

STATE OF VERMONT *Stipulation*  
WASHINGTON COUNTY, SS. *10/18 P 2-21*

*Order*

*10/18 P 2-21*

STATE OF VERMONT )  
Plaintiff )  
v. )  
GANZ, INC., )  
Defendant )

*[Signature]*  
Washington Superior Court  
Docket No. 791-12-07 Wncv

**STIPULATION OF SETTLEMENT AND CONSENT ORDER**

WHEREAS, as evidenced by their signatures below, Plaintiff State of Vermont, through its Attorney General, and Defendant Ganz U.S.A., LLC (hereinafter "Ganz"), a Delaware limited liability corporation and successor to Defendant Ganz, Inc., a Delaware corporation, have agreed to the entry of this Stipulation of Settlement and Consent Order;

WHEREAS Ganz has waived any need to amend the pleadings in this action to acknowledge its successor status to Ganz, Inc., or to render it subject to the jurisdiction of this Court;

WHEREAS this lawsuit was filed on December 6, 2007, prior to the adoption in 2008 of the Vermont Lead in Consumer Products Law, 9 V.S.A. chapter 63, subchapter 1C, when there was no specific limit on the amount of lead a consumer product sold in or into the State of Vermont could contain;

WHEREAS at all times relevant to this lawsuit, the Vermont Consumer Fraud Act has prohibited unfair and deceptive acts and practices in commerce, including those that present a risk of substantial consumer injury;

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

WHEREAS since the filing of this lawsuit, Ganz has not sold any metal products in or into the State of Vermont in violation of the quantitative limits set out in this Stipulation of Settlement and Consent Order;

WHEREAS the parties have waived any requirement that the Court make findings of fact or conclusions of law;

WHEREAS this Stipulation of Settlement and Consent Order appears to be just as to all parties; and

WHEREAS the Court approves the terms of the parties' agreement and adopts them as its own determination of the parties' respective rights and obligations;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. For the purpose of this Stipulation of Settlement and Consent Order, the following terms are defined:

- a. "Contain(s)" or "containing" lead means containing, or having a surface coating containing, the stated amount by weight of lead or lead compound in any component part of a product.
- b. "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 set out in this Stipulation of Settlement and Consent Order.

- 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, whether at wholesale or retail; directly or through an agent; and through any medium, including, but not limited to, through normal distribution channels, by mail, or over the internet.
- d. "Small metal product" means a consumer product, whether intended for children or for adults, that is made up in whole or in part of any metal, and that is considered a "small part" by the Consumer Product Safety Commission, *see* 16 C.F.R. Part 1501 (currently equal to or less than one and one-quarter inch in all dimensions).

2. In the course of doing business in or into the State of Vermont, Ganz 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 permitted in children's and other consumer products.

3. In keeping with the preceding paragraph, Ganz shall comply with 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 or Vermont law are more stringent than the following requirements (in which case Ganz shall comply with such more stringent federal or Vermont requirements), Ganz shall not sell in or into the State of Vermont:

- a. Effective upon Ganz's signing this Stipulation of Settlement and Consent Order, any small metal product that contains more than 0.02 (two one-hundredths) percent of lead, equivalent to 200 (two hundred) (ppm);

- b. Effective upon Ganz's signing this Stipulation of Settlement and Consent Order, any metal product larger than a small metal product that contains more than 0.06 (six one-hundredths) percent of lead, equivalent to 600 (six hundred) ppm;
- c. Effective August 14, 2009, any metal product that contains more than 0.02 (two one-hundredths) percent of lead, equivalent to 200 (two hundred) ppm;
- d. Effective August 14, 2009, any product intended for children 12 (twelve) years of age or younger, with paint or other surface coating containing more than 0.009 (nine one-thousandths) percent of lead, equivalent to 90 (ninety) ppm.
- e. Effective August 14, 2010, any product, whether intended for children or adults, with paint or other surface coating containing more than 0.009 (nine one-thousandths) percent of lead, equivalent to 90 (ninety) ppm.

5. In the event that, prior to signing this Stipulation of Settlement and Consent Order, Ganz sold any metal product containing lead in excess of the limits set out in paragraph 4(a) or 4(b), above, which product is still available for purchase from a retailer in the State of Vermont, Ganz 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. This requirement shall be in addition to any other remedy available to the State of Vermont.

6. For three years from the date this Stipulation of Settlement and Consent Order is approved by the Court, Ganz shall undertake the following product testing, reporting and related obligations:

- a. Ganz shall ensure that a representative sample of the products that it sells in or into the State of Vermont is tested by a laboratory that is duly certified under federal law, so as to guarantee compliance with paragraphs 3 and 4, above;
- b. No later than October 1, January 1, April 1 and July 1 of each year beginning October 1, 2008, and concluding on July 1, 2011, Ganz shall provide to the Vermont Attorney General's Office a report that identifies each product described in paragraph 4, above, that has, in the previous calendar quarter, been tested and found to contain lead in excess of the limits set out in (and for the products described in) paragraph 3 or 4 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 Ganz in response to the test result;
- c. Ganz shall provide to the Vermont Attorney General's Office periodic reports on the company's developing Regulatory Compliance Program, setting forth its approach to establishing a process for identifying and rewarding suppliers who consistently produce goods in compliance with the lead standards set out in paragraphs 3 and 4 above, and terminating those suppliers who produce more than a *de minimis* quantity of goods that do not comply with said lead standards. Ganz shall design its Regulatory Compliance Program so as to ensure compliance with paragraphs 3 and 4, above. Said reports shall be provided to the Attorney General's Office no later than the following dates:

October 1, 2008; January 1, 2009; July 1, 2009; January 1, 2010; July 1, 2010; and July 1, 2011.

7. Ganz shall take all reasonable steps to permit any consumer who has purchased from a Vermont retailer a small metal product that was distributed by Ganz in the State of Vermont prior to the date of this Stipulation of Settlement and Consent Order, to return said product to the retailer for a full refund, which refund shall be paid promptly. Within 30 days of the date this Stipulation of Settlement and Consent Order is approved by the Court, Ganz shall describe the steps taken to comply with this paragraph. In addition, Ganz shall provide to the Vermont Attorney General's Office periodic reports summarizing the number and dollar value of such refunds paid out during the previous three-month period, no later than the following dates: October 1, 2008; January 1, 2009; July 1, 2009; January 1, 2010; July 1, 2010; and July 1, 2011.

8. Within ten (10) days of the date this Stipulation of Settlement and Consent Order is approved by the Court, Ganz shall pay to the State of Vermont, in care of the Vermont Attorney General's Office, the sum of \$85,000.00 (eighty-five thousand dollars) as *cy pres* relief, to be used as follows:

- a. \$75,000.00 (seventy-five thousand dollars) to purchase "wipe test" kits for use by residential property owners and tenants in the State of Vermont to determine the presence of lead-based paint in the properties; and
- b. \$10,000.00 (ten thousand dollars) toward the purchase of any consumer products sold in or into the State of Vermont to determine if they contain more than the legally-permitted concentration of lead or other substances, or contain some defect, hazardous to human health or safety.

9. In addition to the foregoing, Ganz shall pay to the State of Vermont, in care of the Vermont Attorney General's Office, the sum of \$130,000.00 (one hundred thirty thousand dollars) as civil penalties and costs in this action.

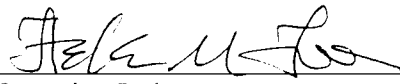
10. The State of Vermont, through the Vermont Attorney General's Office, shall treat with the same level of confidentiality from public disclosure as required by 9 V.S.A. § 2460(a) all information relating to Ganz that was produced in response to a civil investigative subpoena issued under that statutory section, and all "trade secret" information as that term is defined in the Vermont Access to Public Records Act, 1 V.S.A. § 317(c)(9), that was produced by Ganz in discovery in this litigation. The Vermont Attorney General's Office will notify Ganz of any request for information it obtained through this litigation and related civil investigative subpoenas, other than a request from a law enforcement agency, in order to allow Ganz to participate in enforcement of this provision. Notice to Ganz shall be sent to the attention of the undersigned representative.

11. This Stipulation of Settlement and Consent Order shall be binding on Ganz, its owners, officers and directors, and its successors and assigns.

12. This Stipulation of Settlement and Consent Order resolves the issues raised in the State of Vermont's Consumer Fraud Complaint in this matter.

13. This Court shall retain jurisdiction solely for the purpose of enforcing this Stipulation of Settlement and Consent Order, including ordering any post-settlement relief that may be appropriate.

Dated this 18<sup>th</sup> day of December, 2008.

  
\_\_\_\_\_  
Superior Judge

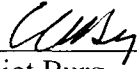
STIPULATION OF SETTLEMENT

The undersigned parties hereby stipulate and agree to the foregoing Consent Order.

Dated 12/1/08

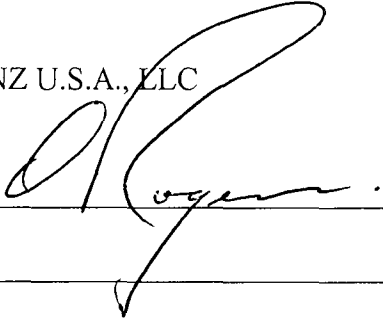
STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

by:   
Elliot Burg  
Assistant Attorney General

Dated 12/11/08

GANZ U.S.A., LLC

by: 

Owen Rogers  
Vice-President and Authorized Agent of  
Ganz U.S.A., LLC

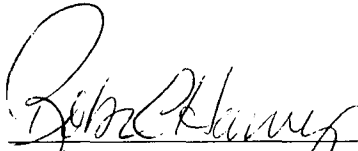
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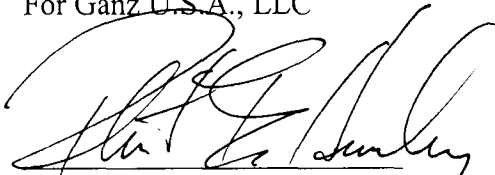
APPROVED AS TO FORM:



\_\_\_\_\_  
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Assistant Attorney General  
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For the State of Vermont



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For Ganz U.S.A., LLC



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