# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

*SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)*

**DATE:** June 9, 2011

**TO:** Steven B. Nichols, President – K-Swiss Inc.
California Attorney General's Office;
District Attorney's Office for 58 Counties; and
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

**FROM:** Anthony E. Held, Ph.D., P.E.

## I. INTRODUCTION

My name is Anthony E. Held. I hold a Doctor of Philosophy degree in Environmental Engineering and I am a registered professional engineer in the State of California. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65") and supplements the 60-Day Notice of Violation sent on March 31, 2011. As noted above, notice is also being provided to the violator, K-Swiss Inc. (the "Violator"). The violations covered by this Notice consist of the product exposures, routes of exposure, and types of harm potentially resulting from exposure to the toxic chemicals ("listed chemicals") identified below, as follows:

| | |
|---|---|
| Product Exposure: | See Section VI. Exhibit A |
| Listed Chemicals: | Di(2-ethylhexyl)phthalate ("DEHP"); Butyl benzyl phthalate ("BBP"); Di-n-butyl phthalate ("DBP") |
| Routes of Exposure: | Ingestion, Dermal, Inhalation |
| Types of Harm: | Birth Defects and Other Reproductive Harm |

## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific types of products that are causing consumer and occupational exposures in violation of Proposition 65, and that are covered by this Notice, are listed under "Product Category/Type" in Exhibit A in Section VI below. All products within the types covered by this Notice shall be referred to hereinafter as the "products." The sales of these products in California dating as far back as June 9, 2008 are subject to this Notice. As a result of the sales of these products, exposures to the listed chemicals have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposure to the listed chemicals resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemicals from the reasonably foreseeable use of the products.

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemicals. Infants, children and/or women of childbearing age ingest the listed chemicals when they, among other activities, place the product, or a portion thereof, into their mouth, or otherwise suck, lick, teethe and/or bite the product thereby allowing the listed chemicals to leach out of the substrate directly into their mouths. Infants, children and/or women of childbearing age ingest the listed chemicals when they, among other activities, touch the products and transfer the listed chemicals from the products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops. Infants, children and/or women of childbearing age are exposed to the listed chemicals through direct dermal contact when they, among other activities, handle, touch or otherwise use the products. Infants, children and/or women of childbearing age inhale the listed chemicals when, among other activities, they breathe indoor air with airborne particles that are released from the products containing the listed chemicals.

## III. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel's office at the following address:

Anthony E. Held, Ph.D., P.E.
c/o Josh Voorhees
The Chanler Group
Parker Plaza
2560 Ninth Street, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880

## IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

## V. ADDITIONAL NOTICE INFORMATION

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within one of the categories or types of offending products covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator and other distributors and retailers of the manufacturer.

## V. ADDITIONAL NOTICE INFORMATION (continued)

| *Product** | *Retailer(s)* | *Manufacturer(s)/Distributor(s)* |
|---|---|---|
| K-Swiss Zorrie Sandal, #92601-064-M (#8 84142 74807 1) | Famous Footwear Alameda County, Northern California | K-Swiss Inc. |

## VI. EXHIBIT A

| *Product Category/Type* | *Such As** | *Toxins* |
|---|---|---|
| Footwear containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | K-Swiss Zorrie Sandal, #92601-064-M (#8 84142 74807 1) | Di(2-ethylhexyl)phthalate Butyl benzyl phthalate Di-n-butyl phthalate |
| Wallets and other coin or bill holders containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | | Di(2-ethylhexyl)phthalate Butyl benzyl phthalate Di-n-butyl phthalate |
| Handbags, purses, clutches and totes containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | | Di(2-ethylhexyl)phthalate Butyl benzyl phthalate Di-n-butyl phthalate |
| Belts containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | | Di(2-ethylhexyl)phthalate Butyl benzyl phthalate Di-n-butyl phthalate |
| Apparel, including gloves and headwear (and excluding sauna suits) containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | | Di(2-ethylhexyl)phthalate Butyl benzyl phthalate Di-n-butyl phthalate |

## VI. EXHIBIT A (continued)

| *Product Category/Type* | *Such As** | *Toxins* |
|---|---|---|
| Jewelry containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | | Di(2-ethylhexyl)phthalate<br>Butyl benzyl phthalate<br>Di-n-butyl phthalate |
| Key holders, keychains and key caps containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | | Di(2-ethylhexyl)phthalate<br>Butyl benzyl phthalate<br>Di-n-butyl phthalate |
| Luggage tags and ID cases containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | | Di(2-ethylhexyl)phthalate<br>Butyl benzyl phthalate<br>Di-n-butyl phthalate |
| Bag charms and zipper pulls containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | | Di(2-ethylhexyl)phthalate<br>Butyl benzyl phthalate<br>Di-n-butyl phthalate |
| Eyeglass cases containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | | Di(2-ethylhexyl)phthalate<br>Butyl benzyl phthalate<br>Di-n-butyl phthalate |
| Coverings/cases for mobile electronic devices (e.g., for telephones, cameras, MP3 players, CDs/DVDs, and laptops) containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | | Di(2-ethylhexyl)phthalate<br>Butyl benzyl phthalate<br>Di-n-butyl phthalate |

## VI. EXHIBIT A (continued)

| *Product Category/Type* | *Such As** | *Toxins* |
|---|---|---|
| Coverings for journal/address books (e.g., diaries, planners, photo albums) containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | | Di(2-ethylhexyl)phthalate<br>Butyl benzyl phthalate<br>Di-n-butyl phthalate |
| Cosmetic cases/bags containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | | Di(2-ethylhexyl)phthalate<br>Butyl benzyl phthalate<br>Di-n-butyl phthalate |
| Toiletry cases/bags containing Di(2-ethylhexyl)phthalate or Butyl benzyl phthalate or Di-n-butyl phthalate or any combination thereof | | Di(2-ethylhexyl)phthalate<br>Butyl benzyl phthalate<br>Di-n-butyl phthalate |

*The specifically identified example of one of the types of products that are subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemicals from other items within the product categories/types listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the types listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the types or categories described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On June 9, 2011, I served the following documents:

**SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);**

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

on the Violator listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to such Violator and providing each envelope to a United States Postal Service Representative:

Steven B. Nichols, President
K-Swiss Inc.
31248 Oak Crest Drive
Westlake Village, CA 91361

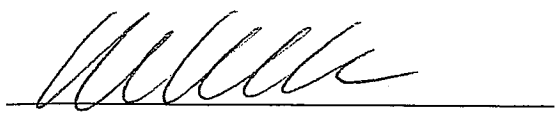
Lee D. Green, Corporate Counsel
K-Swiss Inc.
31248 Oak Crest Drive
Westlake Village, CA 91361

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

| | |
|---|---|
| *Via 2nd Day Air Service by placing such envelope in a Federal Express Drop-Off Box:* | The Attorney General of the State of California; |
| *By placing each envelope in a United States Postal Service mailbox, postage prepaid:* | The District Attorney for Each of the 58 counties in California; and<br><br>The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento |

*A list of addresses for each of these recipients is attached.*

Executed on June 9, 2011 at Berkeley, California.



Eleanor Chen-Ranstrom

# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and Safety Code § 25249.6 by failing to provide clear and reasonable warnings;

2. I am the attorney for the noticing party;

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the ***alleged*** exposure to the listed chemicals that is the subject of this action;

4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute;

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code § 25249.7(h)(2) (*i.e.*, (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons).

Dated: June 9, 2011

Clifford A. Chanler

# SERVICE LIST

The Honorable Nancy O'Malley
Alameda County District Attorney
1225 Fallon Street, Room 900
Oakland, CA 94612

The Honorable Terese Drabec
Alpine County District Attorney
270 Laramie Street, PO BOX 248
Markleeville, CA 96120

The Honorable Todd Riebe
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708 Court Street
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The Honorable Michael Ramsey
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The Honorable Christopher Brooke
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Santa Cruz, CA 95060

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San Francisco, CA 94102

The Honorable Richard Doyle
Office of the City Attorney, San Jose
200 East Santa Clara Street
San Jose, CA 95113

Office of the California Attorney General
Proposition 65 Enforcement Reporting
ATTN: Prop 65 Coordinator
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Oakland, CA 94612-0550