

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONSUMER ELECTRONICS ASSOCIATION,
INFORMATION TECHNOLOGY INDUSTRY
COUNCIL, and ITAC SYSTEMS, INC. ,

Plaintiffs,

09 Civ. 6583 (WHP)

v.

CITY OF NEW YORK, MICHAEL R. BLOOMBERG,
in his official capacity as Mayor of the City of New
York, NEW YORK CITY DEPARTMENT OF
SANITATION, JOHN J. DOHERTY, in his official
capacity as the Commissioner of the Department of
Sanitation, and ROBERT LANGE, in his official
capacity as Director of Waste Prevention, Reuse and
Recycling of the Department of Sanitation,

**DECLARATION OF
CHRISTOPHER A. MCLEAN
OF CONSUMER
ELECTRONICS RETAILERS
ASSOCIATION IN SUPPORT
OF PLAINTIFFS' MOTION
FOR A PRELIMINARY
INJUNCTION**

Defendants.

**DECLARATION OF CHRISTOPHER A. MCLEAN OF
CONSUMER ELECTRONICS RETAILERS ASSOCIATION**

1. The following facts are true and correct to the best of my own personal present knowledge and if called as a witness I could so testify.
2. I am the Executive Director of the Consumer Electronics Retailer Coalition ("CERC"). I have served in that capacity at CERC for more than one year.
3. CERC (<http://www.ceretailers.org>) is a non-profit association of electronic, specialty, and general retailers and retail associations. CERC originated in 1991 as an informal coalition of companies, and formally incorporated in 2003. CERC's retail store members include major consumer electronics retailers such as Amazon.com, Best Buy, K-Mart, RadioShack, Sears, Target, and Wal-Mart. CERC's member companies operate more than ten thousand distinct stores in the United States. CERC members operate more than 50 retail

establishments within the five boroughs of New York City, and many more within a short radius within the tri-state area. Many CERC members also sell consumer electronics products to consumers in New York City via online retail. Our members have invested countless millions of dollars in their facilities in New York, and employ many hundreds of New Yorkers in their stores and other related facilities.

4. CERC's primary goal is to bring its expertise concerning consumer electronics retailing to policymakers addressing issues facing the consumer electronic retail industry and its customers. CERC seeks to educate decision makers with respect to its members' concerns on important public policy issues discussed and debated at all levels of government. CERC has participated in legislative and regulatory debates, and been an active partner with federal and state governments on issues such as ensuring the smooth consumer transition from analog to digital television, promoting Enhanced 911 services, and the efficient recycling and safe disposal of consumer electronics products at the end of their useful life. CERC strives to instill continued consumer and market confidence through our interactions with federal, state, and local government agencies, the U.S. Congress, the Administration and state legislatures.

5. How to best design at the front end – and properly dispose at the back end – consumer electronics are issues in which CERC is intimately involved. We have been actively promoting a national approach to the handling of electronics at their end-of-life, focusing on a shared responsibility approach to “Product Stewardship.” CERC has developed a set of Electronic Scrap Management Principles as part of a legislative advocacy platform. *See* http://www.ceretailers.org/pdf/CERC_Position_on_eWaste.pdf. Thus, CERC supports the development of efficient and sustainable policies throughout the United States and globally for the management, recycling, and reuse of discarded electronics (“E-waste”).

6. Our individual members encourage responsible recycling and the environmentally safe disposal of consumer electronics waste. Many of our members have adopted recycling programs and policies and participated in countless community recycling events across the country, including in New York.

7. Many CERC members have expressed concern over the City of New York's "Electronic Equipment Collection, Recycling and Reuse" Law ("E-waste Law") and the regulations ("E-waste Rules") issued recently by the New York City Department of Sanitation ("DSNY") to implement the law.

8. CERC submitted comments on the E-waste Rules when they were first issued by DSNY. Our comments expressed deep concern at the breadth and scope of the burdens that the rules would place on consumer electronics manufacturers, and the adverse filter-down effects on retailers and consumers. CERC's comments are attached as an exhibit to this declaration. Unfortunately, CERC's concerns have not been addressed by the City or the DSNY in the rules as currently promulgated.

9. A number of CERC members sell consumer electronics products under their own brand name. It is CERC's understanding that these retailers would be considered "manufacturers" under the E-waste Rules, and thus would become subject to many of the Rules' most onerous provisions.

10. The fees, fines, penalties, and unprecedented mandates (including "direct collection" of used electronics in excess of 15 pounds in weight from residences' homes) imposed by the E-waste Program will harm electronics manufacturers, particularly during the current economic climate. This adverse impact could force on electronics retailers job losses, product price increases, and productivity declines, all of which individually and collectively will

undermine the goal of improved electronics recycling and reuse. Because the E-waste Law prohibits manufacturers from charging any fees to provide the services mandated by the program, small manufacturers could be driven out of business or would stop selling products into the United States, thereby reducing product choice to consumers. Further, manufacturer and retailer costs associated with recycling mandates eventually will be reflected in the price that New Yorkers pay for consumer electronics equipment. This contradicts the E-waste Law's stated goal of "minimiz[ing] costs to consumers."

11. The E-waste Law and Rules will have direct and negative impacts in our members' stores in New York City. As noted above, retailers that sell products under their own brands would become responsible for compliance with the E-waste Rules, potentially including the burden and expense of collecting other manufacturers' equipment from consumer homes. Moreover, manufacturers of electronics covered under the Rules must include information for consumers at point of purchase explaining how they can contact manufacturers for the collection services mandated under the law. Retailers will have to train all their floor and phone sales employees in the detailed and complicated requirements of the E-waste Law and Rules – including all changes to these requirements occurring over the next few years -- in order to answer purchaser questions.

12. The program's "direct collection" mandate will compel retailers to create an entirely new infrastructure to collect and manage used electronics. In addition, manufacturers likely will pressure retailers to provide the "drop-off" locations for discarded electronics mandated for certain parts of the Program. Retail space in New York City is some of the most expensive in the world. Any space that has to be converted from inventory and sales of new products to sorting and storing returned electronics will foist a huge unreimbursed cost upon

retailers. Further, retailers will have to dedicate substantial employee time and effort to the inventory, management, and disposition of these returned products.

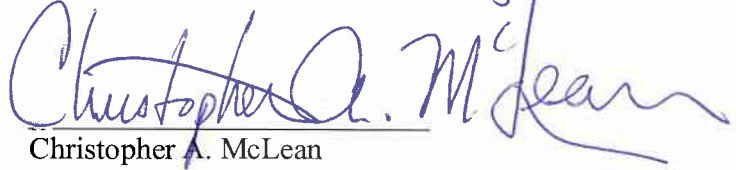
13. These mandates will leave manufacturers and retailers with difficult choices. The consumer electronics business historically has been characterized by deep price competition (which benefits consumers) but low profit margins. Several major consumer electronics retailers, including former CERC members, recently have been forced into bankruptcy during the current recession by the combination of lower consumer sales, low profit margins, higher costs, and tightened credit markets. As noted above, the requirements of the E-waste Laws would force retailers to incur unreimbursed costs for real estate, employee, and transportation, and all related overhead and energy costs. In these recessionary times, retailers can ill afford to take on additional costs without any return on their investment; and if compelled to shoulder these costs, would have to consider cutting other employees, expenses, or consumer programs. The prohibitive costs of the E-waste Rules could lead some manufacturers and major retailers to consider closing some New York City stores or leaving the New York City market entirely. The resulting loss of consumer choice, competition, and jobs will have severe economic impacts on New York City's large and small consumer electronic retailers alike as well as New York City consumers.

14. Beyond these costs to retailers and manufacturers, hundreds of new trucks will be required to implement the direct collection requirements of the new program. DSNY has failed to consider the impact of increased traffic, congestion, parking problems from hundreds of trucks tasked with door to door pick up of disposed items, and increased air pollution and greenhouse gas emissions. In any product stewardship program, CERC believes the ultimate goal is to

reduce the total impact on the environment. In CERC's view, DSNY's regulations fail to properly balance these impacts on New Yorkers' quality of life and the environment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of August 2009 at 317 Massachusetts Ave, Washington, DC.


Christopher A. McLean