

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2011 JUL 22 P 2:11

In re VANDOR, LLC)

CIVIL DIVISION

Docket No. 466-7-11 Wnw

ASSURANCE OF DISCONTINUANCE

WHEREAS Vandor, LLC ("Vandor") is a Utah corporation whose address is P.O. Box 27873, Salt Lake City, Utah 84127-0873;

WHEREAS Vandor is an importèr of consumer goods from Asia, among other places, including drinking glasses and mugs decorated with multicolor painted designs on the exterior, such as Elvis Presley and characters from "Gone with the Wind", which Vandor markets to adult collectors;

WHEREAS Vandor has sold such products to retailers in the State of Vermont;

WHEREAS in April 2011, independent laboratory testing of one sample of each of 15 different decorated glasses imported from China and Indonesia by Vandor, sold by Vandor to two retailers in Vermont, and then offered for sale to consumers in Vermont, determined that 9 out of the 15 samples contained total lead concentrations of between 14 and 81 times the state limit for children's products;

WHEREAS the following is a list of the high-lead decorated glasses, with descriptions of the illustrations that appeared on them, and the total lead concentration for each:

Gone with the Wind glass no. 1—4,831 parts per million (ppm)
Gone with the Wind glass no. 2—4,191 ppm
Elvis Presley tumbler—7,345 ppm
Elvis Presley glass (white)—1,443 ppm
Elvis Presley glass (black)—2,935 ppm

Elvis Presley "All Shook Up" glass—4,216 ppm
Elvis Presley "Heartbreak Hotel" glass—4,109 ppm
Elvis Presley "Love Me Tender" glass—4,066 ppm
Elvis Presley "Burning Love" glass—8,174 ppm

WHEREAS the same 9 glasses also contained the toxic heavy metal cadmium, although at much lower levels and without violating any applicable mandatory federal or state governmental limit on the amount of cadmium in consumer products;

WHEREAS both lead and cadmium are toxic substances that can cause serious harm, particularly to young children, if ingested;

WHEREAS prior to selling decorated glasses to or into Vermont, Vandor previously arranged for independent laboratory testing to ensure its decorated glasses complied with applicable laws and regulations for drink ware in all other respects, but had not previously tested certain decorated glasses to the Vermont standard for children's products because it believed that those decorated glasses were not children's products;

WHEREAS decorated glasses of the type described above are considered "children's products" under Vermont state law, which defines that term as "any consumer product marketed for use by children under the age of 12, or whose substantial use or handling by children under 12 years of age is reasonably foreseeable," 9 V.S.A. § 2470e(1);

WHEREAS this definition is broader than the federal definition of "children's products" set out in the Consumer Product Safety Improvement Act, 15 U.S.C. § 2052(16);

WHEREAS the limit on lead in children's products under Vermont state law is 100 parts per million;

WHEREAS there are also 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 after being notified of the above-described test results, Vandor asked that the two retailers in Vermont to whom the company had sold decorated glasses remove those products from their stores;

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

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

AND WHEREAS the Attorney General and Vandor 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 any consumer product marketed for use by children under the age of 12, or whose substantial use or handling by children under 12 years of age is reasonably foreseeable.

- b. "Containing" lead or cadmium refers to 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. "Representative sample" means a sufficient number of units from each manufacturing run of a particular product to be tested consistent with a reasonable testing program for lead content (where the units in the manufacturing run are the same in design, source and nature of materials, and manufacturing process across the entire run) to establish compliance with the limits on lead and cadmium set out in this Assurance of Discontinuance.
- d. "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, Vandor shall comply with all applicable federal and Vermont statutes and regulations relating to product safety, including, but not limited to, laws limiting the amount of lead and/or cadmium permitted in children's and other consumer products, including, without limitation, the Vermont Lead in Consumer Products Act, 9 V.S.A. chapter 63, subchapter 1C.

3. Specifically, and unless and until the requirements of federal and/or Vermont law are more stringent than the following requirements (in which case Vandor shall comply with such more stringent federal and/or Vermont requirements), Vandor shall not sell in or into the State of Vermont any children's product as defined herein, including, but not limited to, decorated glasses or mugs unless a representative sample of items from the particular

manufacturing run that produced them has been tested by a laboratory that is duly certified under federal law using appropriate methods and been found to contain:

- a. No more than one hundred (100) ppm of lead; and
- b. In any paint or other surface coating, no more than ninety (90) ppm of lead or seventy-five (75) ppm of cadmium.

4. If Vandor elects to continue making sales of decorated glasses or mugs to or into Vermont, for three years from the date of signing this Assurance of Discontinuance or from resuming sales to or into Vermont, whichever comes later, Vandor shall undertake the following product testing, reporting and related obligations:

- a. No later than October 1, January 1, April 1 and July 1 of each year, Vandor shall provide to the Vermont Attorney General's Office a report that identifies each product described in paragraph 3, above, that has, in the previous calendar quarter, been tested and found to contain lead or cadmium in excess of the limits set out in (and for the products described in) paragraph 3, above, and that, in connection with each such test, states the date and result of the test, the name and address of the product manufacturer and the testing laboratory, and the actions taken by Vandor in response to the test result; and
- b. Vandor shall take reasonable steps to identify and reward suppliers who consistently produce goods in compliance with the lead and cadmium standards set out in paragraph 3, above, and to terminate those suppliers who produce more than a *de minimis* quantity of goods that do not comply with said standards. No later than October 1, January 1, April 1 and July 1 of

each year, Vandor shall provide to the Vermont Attorney General's Office a report on the actions it has taken to comply with the requirements of this subparagraph.

5. In the event that, prior to signing this Assurance of Discontinuance, Vandor sold any product containing lead or cadmium in excess of the limits set out in paragraph 3, above, which product is still available for purchase from a retailer in the State of Vermont, Vandor shall take all reasonable steps to immediately remove said product from the state and reimburse the retailer for his or her cost of the product, or, at the retailer's option, exchange the product for another product of equivalent value.

6. Vandor shall take all reasonable steps to permit any consumer who has purchased from a Vermont retailer any Vandor decorated glass to return said product to the retailer for a full refund, which refund shall be paid promptly. Specifically, given the limited scale and scope of distribution (approximately 16 decorated glass sets of the same type as those which exceeded the Vermont standard for children's products, distributed to only two Vermont retail locations during calendar year 2010), Vandor shall coordinate with its retail locations on a recall bulletin to be displayed on location and delivered to those consumers who can be identified, and shall coordinate with those locations on paying any appropriate refunds.

7. Within ten (10) days of signing this Assurance of Discontinuance, Vandor shall pay to the State of Vermont, in care of the Vermont Attorney General's Office, civil penalties and costs, which, given the company's financial ability to pay and the limited scale and scope of distribution of the products at issue, shall be in the sum of ten thousand dollars (\$10,000.00).

8. This Assurance of Discontinuance shall be binding on Vandor and its successors and assigns.

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

Dated 6/21/11

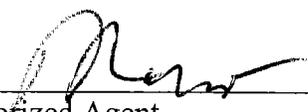
STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 
Elliot Burg
Assistant Attorney General

Dated 7/7/11

VANDOR, LLC

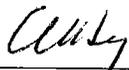
by: 
Authorized Agent

Tom Russo
Name of Authorized Agent

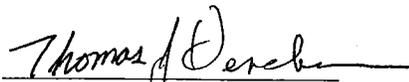
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