendants, were engaging in or planned to engage in the violations of law alleged in this Complaint. Knowing or realizing that others, including the other Defendants, were engaging in such unlawful conduct, each Defendant nevertheless facilitated and continued to facilitate the commission of those unlawful acts. Each Defendant intended to encourage and facilitate the commission of the unlawful acts, and did encourage, facilitate, aid, promote or instigate the commission of unlawful acts, and thereby, aided and abetted others, including the other Defendants, in unlawful conduct. The unlawful acts alleged in this Complaint were those acts Defendants intended to and did facilitate or were the natural and reasonable consequences of the acts Defendants intended to and did facilitate.

FIRST CAUSE OF ACTION

**FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500 ET SEQ.
(UNTRUE OR MISLEADING STATEMENTS)**

11. The People re-allege and incorporate by reference each of the paragraphs above as though fully set forth herein.

12. Defendants have violated, and continue to violate, Business and Professions Code section 17500 *et seq.* by making or disseminating, or causing to be made or disseminated, untrue or misleading statements with the intent to induce members of the public to purchase Defendants' products when Defendants knew, or by the exercise of reasonable care should have known, that the statements were untrue or misleading. The untrue or misleading statements include, but are not limited to, the following:

- 1 a. To induce consumers to attend a sales presentation for Defendants' products
2 or to induce consumers to provide referrals to others whom Defendants can
3 solicit to attend such a sales presentation,
- 4 i. Defendants make untrue or misleading statements that consumers
5 have been "selected" to win a prize or gift or to enter a raffle for a
6 valuable prize. In fact, Defendants make the offer of a prize, gift or
7 raffle entry either indiscriminately or to any adult with a job.
8 Defendants make these statements so that the consumer will make an
9 appointment to receive the gift, prize or raffle entry form. At that
10 appointment, Defendants make their sales presentation.
- 11 ii. Defendants offer consumers free prizes or gifts or the opportunity to
12 enter a raffle for a valuable prize, and make untrue or misleading
13 statements that they are doing "publicity" for the company or that
14 Defendants are offering the gift, prize or raffle entry in exchange for
15 the consumer's opinion about Defendants' company or their products.
16 Defendants make these statements to disguise their true purpose of
17 scheduling appointments to make sales presentations for Defendants'
18 products.
- 19 iii. Defendants make untrue or misleading statements that a consumer
20 enters a raffle to win a valuable prize by providing his or her personal
21 information to Defendants. In fact Defendants use the consumer's
22 personal information to contact the consumer to schedule a sales
23 presentation for Defendants' products. The consumer must make an
24 appointment to meet a salesperson to get the raffle entry form, at
25 which time Defendants make a sales presentation for Defendants'
26 products.
- 27 iv. Defendants ask consumers for the names of family members or
28 friends who would like either to receive a prize or to enter a raffle for

1 a valuable prize. Defendants do not disclose prior to making this
2 request that the consumers' family members and friends will be asked
3 to view a sales presentation for Defendants' products.

4 b. During the sales presentation for their products,

- 5 i. Defendants make untrue or misleading statements that other
6 cookware, including cookware made with non-stick surfaces or
7 aluminum, is or may be hazardous to consumers' health.
- 8 ii. Defendants perform a demonstration in which a mixture of baking
9 soda and water is heated in various types of cookware, including other
10 cookware and their own cookware. Due to a chemical reaction, when
11 the baking soda and water mixture is heated in Defendants' stainless
12 steel cookware, it does not have the objectionable taste that it has
13 when heated in cookware with other surfaces such as aluminum or
14 non-stick surfaces. Defendants make untrue or misleading statements
15 that the objectionable taste demonstrates that cooking in other
16 cookware is or may be hazardous to consumers' health, but that
17 cooking in Defendants' cookware is safe.
- 18 iii. Defendants perform a demonstration in which various types of
19 cookware, including other cookware and Defendants' cookware, are
20 scrubbed with a coarse sponge and rinsed, with the resulting mixture
21 poured into a cup. The mixture from Defendants' cookware is clearer
22 than the mixture from cast iron, non-stick or aluminum-coated
23 cookware. Defendants then make untrue or misleading statements
24 that the results show that cooking in other cookware is or may be
25 harmful to consumers' health, but that cooking in Defendants'
26 cookware is safe.
- 27 iv. Defendants make untrue or misleading statements that the use of
28 Defendants' cookware, rather than other cookware, will result in

savings due to reduced energy usage or food shrinkage.

v. Defendants make untrue or misleading statements that Defendants are offering Defendants' products at a discounted price for a limited time or that Defendants are having a special "promotion" in which consumers can receive additional products as gifts or prizes with purchase.

vi. Defendants make untrue or misleading statements that Defendants offer financing at an interest rate of about 2% per year, when in fact Defendants offer financing at about 2% per month; the annual percentage rate over 20%.

SECOND CAUSE OF ACTION

FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200 *ET SEQ.* (UNFAIR BUSINESS PRACTICES)

13. The People reallege and incorporate by reference each of the paragraphs above as though fully set forth herein.

14. Defendants have violated, and continue to violate, Business and Professions Code section 17200, by engaging in acts or practices including, but not necessarily limited to, the following:

- a. Defendants have violated, and continue to violate, Business and Professions Code section 17500 *et seq.*, as alleged above in the First Cause of Action.
- b. Defendants have violated, and continue to violate, Business and Professions Code section 17500.3(a) by soliciting consumers in their homes, either in person or by telephone, without disclosing in the manner required by this section that the purpose of the contact is to effect a sale.
- c. Defendants have violated, and continue to violate, Business and Professions Code section 17500.3(b) by using plans, schemes and ruses that misrepresent Defendants' true status or mission for the purpose of making a sale.
- d. Defendants have violated, and continue to violate, Business and Professions

Code section 17508 by, among other things, making untrue or misleading advertising claims, including claims that:

- i. purport to be based on factual, objective, or clinical evidence,
 - ii. compare their products' effectiveness or safety to that of other products, or
 - iii. purport to be based on any fact.
- e. Defendants have violated, and continue to violate, Business and Professions Code section 17537.1(a) by, as part of an advertising plan or program, offering incentives as an inducement to consumers to visit a location, attend a sales presentation, or contact a salesperson, without clearly and conspicuously disclosing in writing the information required by that section.
- f. Defendants have violated, and continue to violate, Business and Professions Code section 17537.1(g), in making an offer subject to section 17537.1(a), by falsely representing directly or by implication that the number of participants has been significantly limited or that the consumer has been selected to receive a particular incentive.
- g. Defendants have violated, and continue to violate, Business and Professions Code section 17533.8 by offering a prize or gift with the intent to offer a sales presentation, without disclosing at the time of the offer of the prize or gift, in a clear and unequivocal manner, the intent to offer that sales presentation.
- h. Defendants have violated, and continue to violate, the Consumer Legal Remedies Act, Civil Code section 1770, by, among other things:
- i. Disparaging the goods, services or business of another by untrue or misleading representation of fact, in violation of Civil Code section 1770(a)(8).
 - ii. Making untrue or misleading statements of fact concerning reasons for, existence of, or amount of price reductions, in violation of Civil

Code section 1770(a)(13).

- i. Defendants have violated, and continue to violate, Civil Code section 1689.5 *et seq.* Defendants enter into contracts with consumers for the purchase of Defendants' products at locations other than Defendants' appropriate trade premises, such as in consumers' homes, at shopping centers or at fairs. Defendants, however, do not comply with the law governing home solicitation contracts as set forth in Civil Code section 1689.7.
- j. Defendants have offered contract terms, credit terms, rights, privileges and/or advantages to certain consumers, and denied them to other consumers, based on prohibited criteria.

THIRD CAUSE OF ACTION
FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE
SECTIONS 17207 AND 17535.5
(VIOLATION OF INJUNCTION)

15. The People reallege and incorporate by reference each of the paragraphs above as though fully set forth herein.

16. On March 9, 2000, the Superior Court of the State of California for the County of San Francisco entered a stipulated final judgment and permanent injunction in the case of *The People of the State of California v. Hy Cite Corporation, et al.*, Case Number 301274 (the "Final Judgment").

17. Prior to the court's entry of the Final Judgment as set forth in the preceding paragraph, the parties signed a stipulation agreeing to entry of that Final Judgment. The stipulation was signed by Defendant Dennis R. Young, Hy Cite's Executive Vice-President and Chief Operating Officer, individually and on behalf of Hy Cite; Peter O. Johnson, Sr.; James D. Martin; and counsel for each of the foregoing Defendants.

18. Pursuant to Paragraph B of the Final Judgment, the injunction bound "defendant Hy Cite Corporation, its successors, officers, directors, employees, agents and representatives; defendants Peter O. Johnson Sr., Dennis R. Young and James D. Martin, their employees, agents

1 and representatives; and all persons who are acting in concert or in participation with any of them
2 who have actual or constructive knowledge of this Final Judgment . . .” Pursuant to that paragraph,
3 such defendants were permanently enjoined and restrained from directly or indirectly engaging in a
4 variety of enumerated acts or practices in or from California. Defendants have violated the Final
5 Judgment’s injunctive provisions including, but not limited to, the following provisions:

- 6 a. Paragraph B(2): “Making any claim concerning health risks users of any
7 cookware sold by any of Defendants’ competitors may incur unless such
8 claim is true and not misleading and Defendants can substantiate each
9 specific claim in regards to the cookware with information obtained in
10 accordance with generally accepted scientific testing procedures or with
11 information that is otherwise of the type that the scientific community would
12 reasonably rely upon to substantiate such claim. This includes, but is not
13 limited to, making any of the following claims which cannot be substantiated
14 as required above:

15 “(a) Cooking with pots or pans containing Teflon or similar
16 coatings could be hazardous to one’s health; or

17 “(b) Cooking with pots or pans containing aluminum could be
18 hazardous to one’s health.”

19 Defendants have made claims that cooking with pots made with non-stick
20 coating or containing aluminum could be hazardous to consumers’ health.
21 Defendants did not substantiate those claims as required by the Final
22 Judgment.

- 23 b. Paragraph B(10): “If Defendants provide literature or training to distributors
24 concerning the use of gifts or prizes to set appointments or as a sales tool,
25 failing to train distributors that it is unlawful for any person to offer, by mail,
26 by telephone, in person, or by any other means or in any other form, a prize
27 or gift, with the intent to offer a sales presentation, without disclosing at the
28 time of the offer of the prize or gift, in a clear and unequivocal manner, the

1 intent to offer such sales presentation.”

2 Defendants have provided materials to train distributors to use prizes or gifts
3 to set appointments for the sale of Defendants’ products, but have not trained
4 distributors as required by this provision of the Final Judgment.

- 5 c. Paragraph B(12): “Representing that any prospective consumer will save
6 money on his or her energy bill by cooking with products sold by Defendants
7 or by following Defendants’ cooking method unless such representation is
8 true and not misleading and Defendants can substantiate the claim by the
9 results of a study that was performed with Defendant’s products by following
10 generally accepted testing or measuring techniques.”

11 Defendants have claimed that consumers will save money on their energy
12 bills by using Defendants’ products or by following Defendants’ cooking
13 method. This is untrue, misleading and was not substantiated as required by
14 this provision of the Final Judgment.

- 15 d. Paragraph B(14): “Requesting or requiring a consumer to enter into a “retail
16 installment account” (as defined by Civil Code § 1802.7) instead of a “retail
17 installment contract” (as defined by Civil Code § 1802.6) for the purchase of
18 goods or services if any of the following is true:

19 “(b) A credit application is required, a credit check is performed, or
20 a certain number of payments must have been timely received before
21 a consumer can make a subsequent purchase on the same account
22 (however, nothing herein precludes Defendants from determining
23 whether the line of credit has been or will be exceeded, previously has
24 been revoked or is currently delinquent); or

25 “(c) Defendants have the right to decline subsequent purchases
26 from a consumer whose credit line has not been revoked or whose
27 account is not delinquent.”

28 Defendants require consumers to enter into retail installment accounts in

1 violation of these terms, including, but not limited to, the following: (1) a
2 consumer whose credit score is below a designated threshold is required to
3 make four or more consecutive payments and meet other criteria before the
4 consumer can make subsequent purchases; (2) a consumer's request to make
5 a subsequent purchase over \$1,000 may be denied even if the consumer's
6 credit line has not been revoked and the account is not delinquent.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment as follows:

9 1. Pursuant to Business and Professions Code sections 17535, that Defendants, their
10 successors, agents, representatives, employees, and all persons who act in concert with Defendants,
11 be permanently enjoined from making untrue or misleading statements in violation of Business and
12 Professions Codes section 17500 as alleged in this complaint.

13 2. Pursuant to Business and Professions Code section 17203, that Defendants, their
14 successors, agents, representatives, employees, and all persons who act in concert with Defendants,
15 be permanently enjoined from committing acts of unfair competition as alleged in this complaint.

16 3. Pursuant to Business and Professions Code section 17536, that the Court assess a
17 civil penalty of two thousand five hundred dollars (\$2,500) for each violation of Business and
18 Professions Code section 17500, as proved at trial.

19 4. Pursuant to Business and Professions Code section 17206, that the Court assess a
20 civil penalty of two thousand five hundred dollars (\$2,500) for each violation of Business and
21 Professions Code section 17200, as proved at trial.

22 5. Pursuant to Business and Professions Code sections 17207 and 17535.5, that the
23 Court assess a civil penalty of six thousand dollars (\$6,000) for each violation of the Final
24 Judgment entered March 9, 2000 as proved at trial.

25 6. That Defendants be ordered to make restitution of any money or other property that
26 may have been acquired by their violations of Business and Professions Code sections 17500 *et seq.*
27 and 17200 *et seq.* as alleged in this complaint.

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1 7. Such other and further relief that the Court deems just and proper.

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3 Dated: August 25, 2008

Respectfully submitted,

EDMUND G. BROWN JR.,
Attorney General of the State of California
FRANCES T. GRUNDER,
Senior Assistant Attorney General
MICHELE VAN GELDEREN,
Deputy Attorney General

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8 By: _____
9 MICHELE VAN GELDEREN
10 Deputy Attorney General