

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

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STATE OF VERMONT,)
Plaintiff)
)
v.)
)
DOLLAR TREE STORES, INC.,)
Defendant)

FILED

CIVIL DIVISION
Docket No. 420-7-14 Wncw

CONSUMER PROTECTION COMPLAINT

I. Introduction

1. The Vermont Attorney General brings this suit under the Vermont Consumer Protection Act, 9 V.S.A. chapter 63 (“the CPA” or “the Act”), in response to substantial and systematic violation by Defendant Dollar Tree Stores, Inc., of a 2010 Assurance of Discontinuance barring the company from selling jewelry in Vermont, whose purpose was to protect Vermont’s children from exposure to toxic substances in such products. The Attorney General seeks injunctive relief; fair compensation to consumers; payment of civil penalties, fees and costs; and other appropriate relief.

II. Parties

2. Defendant Dollar Tree Stores, Inc. (“Defendant”) is a national, publicly-traded discount variety store chain whose business offices are located at 500 Volvo Parkway, Chesapeake, Virginia 23320.

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Montpelier, VT
05609

3. Defendant has five stores in the State of Vermont, in Barre, Bennington, Burlington, Derby/Newport, and Rutland.

4. The Vermont Attorney General is authorized under the CPA, 9 V.S.A. § 2458, to sue to enforce the Act's prohibitions on unfair and deceptive acts and practices in commerce.

5. This Court has personal jurisdiction over Defendant and is the proper venue for this action, based on Defendant's sale of consumer products to residents of Washington County, among other locations.

6. This action is in the public interest.

III. Facts

7. In the mid-2000s, there was a growing awareness in the United States, at the national and state levels, that many consumer products imported into this country from China and other countries, most especially children's products and including children's jewelry, contained toxic substances.

8. Among the toxics of concern were the heavy metals lead and cadmium and plasticizing chemicals called phthalates, which pose a serious risk to the health of children.

9. This awareness led to the passage of federal and state laws regulating the sale of products containing certain toxics in excess of designated limits, and law enforcement actions against companies selling the products.

10. Among the law enforcement actions taken were consumer protection settlements between the State of Vermont and Mattel, Inc. , and Fisher-Price, Inc. (a multistate settlement), Ganz, Inc. (a Canadian importer of gift items), and Defendant Dollar Tree Stores, Inc.

11. The primary purpose of these laws and law enforcement actions was to protect the health of children.

12. The settlement with Defendant took the form of an Assurance of Discontinuance (“the AOD”) with the Vermont Attorney General’s Office under the CPA, 9 V.S.A. § 2459, entered into by the parties in January 2010.

13. The AOD was filed with the Washington Superior Court on February 8, 2010, under the caption *In re Dollar Tree Stores, Inc.*, Docket No. 79-210 (copy attached hereto as Exhibit 1).

14. According to the AOD, Defendant had previously sold items of jewelry in Vermont that contained high levels of toxic lead.

15. The AOD noted that among the steps that Defendant took to address this problem was that the company “voluntarily removed from its stores in Vermont *all* jewelry, key chains, hair goods with metal, and toys with visible metal, and stopped ordering any products which it characterized as jewelry.” AOD at 2. (Emphasis added.)

16. Among other things, paragraph 4(a) of the AOD imposed the following broad ban on certain sales in Vermont: “Dollar Tree shall not sell in or into the State of Vermont: ... [a]ny product commonly understood to be jewelry.”

17. The AOD also imposed a \$100,000 sanction on Defendant, half of which was paid to the State of Vermont as civil penalties and costs, and the other half of which was paid to the Vermont Department of Health for purposes of promoting children’s health. AOD, para. 5.

18. Paragraph 6 of the AOD further provided that “[t]his Assurance of Discontinuance shall be binding on Dollar Tree and its successors and assigns.”

19. In spite of this ban, and in direct violation of it, Defendant subsequently sold over 30,000 items of jewelry—bracelets, earrings, rings, and necklaces—in Vermont.

20. All of those items were products that are commonly understood to be jewelry.

21. However, Defendant claims that because those items were made of plastic, not metal, they were not jewelry.

22. Such an interpretation is contradicted by the literal wording of the AOD, the commonsense meaning of the AOD, the advertising and sales practices of companies all over the United States that sell jewelry made of plastic and other materials, the authoritative standards of ASTM International (formerly the American Society for Testing and Materials), and the U.S. Consumer Product Safety Commission, among other sources.

23. In fact, lead and other toxics have recently been found in children's products made of plastic, including by USPIRG (which identified five such products, including plastic rings sold by Defendant), and the Washington State Department of Ecology (which identified one such product, a gem pendant, sold by Defendant).

24. Defendant routinely requires the testing of products it purchases for resale to consumers, but this testing protocol does not and cannot ensure that all items of jewelry sold in its stores are free of toxic substances—hence the importance of the AOD's prophylactic ban on sales.

IV. Cause of Action: Unfair and Deceptive Acts and Practices in Commerce

25. The allegations set forth above are realleged herein.

26. The CPA, 9 V.S.A. § 2453(a), prohibits unfair and deceptive acts and practices in commerce.

27. The CPA, 9 V.S.A. § 2459(a), provides that evidence of a violation of an assurance of discontinuance "shall be prima facie proof of a violation of section 2453 of this title [*i.e.*, 9 V.S.A. § 2453(a)].

28. Defendant violated the AOD, and hence the CPA, over 30,000 times by undertaking that number of sales of jewelry in Vermont after the AOD was agreed to and filed.

WHEREFORE Plaintiff State of Vermont requests judgment in its favor and the following relief:

1. An injunction prohibiting Defendant from offering or selling any items of jewelry in Vermont, regardless of the material from which those items are made.
2. Appropriate relief to affected Vermont consumers.
3. Civil penalties of up to \$10,000.00 for each violation of the Consumer Protection Act.
4. The award of investigative and litigation costs and fees to the State of Vermont.
5. Such other relief as the Court deems appropriate.

Dated: 7/7/17

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 
Elliot Burg
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
Tel. (802) 828-2153
elliott.burg@state.vt.us

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

(2) that same limit, and a 90 ppm limit for lead in surface coatings, became mandatory for children's products on February 10, 2009, as a result of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314; and (3) there have also been voluntary limits for surface coatings on toys under "Standard Consumer Safety Specification for Toy Safety," ASTM F 963-07 (from ASTM International, formerly known as the American Society for Testing and Materials), of 90 ppm for lead and 75 ppm for cadmium;

WHEREAS the results of the four product tests ("the tests") commissioned by the Attorney General's Office were as follows, in parts per million ("ppm"):

- "Sassy & Chic" Earrings: 447,539 ppm cadmium;
- "Sassy & Chic" Necklace: 22,751 ppm cadmium, and 152,132 ppm lead;
- "Sassy & Chic" Digital Watch: 483,672 ppm lead; and
- Pony Tail Holder: 49,484 ppm lead;

WHEREAS in December 2007, prior to learning of any action by the Attorney General's Office or of results of the tests, Dollar Tree voluntarily sent a letter to all its importer-vendors, informing them that they would not accept any more products containing lead in paint, decals, or solder or containing other than trace amounts of heavy metals;

WHEREAS Dollar Tree voluntarily removed from its stores in Vermont all jewelry, key chains, hair goods with metal, and toys with visible metal, and stopped ordering any products which it characterized as jewelry.

WHEREAS in addition, Dollar Tree voluntarily adopted a 300 ppm limit on lead in its products, as well as 90 ppm and 75 ppm limits on lead and cadmium, respectively, for surface coatings;

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GENERAL
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WHEREAS the Attorney General alleges that the sale of consumer products with very high concentrations of toxic substances like lead and cadmium is, and has been, a violation of the Vermont Consumer Fraud Act's prohibition on unfair and deceptive trade practices, 9 V.S.A. § 2453(a);

WHEREAS, Dollar Tree has not admitted any violation of the Vermont Consumer Fraud Act;

AND WHEREAS the Attorney General and Dollar Tree are willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459;

THEREFORE the parties agree as follows:

1. For the purpose of this Assurance of Discontinuance, the following terms are defined:

- a. "Children's product" means a consumer product designed or intended primarily for children 12 years of age or younger.
- b. "Contain[s]" or "containing" lead or cadmium means containing, or having a surface coating containing, the stated amount by weight of lead, cadmium, or lead or cadmium compound in any component part of a product.
- c. "Sell[s] in or into the State of Vermont" means to distribute or sell to a business or consumer in the State of Vermont through any medium, including, but not limited to, in a store or over the Internet.

2. In the course of doing business in or into the State of Vermont, Dollar Tree shall comply with all applicable federal and Vermont statutes and regulations relating to product

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109 State Street
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safety, including, but not limited to, laws limiting the amount of lead and/or cadmium permitted in children's and other consumer products.

3. In keeping with the preceding paragraph, Dollar Tree shall comply with the federal Consumer Product Safety Improvement Act of 2008, Public Law 110-314, the Vermont Lead in Consumer Products Act, 9 V.S.A. chapter 63, subchapter 1C, and any regulations enacted thereunder.

4. Notwithstanding the preceding two paragraphs, and unless and until the requirements of federal and/or Vermont law are more stringent than the following requirements (in which case Dollar Tree shall comply with such more stringent federal and/or Vermont requirements), Dollar Tree shall not sell in or into the State of Vermont:

- a. Any product commonly understood to be jewelry;
- b. Any children's product, where any component of the product contains more than three hundred (300) ppm of lead, *provided that* effective August 14, 2011, the limit for lead shall be one hundred (100) ppm (or, if the CPSC determines that said limit is not technologically feasible, such limit as the CPSC shall set); or
- c. Any children's product, where any component of the product has paint or another surface coating containing more than ninety (90) ppm of lead or seventy-five (75) ppm of cadmium.

5. Within ten (10) days of the date this Assurance of Discontinuance is signed by Dollar Tree, Dollar Tree shall pay to the State of Vermont, in care of the Vermont Attorney General's Office, the sum of \$100,000.00 (one hundred thousand dollars), of which \$50,000.00 (fifty thousand dollars) is civil penalties and costs, and \$50,000.00 (fifty

thousand dollars) shall be forwarded to the Vermont Department of Health for purposes of promoting children's health.

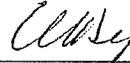
6. This Assurance of Discontinuance shall be binding on Dollar Tree and its successors and assigns.

7. This Assurance of Discontinuance resolves all claims the State of Vermont may have against Dollar Tree relating to the sale of products containing lead or cadmium through the date of its execution.

Dated 1/22/10

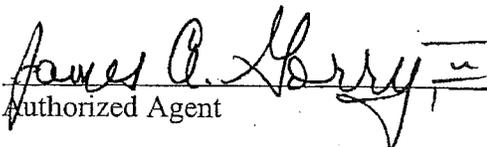
STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 
Elliot Burg
Assistant Attorney General

Dated 1/28/10

DOLLAR TREE STORES, INC.

by: 
Authorized Agent

James A. Gorry III
Name of ~~Authorized Agent~~ General Counsel and
Corporate Secretary

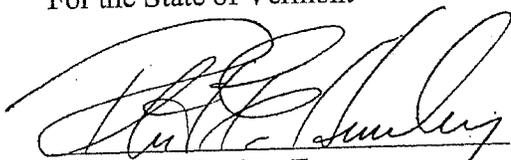
Title of Authorized Agent

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

APPROVED AS TO FORM:



Elliot Burg
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
For the State of Vermont



Robert B. Hemley, Esq.
Gravel and Shea, A Professional Corporation
76 St. Paul Street, 7th Floor, P. O. Box 369
Burlington, VT 05402-0369
(802) 658-0220
For Dollar Tree Stores, Inc.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609