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FILED

MAR - 6 2009

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 BOSTON WAREHOUSE TRADING CORP.;
19 and DOES 1-150, inclusive,

20 Defendants.

Case No.

CIV 091030

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff RUSSELL
3 BRIMER, in the public interest of the citizens of the State of California, to enforce the People’s
4 right to be informed of the presence of lead, a toxic chemical found in mugs with colored
5 artwork or designs on the exterior sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens about their exposure to lead present in or on certain mugs with colored
8 artwork or designs on the exterior that defendants manufacture, distribute and/or offer for sale to
9 consumers throughout the State of California.

10 3. High levels of lead are commonly found in and on mugs with colored artwork or
11 designs on the exterior that defendants manufacture, distribute, and/or offer for sale to consumers
12 throughout the State of California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code § 25249.6 *et seq.* (Proposition 65), “No person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

18 5. On February 27, 1987, the State listed lead as a chemical known to cause birth
19 defects and other reproductive harm. This chemical became subject to the warning requirement
20 one year later and was therefore subject to the “clear and reasonable warning” requirements of
21 Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001; Cal. Health & Safety Code*
22 *§ 25249.8.*)

23 6. Lead shall hereinafter be referred to as the “LISTED CHEMICAL.”

24 7. Defendants manufacture, distribute, and/or sell mugs with colored artwork or
25 designs on the exterior containing excessive levels of the LISTED CHEMICAL including, but
26 not limited to, the *Latte Lover Gift Mug, #63210 (#0 26602 632210 4)*. All such mugs with
27 colored artwork or designs on the exterior containing the LISTED CHEMICAL shall hereinafter
28 be referred to as the “PRODUCTS.”

1 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
2 believes that such violations will continue to occur into the future.

3 30. After receipt of the claims asserted in the sixty-day notices of violation, the
4 appropriate public enforcement agencies have failed to commence and diligently prosecute a
5 cause of action against DEFENDANTS under Proposition 65.

6 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
8 limits.

9 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
10 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
11 LISTED CHEMICAL.

12 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
13 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
14 during the reasonably foreseeable use of the PRODUCTS.

15 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
16 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
17 by 27 CCR § 25602(b).

18 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
20 and/or ingestion.

21 36. DEFENDANTS, and each of them, intended that such exposures to the LISTED
22 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their
23 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or
24 use of PRODUCTS to individuals in the State of California.

25 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those
26 consumers and/or other individuals in the State of California who were or who could become
27 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
28 reasonably foreseeable use of the PRODUCTS.

- 1 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
2 4. That the Court grant such other and further relief as may be just and proper.
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4 Dated: March 6, 2009
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Respectfully Submitted,

HIRST & CHANLER LLP

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7 By: 

Daniel Bornstein
Attorneys for Plaintiff
RUSSELL BRIMER
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