

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

COLOMER USA; COLOMER USA, INC., DIST.; and DOES 1-50

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CONSUMER ADVOCACY GROUP, INC., in the public interest

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**DEC 29 2008**

**CLERK OF THE SUPERIOR COURT**

By Anita Dhir Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California for the County of Alameda  
Rene C. Davidson Alameda County Courthouse  
1225 Fallon Street, Oakland, California 94612

CASE NUMBER: PD 08427904  
(Número del Caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Daniel D. Cho (SBN 105409), YEROUSHALMI & ASSOCIATES  
3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010; Tel (213) 382-3183

DATE:

(Fecha)

**DEC 29 2008**

Clerk, by

(Secretario)

Anita Dhir

, Deputy

(Adjunto)

Pat S. Sweeten

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

**NOTICE TO THE PERSON SERVED: You are served**

- 1.  as an individual defendant.
- 2.  as the person sued under the fictitious name of (specify):

- 3.  on behalf of (specify):

- under:  CCP 416.10 (corporation)  CCP 416.60 (minor)
- CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)
- other (specify):

- 4.  by personal delivery on (date):

COPY

1 REUBEN YEROUSHALMI (SBN 193981)  
2 DANIEL D. CHO (SBN 105409)  
3 BEN YEROUSHALMI (SBN 232540)  
4 **YEROUSHALMI & ASSOCIATES**  
5 3700 WILSHIRE BLVD., SUITE 480  
6 LOS ANGELES, CA 90010  
7 Telephone: 213-382-3183  
8 Facsimile: 213-382-3430

9 Attorneys for Plaintiffs,  
10 Consumer Advocacy Group, Inc

FILED  
ALAMEDA COUNTY

DEC 29 2008

CLERK OF THE SUPERIOR COURT

By - By Anita Dhir Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA - UNLIMITED

13 CONSUMER ADVOCACY GROUP, INC., )  
14 in the public interest, )

15 Plaintiff,

16 v.

17 COLOMER USA; COLOMER USA, INC., )  
18 DIST.;; and DOES 1-50; )

19 Defendants. )

20 CASE NO. *RLT* 08427904

21 COMPLAINT FOR PENALTY,  
22 INJUNCTION, AND RESTITUTION

23 Violation of Proposition 65, the Safe  
24 Drinking Water and Toxic Enforcement  
25 Act of 1986 (Health & Safety Code., §§  
26 25249.5, et seq.)

27 ACTION IS AN UNLIMITED CIVIL  
28 CASE (exceeds \$25,000)

29 Plaintiff Consumer Advocacy Group, Inc. alleges, based on information and belief, a  
30 cause of action against defendants as follows:

31 \\\

32 \\\

1 **THE PARTIES**

- 2 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff") is a non-profit corporation  
3 qualified to do business in the State of California. It brings this action in the public  
4 interest as defined under Health and Safety Code section 25249.7, subdivision (d).  
5 2. Defendants Colomer USA and Colomer USA, Inc., Dist. are foreign corporations  
6 qualified to do business in the State of California.  
7 3. Plaintiff is ignorant of the true names and capacities of defendants Does 1-50, and  
8 therefore sues these defendants by such fictitious names. Plaintiff will amend this  
9 complaint to allege their true names and capacities when ascertained. Plaintiff is  
10 informed, believes, and thereon alleges that each fictitiously named defendant is  
11 responsible in some manner for the occurrences herein alleged and the damages caused  
12 thereby.  
13 4. Plaintiff is informed, believes, and thereon alleges that Colomer USA and Colomer USA,  
14 Inc., Dist. at all times mentioned herein have conducted business within the State of  
15 California.  
16 5. At all times mentioned herein, "Defendants" includes Colomer USA; Colomer USA, Inc.,  
17 Dist.; and Does 1-50.  
18 6. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
19 Defendants was a person doing business within the meaning of Health and Safety Code  
20 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
21 employees.

22 **JURISDICTION**

- 23 7. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
24 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
25 those given by statute to other trial courts.

26 ///

27 ///

28 ///

1 **BACKGROUND AND PRELIMINARY FACTS**

- 2 8. In 1986, California voters approved an initiative to address growing concerns about  
3 exposure to toxic chemicals. The initiative, The Safe Drinking Water and Toxic  
4 Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.*  
5 (“Proposition 65”), helps to protect California’s drinking water sources from  
6 contamination, to allow consumers to make informed choices about the products they  
7 buy, and to enable persons to protect themselves from toxic chemicals as they see fit.
- 8 9. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
9 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
10 *Code*, § 25249.8. The list, which the Governor updates at least once a year, contains over  
11 550 chemicals. Proposition 65 imposes warning requirements and other controls that  
12 apply to Proposition 65-listed chemicals.
- 13 10. All businesses with ten (10) or more employees that operate or sell products in California  
14 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
15 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
16 water (*Health & Safety Code*, § 25249.5), and (2) required to provide “clear and  
17 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
18 Proposition 65-listed chemical (*Health & Safety Code*, § 25249.6).
- 19 11. Plaintiff conducted research, from which it identified a widespread practice of  
20 manufacturers and distributors of hair coloring products of exposing, knowingly and  
21 intentionally, persons in California to the Proposition 65-listed chemicals of such  
22 products without providing clear and reasonable warnings of such to the exposed persons  
23 prior to exposure. Plaintiff later discerned that Defendants engaged in such practice.

24 **FIRST CAUSE OF ACTION**

25 **(By Consumer Advocacy Group, Inc. and against Colomer USA; Colomer USA, Inc., Dist.;**  
26 **and Does 1-50 For Violation Of Proposition 65, The Safe Drinking Water And Toxic**  
27 **Enforcement Act Of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

1                   **Roux® ‘Tween Time® Black Instant Haircolor Touch-Up Stick**

2           12. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference  
3           paragraphs 1 through 11 of this complaint as though fully set forth herein.

4           13. Each of the Defendants is, and at all times mentioned herein, was a manufacturer or  
5           distributor of Roux® ‘Tween Time® Black Instant Haircolor Touch-Up Stick  
6           (hereinafter “Tween Time”), a consumer product designed as for human use in the  
7           coloring of hair.

8           14. Plaintiff is informed, believes, and thereon alleges that Tween Time contains o-  
9           Phenylphenol.

10          15. On August 4, 2000, the Governor of California added o-Phenylphenol to the list of  
11          chemicals known to the State to cause cancer (*Cal. Code Regs. 22 § 12000(b)*). Pursuant  
12          to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after  
13          addition of o-Phenylphenol to the list of chemicals known to the State to cause cancer, o-  
14          Phenylphenol became fully subject to Proposition 65 warning requirements and discharge  
15          prohibitions.

16          16. Plaintiff is informed, believes, and thereon alleges that between March 31, 2005 and the  
17          present, each of the Defendants knowingly and intentionally exposed California  
18          consumers and users of Tween Time, which it manufactured or distributed as mentioned  
19          above, to o-Phenylphenol without first giving clear and reasonable warning of such to the  
20          exposed persons before the time of exposure. Defendants have distributed Tween Time  
21          in California. Defendants thereby violated Proposition 65.

22          17. The principal route of exposure is through dermal contact when users of Tween Time  
23          moisten the stick comprising the product and apply the same directly to hair roots or gray  
24          areas of hair on scalp, and in doing so, users permit bare skin, including scalp and hands,  
25          to touch the product containing o-Phenylphenol. Tween Time is a consumer product  
26          designed for use on humans to touch up instantly roots if hair on scalp between regular  
27          hair color applications and to blend away grey. Such exposure assumes use of Tween  
28          Time in accordance with its instructions.

1 18. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
2 Proposition 65 as to Tween Time have been ongoing and continuous to the date of the  
3 signing of this complaint, so that a separate and distinct violation of Proposition 65  
4 occurred each and every time a consumer was exposed to o-Phenylphenol by using  
5 Tween Time as mentioned herein.

6 19. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
7 mentioned herein is ever continuing.

8 **SATISFACTION OF PRIOR NOTICE**

9 20. On or about March 31, 2008, Plaintiff gave notice of alleged violations of Health and  
10 Safety Code section 25249.6 subject to a private action to Colomer USA, identified in the  
11 notice as Colomer USA, and to the California Attorney General, County District  
12 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
13 people in whose jurisdictions the violations allegedly occurred, concerning consumer  
14 products Tween Time.

15 21. On or about March 31, 2008, Plaintiff gave notice of alleged violations of Health and  
16 Safety Code section 25249.6 subject to a private action to Colomer USA, Inc., Dist.,  
17 identified in the notice as Colomer USA, Inc., Dist., and to the California Attorney  
18 General, County District Attorneys, and City Attorneys for each city containing a  
19 population of at least 750,000 people in whose jurisdictions the violations allegedly  
20 occurred, concerning consumer products Tween Time.

21 22. Before sending the notice of alleged violation, Plaintiff investigated the consumer  
22 product involved, the likelihood that such product would cause users to suffer significant  
23 exposures to o-Phenylphenol, the corporate structure of each of the Defendants, and other  
24 relevant matters.

25 23. Plaintiff's notice of alleged violation included a certificate of merit executed by the  
26 attorney for the noticing party, Plaintiff. The certificate of merit stated that the attorney  
27 for Plaintiff who executed the certificate had consulted with at least one person with  
28 relevant and appropriate expertise who had reviewed data regarding the exposure to o-

1 Phenylphenol, respectively, which are the subject Proposition 65-listed chemicals of this  
2 action. Based on that information, the attorney for Plaintiff who executed the certificate  
3 believed there was a reasonable and meritorious case for this private action. The attorney  
4 for Plaintiff attached to the certificate of merit served on the Attorney General  
5 information sufficient to establish the basis of the certificates of merit.

6 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
7 gave notice of the alleged violations to Colomer USA; Colomer USA, Inc., Dist.; and to  
8 the public prosecutors referenced in Paragraphs 20 and 21.

9 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
10 any applicable district attorney or city attorney has commenced and is diligently  
11 prosecuting an action against the Defendants.

12 26. Plaintiff's allegations concern a "consumer product exposure," which is an exposure that  
13 results from a person's acquisition, purchase, storage, consumption, or other reasonably  
14 foreseeable use of a consumer good. Tween Time is a consumer product, and as  
15 mentioned in paragraphs 12-19, exposure to o-Phenylphenol took place as a result of such  
16 consumption and foreseeable use.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 Plaintiff demands against each of the Defendants as follows:

- 3 1. A permanent injunction mandating Proposition 65 compliant warnings;  
4 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);  
5 3. Costs of suit;  
6 4. Reasonable attorney fees and costs; and  
7 5. Any further relief that the court may deem just and equitable.

8  
9 Dated: December 22, 2008

YEROUSHALMI & ASSOCIATES

10  
11  
12 BY:   
13 Daniel D. Cho  
14 Attorneys for Plaintiff,  
15 Consumer Advocacy Group, Inc.