

1 Clifford A. Chanler, State Bar No. 135534
2 Laurence D. Haveson, State Bar No. 152631
3 HIRST & CHANLER LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 RUSSELL BRIMER

**ENDORSED
FILED**
San Francisco County Superior Court

MAR 12 2009

GORDON PARK LI, Clerk
By: JUDITH O. NUNEZ
Deputy Clerk

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,
Plaintiff,

v.

ACCO BRANDS CORPORATION; A & W
PRODUCTS CO., INC.; J.J. PARAMOUNT
INTERNATIONAL, INC.; PARAMOUNT
IMPORTS AND WHOLESALE; KOLE
IMPORTS; NATIONWIDE TRADING
CORP.; TOPCO ASSOCIATES, INC.
(COOPERATIVE); TOPCO ASSOCIATES,
LLC; KINGSTON MARKETING, CO; and
DOES 1-600, inclusive,

Defendants.

Case No. CGC-09-485784

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

NATURE OF THE ACTION

1
2 1. This Complaint is a representative action brought by plaintiff Russell Brimer, in
3 the public interest of the citizens of the State of California, to enforce the People’s right to be
4 informed of the presence of lead, a toxic chemical found in vinyl-coated paper fasteners, vinyl
5 coated measuring tapes, vinyl-coated craft wire, and stationery packs/kits with vinyl components
6 sold in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
8 warn California citizens about their exposure to lead present in or on certain vinyl-coated paper
9 fasteners, vinyl coated measuring tapes, vinyl-coated craft wire, and stationery packs/kits with
10 vinyl components that defendants manufacture, distribute and/or offer for sale to consumers
11 throughout the State of California.

12 3. Elevated levels of lead are commonly found in and on vinyl-coated paper
13 fasteners, vinyl coated measuring tapes, vinyl-coated craft wire, and stationery packs/kits with
14 vinyl components that defendants manufacture, distribute, and/or offer for sale to consumers and
15 businesses throughout the State of California.

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

21 5. On February 27, 1987, the State listed lead as a chemical known to cause birth
22 defects and other reproductive harm. Lead became subject to the warning requirement one year
23 later and was therefore subject to the “clear and reasonable warning” requirements of Proposition
24 65, beginning on February 27, 1988. (*27 CCR § 27001(c); Cal. Health & Safety Code*
25 *§ 25249.8.*)

26 6. Lead shall hereinafter be referred to as the “Listed Chemical.”

27 7. Defendants manufacture, distribute, and/or sell vinyl-coated paper fasteners, vinyl
28 coated measuring tapes, vinyl-coated craft wire, and stationery packs/kits with vinyl components

1 containing excessive levels of the Listed Chemical as follows:

2 a. Defendant Acco Brands Corporation manufactures, distributes, and/or
3 sells vinyl-coated paper fasteners including, but not limited to, *Vinyl-coated Jumbo Clips*
4 #72523 (#0 5050 72523 6);

5 b. Defendant A & W Products Co., Inc. manufactures, distributes, and/or
6 sells vinyl-coated paper fasteners including, but not limited to, *A&W The Boxables Paper*
7 *Clips, Item No. 12104* (#0 79184 12104 7);

8 c. Defendants J.J. Paramount International, Inc. and Paramount Imports and
9 Wholesale manufacture, distribute, and/or sell stationery packs/kits with vinyl
10 components including, but not limited to, the *ParaMAXX Stationery Pack Item No. ST-*
11 *54426* (#7 43016 54426 6);

12 d. Defendant Kole Imports manufactures, distributes, and/or sells: (i) vinyl-
13 coated paper fasteners, including, but not limited to, *Sterling Stationery Jumbo Colored*
14 *Paper Clips, #OS074* (#7 31015 02661 6); (ii) vinyl-coated measuring tapes including,
15 but not limited to, the *Sterling High Quality 4 Piece Tailor Set, #HS092* (#7 31015 03019
16 4); and (iii) vinyl-coated craft wire including, but not limited to, the *Krafters Korner 5pc*
17 *Craft Wire, #CC092* (#7 31015 06589 9);

18 e. Defendant Nationwide Trading Corp. manufactures, distributes, and/or
19 sells vinyl-coated paper fasteners including, but not limited to, *150PC Color Paper Clips*
20 *#NST244* (#7 04936 20244 5); and

21 f. Defendants Topco Associates, Inc. (Cooperative), Topco Associates, LLC
22 And Kingston Marketing, Co. manufacture, distribute, and/or sell vinyl-coated paper
23 fasteners including, but not limited to, *Academix 45 Giant Vinyl-coated Clips* (#0 11225
24 03677 4).

25 8. All such vinyl-coated paper fasteners, vinyl coated measuring tapes, vinyl-coated
26 craft wire, and stationery packs/kits with vinyl components containing the Listed Chemical, as
27 listed above in paragraphs 7(a) through 7(f), shall hereinafter be referred to as the "Products."
28

1 19. Defendant Topco Associates, Inc. (Cooperative) (“Topco Cooperative”) is a
2 person doing business within the meaning of California Health & Safety Code § 25249.11.

3 20. Defendant Topco Associates, LLC (“Topco Associates”) is a person doing
4 business within the meaning of California Health & Safety Code § 25249.11.

5 21. Defendant Kingston Marketing, Co. (“Kingston”) is a person doing business
6 within the meaning of California Health & Safety Code § 25249.11.

7 22. Defendants ACCO Brands, A & W, J.J. Paramount International, Paramount
8 Imports, Kole, Nationwide, Topco Cooperative, Topco Associates, and Kingston, and each of
9 them, manufacture, distribute, and/or offer the Products for sale or use in the State of California
10 or imply by their conduct that they manufacture, distribute and/or offer the Products for sale or
11 use in the State of California.

12 23. Defendants DOES 1-200 (“Manufacturer Defendants”) are each persons doing
13 business within the meaning of California Health & Safety Code § 25249.11.

14 24. Manufacturer Defendants engage in the process of research, testing, designing,
15 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the
16 process of research, testing, designing, assembling, fabricating and/or manufacturing, one or
17 more of the Products for sale or use in the State of California.

18 25. Defendants DOES 201-400 (“Distributor Defendants”) are each persons doing
19 business within the meaning of California Health & Safety Code § 25249.11.

20 26. Distributor Defendants distribute, exchange, transfer, process and/or transport one
21 or more of the Products to individuals, businesses or retailers for sale or use in the State of
22 California.

23 27. Defendants DOES 401-600 (“Retailer Defendants”) are each persons doing
24 business within the meaning of California Health & Safety Code § 25249.11.

25 28. Retailer Defendants offer the Products for sale primarily to individuals in the
26 State of California.

27 29. At this time, the true names of Defendants DOES 1 through 600, inclusive, are
28 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to

1 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
2 each of the fictitiously named defendants is responsible for the acts and occurrences herein
3 alleged. When ascertained, their true names shall be reflected in an amended complaint.

4 30. ACCO Brands, A & W, J.J. Paramount International, J.J. Paramount Imports,
5 Kole, Nationwide, Topco Cooperative, Topco Associates, Kingston, Manufacturer Defendants,
6 Distributor Defendants, and Retailer Defendants shall, where appropriate, collectively be referred
7 to hereinafter as “Defendants.”

8 **VENUE AND JURISDICTION**

9 31. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
10 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,
11 because one or more instances of wrongful conduct occurred, and continues to occur, in the City
12 and County of San Francisco and/or because Defendants conducted, and continue to conduct,
13 business in this County with respect to the Products.

14 32. The California Superior Court has jurisdiction over this action pursuant to
15 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in
16 all causes except those given by statute to other trial courts.” The statute under which this action
17 is brought does not specify any other basis of subject matter jurisdiction.

18 33. The California Superior Court has jurisdiction over Defendants based on
19 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
20 association that either are citizens of the State of California, have sufficient minimum contacts in
21 the State of California, or otherwise purposefully avail themselves of the California market.
22 Defendants’ purposeful availment renders the exercise of personal jurisdiction by California
23 courts consistent with traditional notions of fair play and substantial justice.

24 **FIRST CAUSE OF ACTION**

25 **(Violation of Proposition 65 – Against All Defendants)**

26 34. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
27 Paragraphs 1 through 33, inclusive.

1 35. The citizens of the State of California have expressly stated in the Safe Drinking
2 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*
3 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
4 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

5 36. Proposition 65 states, “No person in the course of doing business shall knowingly
6 and intentionally expose any individual to a chemical known to the state to cause cancer or
7 reproductive toxicity without first giving clear and reasonable warning to such individual....”
8 (*Id.*)

9 37. On November 28, 2008, a sixty-day notice of violation, together with the requisite
10 certificate of merit, was provided to:

11 a. A & W and various public enforcement agencies stating that as a result of
12 A & W’s sales of the products listed above in paragraph 7(b), purchasers and users in the
13 State of California were being exposed to the Listed Chemical resulting from the
14 reasonably foreseeable uses of the Products, without the individual purchasers and users
15 first having been provided with a “clear and reasonable warning” regarding such toxic
16 exposures; and

17 b. Kole and various public enforcement agencies stating that as a result of
18 Kole’s sales of the products listed above in paragraph 7(d), purchasers and users in the
19 State of California were being exposed to the Listed Chemical resulting from the
20 reasonably foreseeable uses of the Products, without the individual purchasers and users
21 first having been provided with a “clear and reasonable warning” regarding such toxic
22 exposures.

23 38. On December 23, 2008, a sixty-day notice of violation, together with the requisite
24 certificate of merit, was provided to:

25 a. ACCO Brands and various public enforcement agencies stating that as a
26 result of ACCO Brands’ sales of the products listed above in paragraph 7(a), purchasers
27 and users in the State of California were being exposed to the Listed Chemical resulting
28 from the reasonably foreseeable uses of the Products, without the individual purchasers

1 and users first having been provided with a “clear and reasonable warning” regarding
2 such toxic exposures;

3 b. J.J. Paramount International, J.J. Paramount Imports, and various public
4 enforcement agencies stating that as a result of J.J. Paramount International and J.J.
5 Paramount Imports’ sales of the products listed above in paragraph 7(c), purchasers and
6 users in the State of California were being exposed to the Listed Chemical resulting from
7 the reasonably foreseeable uses of the Products, without the individual purchasers and
8 users first having been provided with a “clear and reasonable warning” regarding such
9 toxic exposures;

10 c. Nationwide and various public enforcement agencies stating that as a
11 result of Nationwide’s sales of the products listed above in paragraph 7(e), purchasers
12 and users in the State of California were being exposed to the Listed Chemical resulting
13 from the reasonably foreseeable uses of the Products, without the individual purchasers
14 and users first having been provided with a “clear and reasonable warning” regarding
15 such toxic exposures; and

16 d. Topco Cooperative, Topco Associates, Kingston, and various public
17 enforcement agencies stating that as a result of Topco Cooperative’s, Topco Associates’,
18 and Kingston’s sales of the products listed above in paragraph 7(f), purchasers and users
19 in the State of California were being exposed to the Listed Chemical resulting from the
20 reasonably foreseeable uses of the Products, without the individual purchasers and users
21 first having been provided with a “clear and reasonable warning” regarding such toxic
22 exposures.

23 39. Defendants have engaged in the manufacture, distribution and/or offering of the
24 Products for sale or use in violation of California Health & Safety Code § 25249.6 and
25 Defendants’ manufacture, distribution and/or offering of the Products for sale or use in violation
26 of California Health & Safety Code § 25249.6 has continued to occur beyond Defendants’
27 receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and believes that such
28 violations will continue to occur into the future.

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

4 41. The Products manufactured, distributed, and/or offered for sale or use in
5 California by Defendants contained the Listed Chemical above the allowable state limits.

6 42. Defendants knew or should have known that the Products manufactured,
7 distributed, and/or offered for sale or use by Defendants in California contained the Listed
8 Chemical.

9 43. The Listed Chemical was present in or on the Products in such a way as to expose
10 individuals to the Listed Chemical through dermal contact and/or ingestion during the reasonably
11 foreseeable use of the Products.

12 44. The normal and reasonably foreseeable use of the Products has caused and
13 continues to cause consumer exposures to the Listed Chemical, as such exposure is defined by
14 27 CCR § 25602(b).

15 45. Defendants had knowledge that the normal and reasonably foreseeable use of the
16 Products would expose individuals to the Listed Chemical through dermal contact and/or
17 ingestion.

18 46. Defendants, and each of them, intended that such exposures to the Listed
19 Chemical from the reasonably foreseeable use of the Products would occur by their deliberate,
20 non-accidental participation in the manufacture, distribution and/or offer for sale or use of
21 Products to individuals in the State of California.

22 47. Defendants failed to provide a “clear and reasonable warning” to those consumers
23 and/or other individuals in the State of California who were or who could become exposed to the
24 Listed Chemical through dermal contact and/or ingestion during the reasonably foreseeable use
25 of the Products.

26 48. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
27 directly by California voters, individuals exposed to the Listed Chemical through dermal contact
28 and/or ingestion resulting from the reasonably foreseeable use of the Products, sold by

1 Defendants without a “clear and reasonable warning,” have suffered, and continue to suffer,
2 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

3 49. As a consequence of the above-described acts, Defendants, and each of them, are
4 liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California
5 Health & Safety Code § 25249.7(b).

6 50. As a consequence of the above-described acts, California Health & Safety Code
7 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendants.

8 51. Wherefore, plaintiff prays for judgment against Defendants, and each of them, as
9 set forth hereinafter.

10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiff prays for judgment against Defendants as follows:

12 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
13 civil penalties against Defendants, and each of them, in the amount of \$2,500 per day for each
14 violation alleged herein;

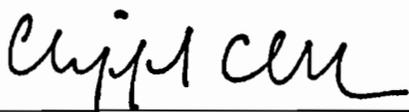
15 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
16 preliminarily and permanently enjoin Defendants, and each of them, from manufacturing,
17 distributing or offering the Products for sale or use in California, without providing “clear and
18 reasonable warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures
19 to the Listed Chemical;

20 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

21 4. That the Court grants such other and further relief as may be just and proper.

22 Respectfully Submitted,

23 HIRST & CHANLER LLP

24
25 By: 
26 Clifford A Chanler
27 Attorneys for Plaintiff
28 RUSSELL BRIMER

23 Dated: March 12, 2009