



22781784

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Evan Smith (Bar No. SBN 242352)  
BRODSKY & SMITH, LLC.  
9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212  
Tel: (877) 534-2590  
Fax: (310) 247-0160

*Attorneys for Plaintiffs*

**FILED**  
ALAMEDA COUNTY

NOV 02 2020

CLERK OF THE SUPERIOR COURT

By *C. Mendez*  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

EMA BELL and ANTHONY FERREIRO,

Plaintiffs,

v.

M&S ACCESSORY NETWORK CORP., et al.,

Defendants.

Case No.: RG19019377

**CONSENT JUDGMENT**

Judge: Stephen Kaus

Dept.: 19

Hearing Date: September 30, 2020

Hearing Time: 3:00 PM

Reservation #: R-2197541

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**1. INTRODUCTION**

1.1 **The Parties.** This Consent Judgment is entered into by and between Ema Bell (“Bell”) and Anthony Ferreiro (“Ferreiro”) acting on behalf of the public interest (hereinafter “Plaintiffs”) and M&S Accessory Network Corp. (“M&S” or “Defendant”) with Plaintiffs and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Bell and Ferreiro are individuals residing in California that seek to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. M&S is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Plaintiffs allege that Defendant has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) and diisononyl phthalate (DINP) from its sales of Gabba Goods headset travel/storage bags and armband phone holders/cases without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity. DINP is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 **Notices of Violation/Complaints.** On or about May 23, 2018 (Bell) and April 5, 2019 (Ferreiro), Plaintiffs served M&S, and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (collectively, the “Notices”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of headphones and their accompanying travel/storage bags (Bell) and armband phone holders/cases (Ferreiro) expose users in California to DEHP and/or DINP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notices. On May 17, 2019, Bell filed a complaint (the “Complaint”) in the matter related to the May 23, 2018 Notice. On February 19, 2020 the Complaint was amended (the “Amended Complaint”) in order to add plaintiff Ferreiro and claims related to the Ferreiro Notice. The Complaint and Amended Complaint are collectively referred to herein as, the “Action.”

1           1.4     For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
2 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that  
3 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,  
4 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all  
5 claims which were or could have been raised in the Action based on the facts alleged therein and/or  
6 in the Notices.

7           1.5     Defendant denies each and every material allegation contained in the Notices and  
8 the Action and maintains that it has not violated Proposition 65 and/or is not subject to that law.  
9 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,  
10 finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment  
11 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of  
12 law, or violation of law, such being specifically denied by Defendant. However, this section shall  
13 not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this  
14 Consent Judgment.

15     **2.     DEFINITIONS**

16           2.1     **Covered Products.** The term "Covered Products" means, collectively, the  
17 following that are manufactured, distributed and/or offered for sale in California by M&S: (i)  
18 headphones and their accompanying travel/storage bags, and (ii) armband phone holders/cases.

19           2.2     **Effective Date.** The term "Effective Date" means the date this Consent Judgment is  
20 entered as a Judgment of the Court.

21     **3.     INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**


22           3.1     **Reformulation of Covered Products.** As of the date this Consent Judgment is  
23 signed by both Parties, and continuing thereafter, Covered Products that M&S directly  
24 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be  
25 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable  
26 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a  
27 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §  
28

1 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated  
2 Product.


3 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products  
4 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP and  
5 1,000 ppm DINP when analyzed pursuant to U.S. Environmental Protection Agency testing  
6 methodologies 3580A and 8270C or other methodology utilized by federal or state government  
7 agencies for the purpose of determining the phthalate content in a solid substance.

8 3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed  
9 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in  
10 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,  
11 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There  
12 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream  
13 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall  
14 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

15 (a) **Warning.** The “Warning” shall consist of the statement:

16  **WARNING:** This product can expose you to chemicals including di(2-  
17 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause  
18 cancer and birth defects or other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

19 (b) **Alternative Warning:** M&S may, but is not required to, use the alternative short-  
20 form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

21  **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).<sup>1</sup>

22 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word  
23 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
24 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
25 triangle with a black outline, except that if the sign or label for the Covered Product does not use

26 <sup>1</sup> To the extent M&S determines that the Covered Products for which a warning statement  
27 is required under § 3.3 above contain only DINP in concentrations in excess of 1,000 ppm, then  
28 in addition to identifying it instead of DEHP, M&S shall delete the reference to reproductive  
harm effects in using either of the warning statements shown in §§ 3.3(a) and 3.3(b) above.

1 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
2 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the  
3 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or  
4 automatic process, providing that the warning is displayed with such conspicuousness, as compared  
5 with other words, statements, or designs as to render it likely to be read and understood by an  
6 ordinary individual under customary conditions of purchase or use. A warning may be contained  
7 in the same section of the packaging, labeling, or instruction booklet that states other safety  
8 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as  
9 those other safety warnings.

10 If M&S sells Covered Products via an internet website to customers located in California,  
11 the warning requirements of this section shall be satisfied if the foregoing warning appears either:  
12 (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the  
13 same page as the price for the Covered Product; or (c) on one or more web pages displayed to a  
14 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a  
15 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or  
16 immediately following the display, description, price, or checkout listing of the Covered Product.  
17 if the warning statement appears elsewhere on the same web page in a manner that clearly associates  
18 it with the product(s) to which the warning applies.

19 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in  
20 compliance with this Consent Judgment and Proposition 65 by either adhering to §§ 3.3 and 3.4 of  
21 this Consent Judgment or by complying with warning requirements adopted by the State of  
22 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) after the Effective  
23 Date.

24 **4. MONETARY TERMS**

25 **4.1 Civil Penalty.** M&S shall pay \$2,000.00 as a Civil Penalty pursuant to Health and  
26 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
27

1 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil  
2 Penalty remitted to Plaintiffs, as provided by California Health & Safety Code § 25249.12(d).

3 4.1.1 Within ten (10) days of the Effective Date, M&S shall issue two separate  
4 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and to (b)  
5 "Brodsky & Smith, LLC in Trust for Bell and Ferreiro" in the amount of \$500.00. Payment owed  
6 to Plaintiffs pursuant to this Section shall be delivered to the following payment address:

7 Evan J. Smith, Esquire  
8 Brodsky & Smith, LLC  
9 Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

10 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
11 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

12 For United States Postal Service Delivery:

13 Mike Gyurics  
14 Fiscal Operations Branch Chief  
15 Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

16 For Non-United States Postal Service Delivery:

17 Mike Gyurics  
18 Fiscal Operations Branch Chief  
19 Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

20 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address  
21 set forth above as proof of payment to OEHHA.

22 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, M&S shall pay  
23 \$17,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiffs'  
24 attorneys' fees and costs incurred as a result of investigating, bringing this matter to M&S'  
25 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public  
26 interest, pursuant to Code of Civil Procedure § 1021.5.

1           **5. RELEASE OF ALL CLAIMS**

2           5.1 This Consent Judgment is a full, final, and binding resolution between Plaintiffs  
3 each acting on their own behalf, and on behalf of the public interest, and M&S, and its parents,  
4 shareholders, members, directors, officers, managers, employees, representatives, agents,  
5 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
6 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they  
7 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
8 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
9 retailers, franchisees, and cooperative members, and their predecessors, successors and assigns  
10 (“Downstream Releasees”), of all claims for violations of Proposition 65 based on exposure to  
11 DEHP and/or DINP from Covered Products, with respect to any Covered Products manufactured,  
12 distributed, and/or sold by M&S prior to the Effective Date. This Consent Judgment shall have  
13 preclusive effect such that no other person or entity, whether purporting to act in his, her, or its  
14 interests or the public interest shall be permitted to pursue and/or take any action with respect to  
15 any violation of Proposition 65 that was alleged in the Action, or that could have been brought  
16 pursuant to the Notices against M&S and/or the Downstream Releasees of the Covered Products  
17 (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment constitutes  
18 compliance with Proposition 65 for all purposes with regard to the Covered Products.

19           5.2 In addition to the foregoing, Plaintiffs, on behalf of themselves, their past and  
20 current agents, representatives, attorneys, and successors and/or assignees, and not in their  
21 representative capacity, hereby waives all rights to institute or participate in, directly or indirectly,  
22 any form of legal action and releases M&S, Defendant Releasees, and Downstream Releasees from  
23 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,  
24 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
25 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
26 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
27 from Covered Products manufactured, distributed, or sold by M&S, Defendant Releasees or  
28

1 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph.  
2 Plaintiffs hereby specifically waive any and all rights and benefits which they now have, or in the  
3 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which  
4 provides as follows:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
6 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
7 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
8 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR OR RELEASED PARTY.

9 5.3 M&S waives any and all claims against Plaintiffs, their attorneys and other  
10 representatives, for any and all actions taken or statements made (or those that could have been  
11 taken or made) by Plaintiffs and their attorneys and other representatives, whether in the course of  
12 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
13 and/or with respect to Covered Products.

14 **6. INTEGRATION**

15 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
16 any and all prior negotiations and understandings related hereto shall be deemed to have been  
17 merged within it. No representations or terms of agreement other than those contained herein exist  
18 or have been made by any Party with respect to the other Party or the subject matter hereof.

19 **7. GOVERNING LAW**

20 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
21 California and apply within the State of California. In the event that Proposition 65 is repealed or  
22 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
23 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
24 to the extent that, Covered Products are so affected.

25 **8. NOTICES**

26 8.1 Unless specified herein, all correspondence and notices required to be provided  
27 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-



1 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
2 by the other party at the following addresses:

3 For Defendant:

4 Bao M. Vu  
5 STOEL RIVES LLP  
6 Three Embarcadero Center, Suite 1120  
San Francisco, CA 94111

7 And

8 For Plaintiffs:

9 Evan Smith  
10 Brodsky & Smith, LLC  
11 9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212

12 Any party, from time to time, may specify in writing to the other party a change of address to  
13 which all notices and other communications shall be sent.

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

15 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
16 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
17 the same document.

18 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
**APPROVAL**

19 10.1 Plaintiffs agree to comply with the requirements set forth in California Health &  
20 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
21 Defendant agrees it shall support approval of such Motion.

22 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
23 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
24 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
25 days, the case shall proceed on its normal course.

26 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
27 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
28

1 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
2 its normal course on the trial court's calendar.

3 **11. MODIFICATION**

4 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
5 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

6 **12. ATTORNEY'S FEES**

7 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
8 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

9 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
10 pursuant to law.

11 **13. RETENTION OF JURISDICTION**

12 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
13 Consent Judgment.

14 **14. AUTHORIZATION**

15 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
16 respective Parties and have read, understood and agree to all of the terms and conditions of this  
17 document and certify that he or she is fully authorized by the Party he or she represents to execute  
18 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
19 explicitly provided herein each Party is to bear its own fees and costs.  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

AGREED TO:

AGREED TO:

Date: \_\_\_\_\_

Date: Aug 10, 2020

By: \_\_\_\_\_  
EMA BELL

By: Anthony Ferreiro  
ANTHONY FERREIRO

AGREED TO:

Date: 07/30/2009

By: [Signature]  
M&S ACCESSORY NETWORK, CORP.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

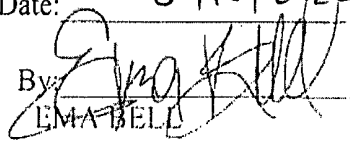
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

AGREED TO:

AGREED TO:

Date: 8/10/2020

Date: \_\_\_\_\_

By:   
EMABELL

By: \_\_\_\_\_  
ANTHONY FERREIRO

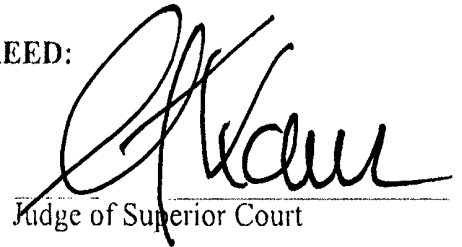
AGREED TO:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
M&S ACCESSORY NETWORK, CORP.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 11-1-2020

  
Judge of Superior Court