

1 Stephen S. Sayad, State Bar No. 104866
2 Daniel M. Bornstein, State Bar No. 181711
3 Laralei S. Paras, State Bar No. 203319
4 PARAS LAW GROUP
5 655 Redwood Highway, Suite 216
6 Mill Valley, CA 94941
7 Tel: (415) 380-9222
8 Fax: (415) 380-9223

6 Christopher M Martin, State Bar No. 186021
7 MARTIN LAW GROUP
8 23 N. Lincoln, suite 204
9 Hinsdale, IL 60521
10 Tel: (630) 789-6998
11 Fax: (630) 214-0979

10 Attorneys for Plaintiff
11 RUSSELL BRIMER

ENDORSED
FILED
San Francisco County Superior Court

SEP 14 2005

GORDON PARK-LI, Clerk
BY: JUN P. PANELO
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

FEB 17 2006 - 9 AM

DEPARTMENT 212

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE CITY AND COUNTY OF SAN FRANCISCO
15
16 UNLIMITED CIVIL JURISDICTION

17 RUSSELL BRIMER,)
18)
19 Plaintiff,)
20 v.)
21 TRAVEL TRADERS, INC.; WH HOTEL)
22 SHOPS, INC.; WH SMITH, INC.; WH SMITH)
23 GIFT SHOP #783; WH SMITH GIFT SHOP)
24 #701; WH SMITH GIFT SHOP # 715; and)
25 DOES 1 through 150, inclusive.)
26 Defendants.)

CGC 05444879
No. _____
COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

(Health & Safety Code §25249, et seq.)

26 RUSSELL BRIMER, by and through his counsel, on behalf of himself, on behalf all others
27 similarly situated and on behalf of the general public, hereby alleges as follows:
28

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,
3 on behalf of citizens of the State of California, to enforce each citizen's right to be informed of the
4 presence of and nature of toxic chemicals in consumer goods.

5 2. This Complaint seeks to remedy defendants' continuing failures to warn the citizens
6 of the State of California about the presence of, the nature of, and such citizens' actual and
7 potential exposure to lead present in or on consumer products placed into the stream of commerce
8 by defendants.

9 3. Lead and cadmium are chemicals that are identified in 22 C.C.R. §12000 that are
10 known to the State of California to cause birth defects and other reproductive harm. Lead and
11 cadmium shall hereafter be referred to as the "LISTED CHEMICALS".

12 4. The consumer products containing the LISTED CHEMICALS, and for which
13 defendants are responsible, are shot glasses, and other glassware intended for the consumption of
14 food or beverages with colored artwork or designs (containing lead and/or cadmium) on the
15 exterior, including but not limited to, *shot glass, Shot Cal Topsy* (#40860; #0 23166 12461 8), *shot*
16 *glass, Shot Ca PalmScrip* (#35616; #0 37050 01016 1), *shot glass, San Francisco Shot Glass*
17 *(#23377; #7 41523 79009 9), and SF College Shooter* (#3575578; #7 96827 17018 6). All such
18 consumer products containing the LISTED CHEMICALS shall hereafter be referred to as the
19 "PRODUCTS".

20 5. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health
21 & Safety Code §25249.5 *et seq.*¹ (hereafter "Proposition 65"), "No person in the course of doing
22 business shall knowingly and intentionally expose any individual to a chemical known to the state
23 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 individual...."

25 6. On February 27, 1987, the State listed lead as a chemical known to cause birth
26 defects and other reproductive harm. This chemical became subject to the warning requirement
27

28 ¹ Unless specifically noted, all statutory citations refer to California law.

1 one year later and was therefore subject to the "clear and reasonable warning" requirements of
2 Proposition 65, beginning on February 27, 1988. (22 Code of Regulations §12000(b)(c); Health &
3 Safety Code §25249.5 *et seq.*)

4 7. On May 1, 1997, the State had listed cadmium as a chemical known to cause birth
5 defects or other reproductive harm. This chemical became subject to the warning requirement one
6 year later and was therefore subject to the "clear and reasonable warning" requirements of
7 Proposition 65, beginning on October 1, 1988 and May 1, 1998, respectively. (22 Code of
8 Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

9 8. Defendants' failures to provide proper mandatory warnings about exposure to the
10 LISTED CHEMICALS in conjunction with the sale of the PRODUCTS is a violation of
11 Proposition 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for
12 each such violation.

13 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
14 and permanent injunctive relief to compel defendants to provide purchasers of the PRODUCTS
15 with the appropriate Proposition 65 warning regarding the health hazards of the LISTED
16 CHEMICALS.

17 10. Plaintiff also seeks civil penalties against defendants for their violations of
18 Proposition 65, as provided for by Health & Safety Code §25249.7(b).

19 PARTIES

20 11. Plaintiff RUSSELL BRIMER is a citizen of the State of California who resides in
21 the County of Alameda and who is dedicated to protecting the health of California citizens,
22 including the elimination or reduction of toxic exposures from consumer products, and who brings
23 this action on behalf of the general public pursuant to Health & Safety Code §25249.7.

24 12. Defendant TRAVEL TRADERS, INC. ("TRAVEL TRADERS") is a person doing
25 business within the meaning of Health & Safety Code §25249.11.

26 13. TRAVEL TRADERS distributes and/or offers the PRODUCTS for sale or use in
27 the State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for
28 sale or use in the State of California.

1 14. Defendant WH HOTEL SHOPS, INC. ("HOTEL SHOPS") is a person doing
2 business within the meaning of Health & Safety Code §25249.11.

3 15. HOTEL SHOPS distributes and/or offers the PRODUCTS for sale or use in the
4 State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for
5 sale or use in the State of California.

6 16. Defendant WH SMITH, INC. ("SMITH") is a person doing business within the
7 meaning of Health & Safety Code §25249.11.

8 17. SMITH distributes and/or offers the PRODUCTS for sale or use in the State of
9 California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or use
10 in the State of California.

11 18. Defendant WH SMITH GIFT SHOP #783 ("SHOP #783") is a person doing
12 business within the meaning of Health & Safety Code §25249.11.

13 19. SHOP #783 distributes and/or offers the PRODUCTS for sale or use in the State of
14 California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or use
15 in the State of California.

16 20. Defendant WH SMITH GIFT SHOP #701 ("SHOP #701") is a person doing
17 business within the meaning of Health & Safety Code §25249.11.

18 21. SHOP #701 distributes and/or offers the PRODUCTS for sale or use in the State of
19 California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or use
20 in the State of California.

21 22. Defendant WH SMITH GIFT SHOP #715 ("SHOP #715") is a person doing
22 business within the meaning of Health & Safety Code §25249.11.

23 23. SHOP #715 distributes and/or offers the PRODUCTS for sale or use in the State of
24 California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or use
25 in the State of California.

26 24. Defendants DOES 1-50 (hereafter "MANUFACTURER DEFENDANTS") are each
27 persons doing business within the meaning of Health & Safety Code §25249.11.

28 25. MANUFACTURER DEFENDANTS engage in the process of research, testing,

1 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
2 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
3 one or more of the PRODUCTS for sale, consumption or use in the State of California.

4 26. Defendants DOES 51-100 (hereafter "DISTRIBUTOR DEFENDANTS") are each
5 persons doing business within the meaning of Health & Safety Code §25249.11.

6 27. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
7 transport one or more of the PRODUCTS to individuals, businesses or retailers in the State of
8 California.

9 28. Defendants DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons
10 doing business within the meaning of Health & Safety Code §25249.

11 29. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
12 of California.

13 30. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
14 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code
15 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of
16 the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When
17 ascertained, their true names shall be reflected in an amended complaint.

18 31. TRAVEL TRADERS, HOTEL SHOP, SMITH, SHOP #783, SHOP #701, SHOP
19 #715, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, RETAIL
20 DEFENDANTS, and Defendants DOES 1 through 150 shall, where appropriate, collectively be
21 referred to hereafter as "DEFENDANTS".

22 VENUE AND JURISDICTION

23 32. Venue is proper in the San Francisco Superior Court, pursuant to Code of Civil
24 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one or
25 more instances of wrongful conduct occurred, and continues to occur, in the County of San
26 Francisco and/or because DEFENDANTS conducted, and continue to conduct, business in this
27 County with respect to the PRODUCTS.

28 33. The California Superior Court has jurisdiction over this action pursuant to

1 California Constitution Article VI, §10, which grants the Superior Court "original jurisdiction in all
2 causes except those given by statute to other trial courts." The statute under which this action is
3 brought does not specify any other basis of subject matter jurisdiction.

4 34. The California Superior Court has jurisdiction over DEFENDANTS based on
5 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
6 association that either is a citizen of the State of California, has sufficient minimum contacts in the
7 State of California, or otherwise purposefully avails itself of the California market.
8 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
9 courts consistent with traditional notions of fair play and substantial justice.

10 **FIRST CAUSE OF ACTION**

11 **(Violation of Proposition 65)**

12 35. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
13 Paragraphs 1 through 34, inclusive.

14 36. The citizens of the State of California have expressly stated in the Safe Drinking
15 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
16 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
17 other reproductive harm." (Proposition 65, §1(b).)

18 37. Proposition 65 further states that, "No person in the course of doing business shall
19 knowingly and intentionally expose any individual to a chemical known to the state to cause cancer
20 or reproductive toxicity without first giving clear and reasonable warning to such individual...."

21 38. Based on information and good faith belief, plaintiff alleges that, at all times
22 relevant to this Complaint, DEFENDANTS have engaged in the sales of the PRODUCTS in
23 violation Health & Safety Code §25249.6, et seq., and that DEFENDANTS' offensive sale of the
24 PRODUCTS has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice
25 of Violation. Plaintiff also alleges and believes that such violations will continue to occur into the
26 future.

27 39. Beginning on July 8, 2005, "60-Day Notices" of Proposition 65 violations were
28 provided to public enforcement agencies and to TRAVEL TRADERS, HOTEL SHOP, SMITH,

1 SHOP #783, SHOP #701, and SHOP #715 stating that exposures to the LISTED CHEMICALS
2 were occurring in the State of California from the reasonably foreseeable uses of the PRODUCTS,
3 without the individual purchasers and users first having been provided with a "clear and reasonable
4 warning" regarding such exposure.

5 40. The appropriate public enforcement agencies have failed to commence and
6 diligently prosecute a cause of action, under Health & Safety Code §25249.6, *et seq.*, against
7 DEFENDANTS based on the claims asserted in Plaintiff's 60-Day Notices.

8 41. At all times relevant to this action, the PRODUCTS contained the LISTED
9 CHEMICALS.

10 42. At all times relevant to this action, the DEFENDANTS knew or should have known
11 that the PRODUCTS contained the LISTED CHEMICALS.

12 43. At all times relevant to this action, the LISTED CHEMICALS were present in or on
13 the PRODUCTS in such a way as to be available for transfer or release from PRODUCTS to
14 individuals during the reasonably foreseeable use of the PRODUCTS.

15 44. The normal and reasonably foreseeable use of the PRODUCTS has caused and
16 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by
17 22 C.C.R. §12601.

18 45. Based on information and good faith belief, plaintiff alleges that at all times relevant
19 to this action, DEFENDANTS had knowledge that individuals' normal and reasonably foreseeable
20 use of the PRODUCTS would cause an exposure to the LISTED CHEMICALS.

21 46. At all times relevant to this action, DEFENDANTS, and each of them, intended that
22 such exposures to the LISTED CHEMICALS from the reasonably foreseeable use of the
23 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,
24 distribution and/or sale of PRODUCTS to individuals in the State of California.

25 47. At all times relevant to this action, DEFENDANTS failed to provide a "clear and
26 reasonable warning" of reproductive toxicity (as defined by 22 C.C.R. §12601) to those consumers
27 or other individuals in the State of California who were or could become exposed to the
28 PRODUCTS and the LISTED CHEMICALS contained therein.

