

STATE OF VERMONT
WASHINGTON COUNTY, SS.

SUPERIOR COURT
WASHINGTON COUNTY

V.

**GANZ, INC.,
Defendant**

Washington Superior Court
Docket No. 791-12-07 Wncv

CONSUMER FRAUD COMPLAINT

I. Introduction

1. The Vermont Attorney General brings this suit under the Vermont Consumer Fraud Act in response to Defendant's sale in or into the State of Vermont, through wholesale distribution to retailers, of consumer products containing toxic lead. Such sales constitute unfair and deceptive acts and practices within the meaning of the Act. The Attorney General seeks injunctive relief, including a ban on the sale of lead-containing products into Vermont in the future, prominent public disclosure of the hazards associated with lead-containing products sold in the past, offers of refund to consumers and retailers, and a stringent testing regime; civil penalties, fees and costs; and other appropriate relief.

II. Parties

2. Defendant Ganz, Inc., a Canadian corporation, is a wholesale distributor of jewelry, ornaments, stuffed animals and other gift items.

3. Defendant has headquarters in Woodbridge, Ontario, and, according to the company's website, U.S. offices in Atlanta and Los Angeles and overseas offices in Hong Kong and Shanghai. Defendant also has a facility in Cheektowaga, New York.

4. The Vermont Attorney General is authorized under the Vermont Consumer Fraud Act, 9 V.S.A. § 2458(b), 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, directly or through retailers, to residents of Washington County, among other locations.

6. This action is in the public interest.

III. Facts

A. Background on Lead

7. Lead is highly toxic, particularly to young children.

8. There is no safe level of lead in the body.

9. Even very small amounts of lead can cause serious neurological damage, including drops in IQ and, in the long term, behavioral problems.

10. Higher exposures to lead cause acute effects, including seizures, coma or death.

11. One of the sources of exposure to lead is jewelry and similarly small metal objects, which young children can mouth or swallow.

12. A child can suffer adverse health effects or die from ingesting lead-containing objects.

13. For example, in February 2006, a four-year-old boy in Minnesota died from acute lead poisoning after swallowing a small leaded charm sold with a Reebok running shoe.

14. The amount of lead in a product is measured in parts per million (ppm) of total lead content, which can also be expressed as a percentage.

15. There is no federal regulatory standard for lead in metal consumer products, although the Consumer Product Safety Commission (CPSC), the federal agency charged with enforcing consumer product safety laws, does have an Interim Enforcement Policy for Children's Metal Jewelry Containing Lead, under which the agency may take enforcement action if it finds that such a product contains total lead exceeding 600 ppm, or 0.06 percent, and "accessible" lead exceeding 175 micrograms (μg).

16. In a December 2006 Briefing Package for Petition Requesting Ban of Lead in Toy Jewelry (Petition No. HP 06-1) (Dec. 2006), the staff of the CPSC recommended a regulatory standard (maximum) for lead in children's jewelry of 600 ppm, or 0.06 percent, total lead content, without reference to "accessible" lead.

17. According to the CPSC staff recommendation,

The staff believes that the data show that excess lead exposure from ingestion of metal jewelry is likely for items that contain more than 0.06 percent lead, and that the amount of exposure likely increases with increasing lead content in the item. ...

Based on the potential for exposure to lead from lead-containing metal jewelry and the known hazards of lead exposure from ingestion of lead-containing metal jewelry ..., the staff concludes that children who swallow lead-containing metal jewelry could experience excess lead exposure that could result in substantial illness.

Id. at 14.

18. Even the 600-ppm standard is high, given the fact that it was originally premised on outmoded assumptions about how much lead can be present in children's blood without significant health effects, and did not take into account the existence of multiple sources of exposure to lead, such as housing, soil, and children's products.

19. Small lead-containing metal items other than jewelry (such as ornaments) with which small children can come into contact, mouth and swallow, logically pose the same danger to the health of young children.

20. Over the past year, there have been numerous and well-publicized national recalls of children's products containing lead, including but not limited to metal jewelry. The Centers for Disease Control's website lists those recalls at www.cdc.gov/nceh/lead/Recalls/default.htm.

21. For example, in the seven weeks beginning October 2007, there were 35 recalls of children's products for lead content, totaling 3.4 million items.

B. Ganz's Lead-Containing Products in Vermont

22. Defendant has sold, and sells, consumer products on a wholesale basis to retail stores in the State of Vermont, including small metal products such as jewelry, charms and ornaments.

23. On information and belief, many of these products are manufactured overseas, for instance in China.

24. In the summer of 2007, an employee of the Vermont Department of Health purchased an item of metal jewelry from a hospital gift shop in Burlington, Vermont, that he suspected might contain lead. The item had been purchased by the shop from Defendant.

25. The product was sent to the Attorney General's Office, which forwarded it to Schneider Laboratories in Richmond, Virginia, to be tested for lead content.

26. The product had a total lead content of 55,176 ppm, or over 90 times the CPSC staff-recommended limit. *See* Exhibit 1 (laboratory report and photograph).

27. The Attorney General's Office asked the gift shop for additional samples of metal charms and similar products that had been purchased wholesale from Defendant.

28. Seven of these products were sent to Schneider Laboratories for testing of total lead content.

29. Of the seven tested products, five had a lead content of over 600 ppm, and substantially so: 8,339 ppm; 11,486 ppm; 111,162 ppm; 142,353 ppm; and 179,013 ppm. *See* Exhibit 2 (laboratory report and photographs).

30. Put another way, the five products contained, respectively, 14, 19, 185, 237 and 298 times the CPSC staff-recommended limit of lead (rounded off to the nearest whole number).

31. None of Defendant's lead-containing products are accompanied by a disclosure that the products contain lead.

32. On July 27, 2007, the Attorney General's Office issued a Civil Investigative Subpoena to Defendant under the Consumer Fraud Act, 9 V.S.A. § 2460(a), for information on Defendant, its testing procedures, the tested products, and the retail stores in Vermont to which the tested products had been sold.

33. Defendant did not provide its full responses to the Subpoena until November 2, 2007.

34. The same month, the Attorney General then obtained a number of additional items of metal jewelry, ornaments and similar items from other stores that were identified as having come from Defendant and sent seven of those to Schneider Laboratories for testing of total lead content.

35. The results of six of those tests showed, in two laboratory reports, even higher—astoundingly higher—levels of lead, specifically: 10,904, ppm; 165,567 ppm; 333,696 ppm; 390,628 ppm; 426,585 ppm; and 435,746 ppm—or 18, 276, 556, 651, 711 and 726 times the CPSC staff-recommended maximum. *See* Exhibit 3 (laboratory reports and photographs).

36. In sum, 12 of 15 of Defendant's small metal products that were tested contained lead at levels that were significantly higher, and in the case of 9 of those products, extremely higher, than the CPSC staff recommended maximum.

37. There is a substantial likelihood that other products introduced into Vermont's stream of commerce by Defendant—now sitting on store shelves or in consumers' homes—contain substantial amounts of lead.

IV. First Count: Unfair Acts and Practices in Commerce

38. The allegations set forth above are realleged herein.

39. The Vermont Consumer Fraud Act prohibits unfair acts and practices in commerce. 9 V.S.A. § 2453(a).

40. An act or practice in commerce is unfair if it runs counter to articulated public policy, is oppressive or unscrupulous, or causes or poses a significant risk of substantial consumer injury.

41. Defendant's sale of products into Vermont containing high concentrations of lead poses a significant risk of serious injury, particularly to young children; it is also inconsistent with the latest pronouncement from the staff of the CPSC, offends public policy, and is oppressive and unscrupulous.

42. As such, Defendant's sales of these products into Vermont constitute unfair acts and practices in commerce in violation of the Consumer Fraud Act.

V. Second Count: Deceptive Acts and Practices

43. The allegations set forth above are realleged herein.

44. The Vermont Consumer Fraud Act prohibits deceptive acts and practices in commerce. 9 V.S.A. § 2453(a).

45. An act or practice is deceptive if it involves the omission of a material fact relating to a consumer product.

46. The existence of a significant amount of lead in a consumer product like small items of jewelry or ornaments is a material fact.

47. Defendant's failure to disclose high lead content in its products constitutes deceptive acts and practices in commerce in violation of the Consumer Fraud Act.


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

1. A temporary restraining order and preliminary and permanent injunctions (a) requiring Defendant to disclose promptly the names and addresses of all of the retailers in Vermont to which it has sold small metal consumer products; and (b) prohibiting Defendant from selling in or into the State of Vermont any product containing more than 600 ppm of lead.
2. Preliminary and permanent injunctions requiring Defendant to take effective measures to remedy the distribution of lead-containing products, including prominent notices to retailers and the public, offers of refund to retailers and consumers, and adequate testing of products for lead in the future.
3. Civil penalties of up to \$10,000.00 for each violation of the Consumer Fraud 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: 12/4/07

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 
Elliot Burg
Assistant Attorney General
Vermont Attorney General's Office
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Montpelier, VT 05609
Tel. (802) 828-2153

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GENERAL
9 State Street
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LABORATORY ANALYSIS REPORT

Lead Analysis by EPA 7420 Method

ACCOUNT #: 3590-07-4
CLIENT: State of Vermont Off of Attorney General
ADDRESS: 109 State Street
Montpelier, VT 05609

DATE COLLECTED:
DATE RECEIVED: 7/5/2007
DATE ANALYZED: 7/10/2007
DATE REPORTED: 7/10/2007

PROJECT NAME: Lead
JOB LOCATION: Vermont
PROJECT NO.: CP07-10001
PO NO.: Elliot Burg-2

Sample Type: BULK

SLI Sample No.	Client Sample No.	Sample Description	Sample Wt (mg)	Total Lead (µg)*	Lead Conc (% by wt)	Lead Conc PPM
29383743	1	Metal Charm	1,465	80,833.3	5.518	55,176

Analysis Run ID: 40103

Analyst: M. TODD GIBSON

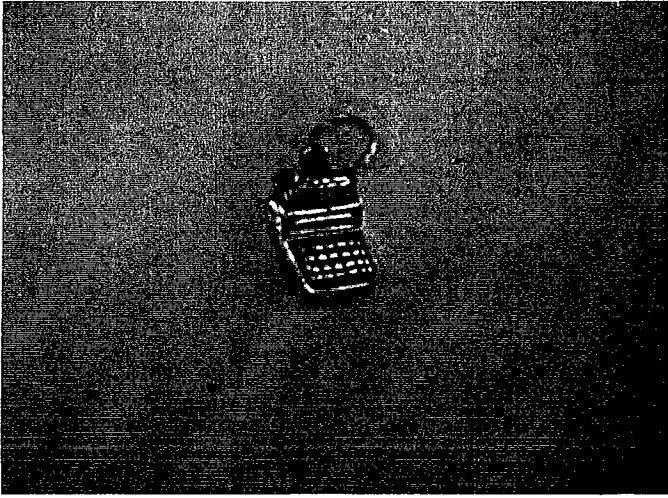
Total Number of Pages in Report: 1

Results relate only to samples as received by the laboratory.

Melissa Kanode

Reviewed By Melissa Kanode, Supervisor Data Mgmt
Visit www.slabinc.com for current certifications.

*Minimum Reporting Limit: 20.0 µg. For work involving HUD, child-occupied building and other residential units, the Federal Lead Standard for paint is 0.5% lead by weight [5000 ppm]. *Data precision justifies 2 significant figures. Unusual sample conditions, if any, are described. All testing is performed in strict accordance with Schneider Laboratories, Inc. protocol.*



Metal Charm

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LABORATORY ANALYSIS REPORT

Lead Analysis by EPA 7420 Method

ACCOUNT #: 3590-07-5
CLIENT: State of Vermont Off of Attorney General
ADDRESS: 109 State Street
 Montpelier, VT 05609

DATE COLLECTED:
DATE RECEIVED: 7/20/2007
DATE ANALYZED: 7/25/2007
DATE REPORTED: 7/26/2007

PROJECT NAME: Lead
JOB LOCATION: Vermont
PROJECT NO.: CP07-10001
PO NO.: Elliot Burg-3

Sample Type: BULK

SLI Sample No.	Client Sample No.	Sample Description	Sample Wt (mg)	Total Lead (µg)*	Lead Conc (% by wt)	Lead Conc PPM
29400168	1	Color Art Sun Catcher	1,008	143,491.7	14.235	142,353
29400169	1	Charm "Sassy"	716	5,970.4	0.834	8,339
29400170	1	Charm "W"	803	41.0	0.005	51
29400171	1	Charm Red Slacks	741	82,371.3	11.116	111,162
29400172	1	Charm "Go Team Go"	762	136,408.1	17.901	179,013
29400173	1	Charm Blank Oval	374	4,295.7	1.149	11,486
29400174	1	Charm "#1 Student"	787	48.1	0.006	61

Analysis Run ID: 41078

Analyst: HANY IBRAHIM**Total Number of Pages in Report:** 1

Results relate only to samples as received by the laboratory.

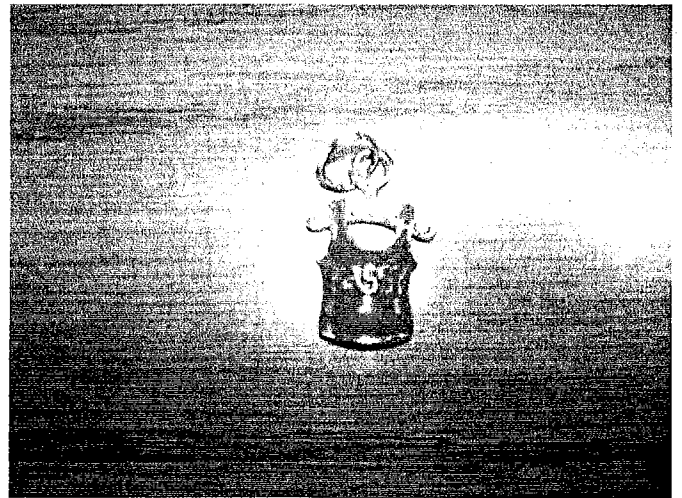
Melissa Kanode

Reviewed By **Melissa Kanode, Supervisor Data Mgmt**
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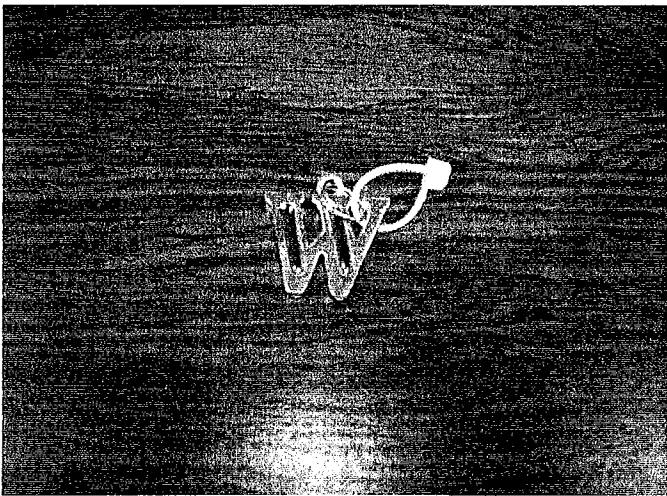
*Minimum Reporting Limit: 20.0 µg. For work involving HUD, child-occupied building and other residential units, the Federal Lead Standard for paint is 0.5% lead by weight [5000 ppm]. *Data precision justifies 2 significant figures. Unusual sample conditions, if any, are described. All testing is performed in strict accordance with Schneider Laboratories, Inc. protocol.*



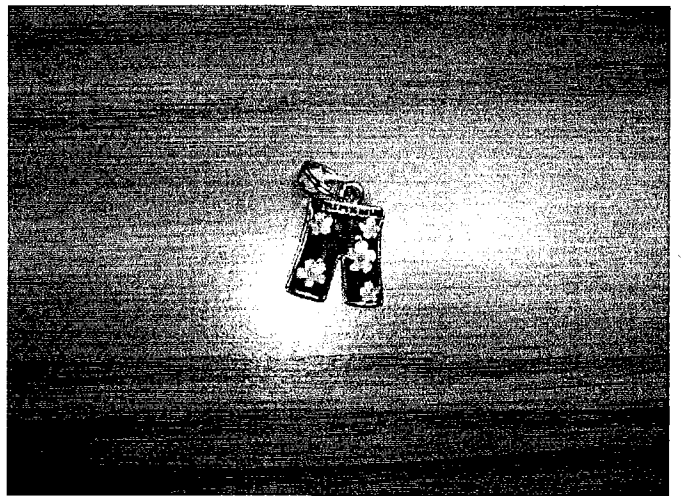
Color Art Sun Catcher



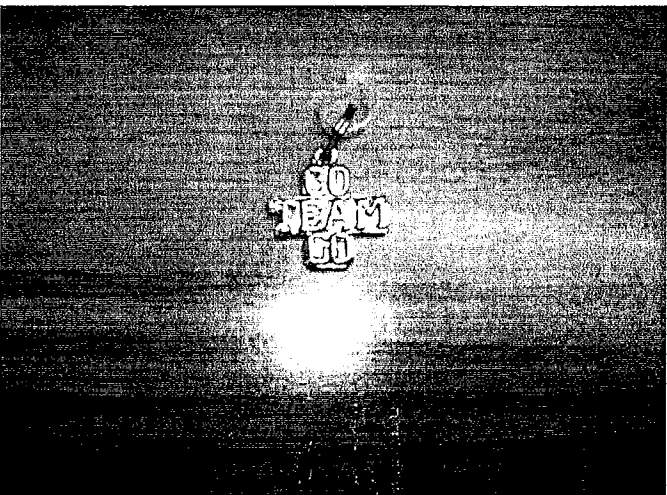
Charm "Sassy"



Charm "W"



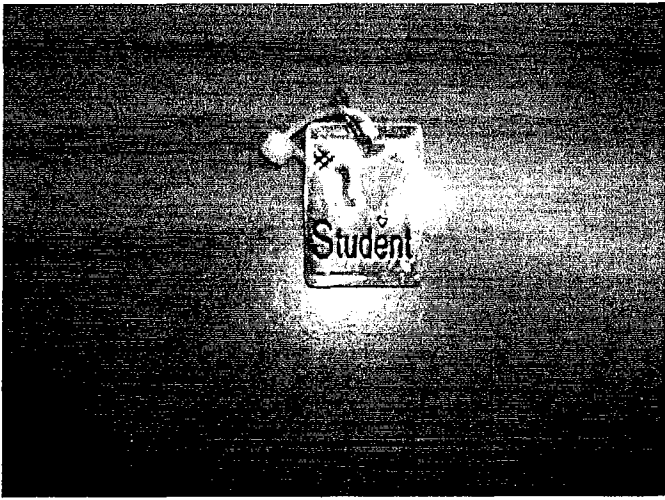
Charm Red Slacks



Charm "Go Team Go"



Charm Blank Oval



Charm "#1 Student"

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LABORATORY ANALYSIS REPORT

Lead Analysis by EPA 7420 Method

ACCOUNT #: 3590-07-8
CLIENT: State of Vermont Off of Attorney General
ADDRESS: 109 State Street
 Montpelier, VT 05609

DATE COLLECTED: 11/21/2007
DATE RECEIVED: 11/23/2007
DATE ANALYZED: 11/27/2007
DATE REPORTED: 11/27/2007

PROJECT NAME: Lead
JOB LOCATION: Vermont
PROJECT NO.: CP07-10001
PO NO.: Elliot-6

Sample Type: BULK

SLI Sample No.	Client Sample No.	Sample Description	Sample Wt (mg)	Total Lead (µg)*	Lead Conc (% by wt)	Lead Conc PPM
29548372	1	Tis The Season	1,405	599,351.7	42.658	426,585
29548373	1	Shimmering Snowflake	1,087	11,852.6	1.090	10,904
29548374	1	Wish Upon A Star	1,281	94.2	0.007	74
29548375	1	Silver Ring	1,203	524,202.1	43.575	435,746
29548376	1	Legend Of The Christmas	1,133	378,077.9	33.370	333,696
29548377	1	Metal Box	1,032	403,127.8	39.063	390,628

Analysis Run ID: 40838

Analyst: MOHAMMED ELTILIB**Total Number of Pages in Report:** 1

Results relate only to samples as received by the laboratory.


 Reviewed By **M. Todd Gibson, Supervisor**

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*Minimum Reporting Limit: 20.0 µg. For work involving HUD, child-occupied building and other residential units, the Federal Lead Standard for paint is 0.5% lead by weight [5000 ppm]. *Data precision justifies 2 significant figures. Unusual sample conditions, if any, are described. All testing is performed in strict accordance with Schneider Laboratories, Inc. protocol.*

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LABORATORY ANALYSIS REPORT

Lead Analysis by EPA 7420 Method

ACCOUNT #: 3590-07-10
CLIENT: State of Vermont Off of Attorney General
ADDRESS: 109 State Street
Montpelier, VT 05609

DATE COLLECTED:
DATE RECEIVED: 11/28/2007
DATE ANALYZED: 11/29/2007
DATE REPORTED: 11/29/2007

PROJECT NAME: Lead
JOB LOCATION: Vermont
PROJECT NO.: CP07-10001
PO NO.: Elliot-7

Sample Type: BULK

SLI Sample No.	Client Sample No.	Sample Description	Sample Wt (mg)	Total Lead (µg)*	Lead Conc (% by wt)	Lead Conc PPM
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29551608	1	Ganz Jean Jewelry	1,012	167,553.4	16.557	165,567
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Analysis Run ID: 40851

Analyst: MOHAMMED ELTILIB

Total Number of Pages in Report: 1

Results relate only to samples as received by the laboratory.

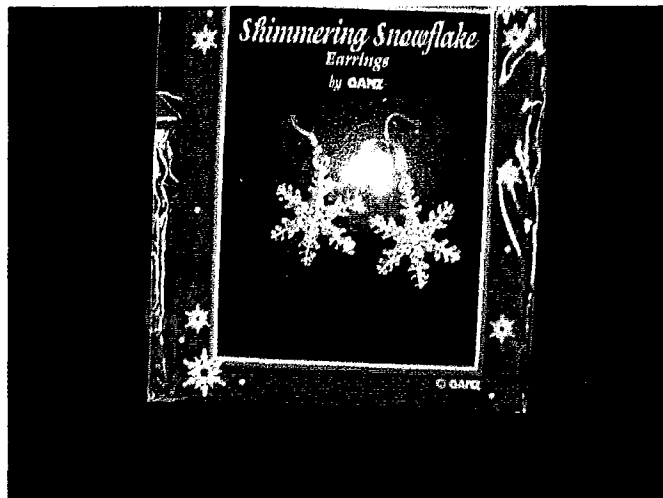

Reviewed By M. Todd Gibson, Supervisor

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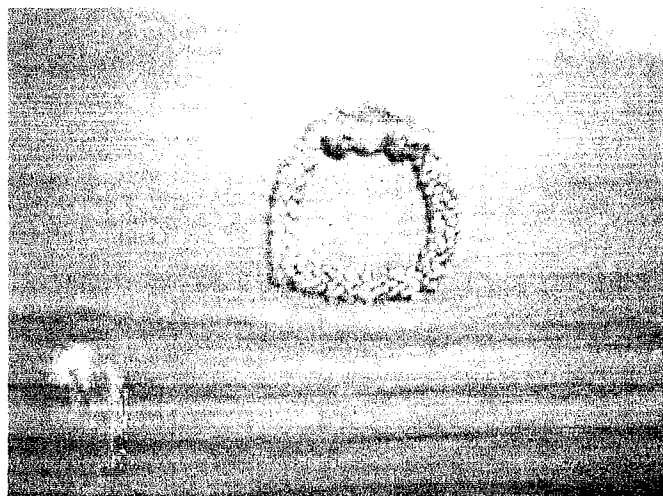
Tis The Season



Shimmering Snowflake



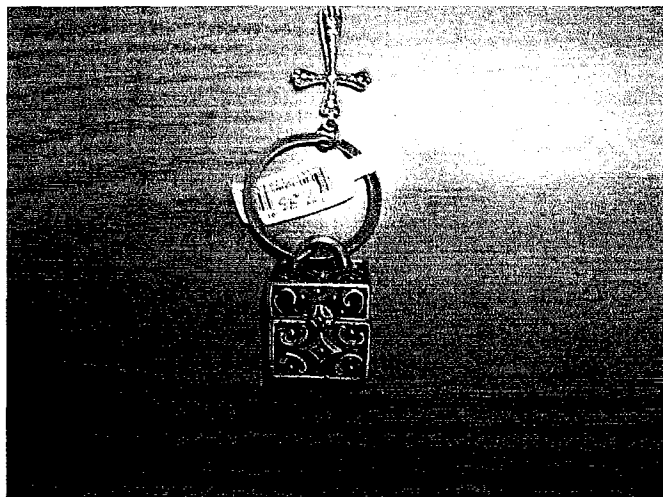
Wish Upon A Star



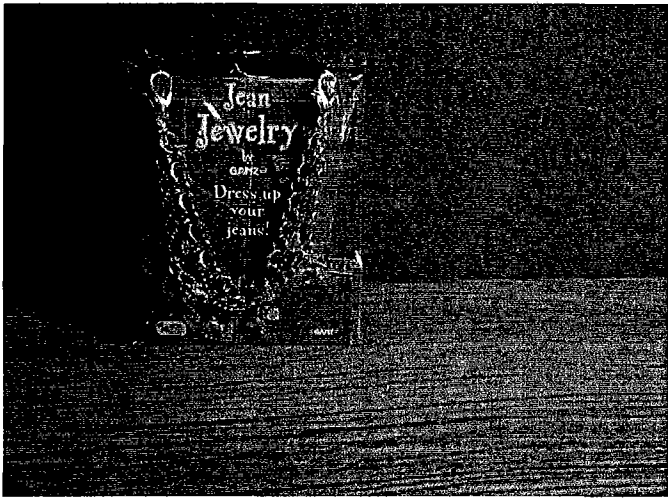
Silver Ring



Legend Of The Christmas



Metal Box



Ganz Jean jewelry