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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

OCT 02 2006

John A. Clarke, Executive Officer/Clerk

BY SHAUNYA WESLEY, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES – UNLIMITED

BC399270

13 CONSUMER ADVOCACY GROUP, INC.,) CASE NO.
14 in the public interest,)
15 Plaintiff,) COMPLAINT FOR PENALTY,
16 v.) INJUNCTION, AND RESTITUTION
17 CTT TOOLS, INC., and DOES 1-100;)
18 Defendants.) Violation of Proposition 65, the Safe
19) Drinking Water and Toxic Enforcement
20) Act of 1986 (Health & Safety Code, §§
21) 25249.5, et seq.)
22) ACTION IS AN UNLIMITED CIVIL
23) CASE (exceeds \$25,000)
24)
25)
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27)
28)

25 Plaintiff, Consumer Advocacy Group, Inc., alleges a cause of action against defendants as
26 follows.
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THE PARTIES

1. Plaintiff, Consumer Advocacy Group, Inc. ("Plaintiff"), is a non-profit corporation qualified to do business in the State of California. It brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant CTT Tools, Inc. is a California corporation.
3. Plaintiff is ignorant of the true names and capacities of defendants Does 1-100, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
4. Plaintiff is informed, believes, and thereon alleges that CTT Tools, Inc. at all times mentioned herein has conducted business within the State of California.
5. At all times mentioned herein, "Defendants" include CTT Tools, Inc. and Does 1-100.
6. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each defendant was a person doing business within the meaning of Health and Safety Code section 25249.11, subdivision (b), and that each defendant had ten or more employees.

JURISDICTION

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

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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 9. Proposition 65 requires the Governor of California to publish a list of chemicals known to
10 the state to cause cancer, birth defects, or other reproductive harm. Health & Safety
11 Code, § 25249.8. The list, which the Governor updates at least once a year, contains over
12 550 chemicals. Proposition 65 imposes warning requirements and other controls that
13 apply to Proposition 65 listed chemicals.
- 14
15 10. All businesses with ten or more employees that operate or sell products in California
16 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
17 from knowingly discharging Proposition 65 listed chemicals into sources of drinking
18 water (Health & Safety Code, § 25249.5), and (2) required to provide "clear and
19 reasonable" warnings before exposing a person, knowingly and intentionally, to a
20 Proposition 65 listed chemical (Health & Safety Code, § 25249.6).
- 21
22 11. Plaintiff conducted research, from which it identified a widespread practice of
23 manufacturers and distributors of soldering products of exposing, knowingly and
24 intentionally, persons in California to the Proposition 65 listed constituents of such
25 products without first providing clear and reasonable warnings of such to the exposed
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1 persons prior to exposure. Plaintiff later discerned that Defendants engaged in such
2 practice.

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4 **FIRST CAUSE OF ACTION**

5 **(By Consumer Advocacy Group, Inc. and against CTT Tools, Inc. and Does 1-100 For**
6 **Violation Of Proposition 65, The Safe Drinking Water And Toxic Enforcement Act Of 1986**
7 **(Health & Safety Code, §§ 25249.5, et seq.)**

8 **Cal-Hawk® 10-pc. Battery Terminal Set (Item No.: CZBT10P)**

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

11 13. Each Defendant is, and at all times mentioned herein, was a manufacturer or distributor
12 of Cal-Hawk® 10-pc. Battery Terminal Set (Item No.: CZBT10P) ("Cal-Hawk®"), a
13 consumer product designed for soldering.
14

15 14. Plaintiff is informed, believes, and thereon alleges that Cal-Hawk® contains Lead.

16 15. On October 1, 1992, the Governor of California added Lead to the list of chemicals
17 known to the State to cause cancer (Cal. Code Regs., title 22, § 12000, subd. (b)).
18 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty months after
19 addition of Lead to the list of chemicals known to the State to cause cancer, Lead became
20 fully subject to Proposition 65 warning requirements and discharge prohibitions.
21

22 16. Plaintiff is informed, believes, and thereon alleges that between October 2, 2004 and the
23 present each defendant knowingly and intentionally exposed California users of Cal-
24 Hawk®, which it manufactured or distributed, as mentioned above, to Lead, without first
25 giving clear and reasonable warning of such to the exposed persons before the time of
26 exposure. Defendants have distributed Cal-Hawk® in California. Defendants thereby
27 violated Proposition 65.
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1 17. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
2 Persons handling Cal-Hawk® suffer exposure when they handle the lead soldering wire
3 without wearing gloves or by touching bare skin with gloves after handling the lead
4 soldering wire. Persons handling Cal-Hawk® also suffer exposures by breathing in
5 particulate matter emanating from the lead soldering wire as they use the lead soldering
6 wire (especially when heating the same) or by inserting surfaces (e.g., hands) that have
7 encountered the lead soldering wire into their mouths. The foregoing assumes use of
8 Cal-Hawk® in accordance with its instructions.
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11 18. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
12 Proposition 65 as to Cal-Hawk® have been ongoing and continuous and have continued
13 to the date of the signing of this complaint, so that a separate and distinct violation of
14 Proposition 65 occurred each and every time a consumer was exposed to Lead by using
15 Cal-Hawk® as mentioned herein.
16

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

20 SATISFACTION OF PRIOR NOTICE

21 20. On or about October 2, 2007, Plaintiff gave notice of alleged violations of Health and
22 Safety Code section 25249.6 subject to a private action to CTT Tools, Inc., identified in
23 the notice as CTT Tools, Inc., and to the California Attorney General, County District
24 Attorneys, and City Attorneys for each city containing a population of at least 750,000
25 people in whose jurisdictions the violations allegedly occurred, concerning Cal-Hawk®.
26

27 21. On or about June 9, 2008, Plaintiff gave notice of alleged violations of Health and Safety
28 Code section 25249.6 subject to a private action to CTT Tools, Inc., identified in the

1 notice as CTT Tools, Inc., and to the California Attorney General, County District
2 Attorneys, and City Attorneys for each city containing a population of at least 750,000
3 people in whose jurisdictions the violations allegedly occurred, concerning Cal-Hawk®.
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5 22. Before sending the notice of alleged violation, Plaintiff investigated the consumer
6 products involved, the likelihood that such products would cause users to suffer
7 significant exposures to Lead, the corporate structure of each Defendant, and other
8 relevant matters.

9
10 23. Plaintiff's notice of alleged violation included a certificate of merit executed by the
11 attorney for the noticing party, Plaintiff. The certificates of merit stated that the attorney
12 for Plaintiff who executed the certificate had consulted with at least one person with
13 relevant and appropriate expertise who had reviewed data regarding the exposure to
14 Lead, respectively, which are the subject Proposition 65 listed chemicals of this action.
15 Based on that information, the attorney for Plaintiff who executed the certificates
16 believed there was a reasonable and meritorious case for this private action. The attorney
17 for Plaintiff attached to the certificates of merit served on the Attorney General
18 information sufficient to establish the basis of the certificates of merit.
19

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21 24. Plaintiff is commencing this action more than sixty days from the date that Plaintiff gave
22 notice of the alleged violations to CTT Tools, Inc. and to the public prosecutors
23 referenced in Paragraphs 20-21.

24 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
25 any applicable district attorney or city attorney has commenced and is diligently
26 prosecuting an action against the Defendants.
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1 26. Plaintiff's allegations concern a "consumer product exposure," which is an exposure that
2 results from a person's acquisition, purchase, storage, consumption, or other reasonably
3 foreseeable use of a consumer good. Cal-Hawk® is a consumer product, and as
4 mentioned in paragraphs 16 -19, exposure to Lead took place as a result of such
5 consumption and foreseeable use.
6

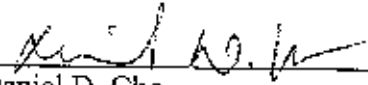
7 **PRAYER FOR RELIEF**

8 Plaintiff demands against each Defendant as follows:

- 9
- 10 1. A permanent injunction mandating Proposition 65 compliant warnings;
 - 11 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
 - 12 3. Costs of suit;
 - 13 4. Reasonable attorney fees and costs; and
 - 14 5. Any further relief that the court may deem just and equitable.
- 15

16 Dated: October 1, 2008

17 YEROUSHALMI & ASSOCIATES

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19
20 BY: 
21 Daniel D. Cho
22 Attorneys for Plaintiff,
23 Consumer Advocacy Group, Inc.
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