

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

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,

Defendants.

09 Civ. 6583 (WHP)

**DECLARATION OF FRANCIS
MARELLA OF SHARP IN SUPPORT
OF PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

DECLARATION OF FRANCIS MARELLA OF SHARP

1. The following facts are true to my own personal knowledge and if called as a witness I could so testify.

2. I am the Senior Manager of Corporate Environmental Affairs at Sharp Electronics Corporation ("Sharp"). I have also been involved in managing Sharp's compliance activities including those related to electronic recycling ("E-waste") programs.

3. I submit this declaration to state my company's substantial concerns with respect to the City of New York's "Electronic Equipment Collection, Recycling and Reuse" Law ("E-waste Law") as well as the rules that the City's Department of Sanitation has issued to

implement the program (“E-waste Rules”), the unreasonable and excessive burdens, deadlines, fees, costs, and exposure to penalties that the City’s E-waste program imposes on manufacturers like Sharp, and the difficulties Sharp faces in meeting the requirements for E-waste plans. I understand that my declaration will be used in support of the plaintiffs’ motion for a preliminary injunction to, among other things, delay implementation of the E-waste Rules.

4. Sharp Electronics Corporation, a New York Corporation, headquartered in Mahwah, New Jersey, is the United States subsidiary of Sharp Corporation, a global manufacturer of consumer electronics such as LCD televisions, office equipment such as printers and copiers, appliances such as room air conditioners, and solar panels. The company has manufacturing sites in North America, including Memphis, Tennessee and Rosarito Beach, Baja California (Mexico), along with major sales and service facilities in California, Illinois, Texas, and Florida. Sharp also has a global research and development facility in Camas, Washington and has additional sales offices and warehousing facilities in a number of states. It has no offices or facilities located within the boundaries of New York City. Sharp does not have personnel or infrastructure in place in New York City to implement the requirements of the New York City E-waste program, particularly the requirement that manufacturers retrieve covered products weighing greater than 15 pounds directly from residents’ homes.

5. Sharp is at the forefront of electronics recycling efforts in the United States. Sharp owns a 25% share of the Electronic Manufacturers Recycling Management Co. (“MRM”), a company that provides electronic product recycling services to Sharp and other electronic product manufacturers to meet compliance requirements in jurisdictions with product take-back laws. MRM operates the largest program in Oregon under that state’s electronics recycling law and the largest manufacturer-operated program in Minnesota. MRM also operates a national

collection infrastructure of more than 310 sites which allows interested manufacturers to offer reasonable and accessible recycling opportunities to their customers in every state. MRM expects to have 400 collection sites across the United States by the end of 2009 and 800 sites by 2011, exclusive of those mandated under state recycling laws. However, MRM is not designed to undertake a direct collection program and does not have the resources or capability for such as task.

6. MRM operates one site within five miles of New York City and a second site less than 25 miles from New York City. Through the first quarter of 2009, the MRM voluntary collection network processed over one million pounds of end-of-life consumer electronics for the three manufacturers utilizing the voluntary network. The MRM network utilizes all types of collection opportunities from partnerships with small retailers and charitable groups to contracting with local collection networks and holding collection events. MRM does not engage in direct collection, as mandated by the New York City E-waste program, but organizes and relies on recycling events and established drop-off locations where discarded electronic devices are returned, and other small scale events where end of life electronics are aggregated, including retail store returns.

7. Through the MRM network, Sharp and other manufacturers can ensure that cost effective, efficient recycling programs can provide convenient service for an average cost of less than \$0.30 per pound. This allows participating electronics companies to provide accessible recycling services (such as convenient collection events and established drop-off locations across the nation) at a reasonable cost, thereby minimizing impacts on new product prices.

8. New York City's direct collection requirement, however, significantly drives up the costs of managing and recycling used electronics products. For a typical Cathode Ray Tube

television weighing 50 pounds, a weight representative of the overwhelming majority of televisions in the waste stream, the cost to manage and recycle in the MRM program outside of New York City is approximately \$15. Under the demands placed upon manufacturers by New York City – where retrieval directly from residents’ homes is required – estimates received from a number of potential service providers place the cost of managing and recycling that same television at no lower than \$100 per unit. Thus, for covered electronics products such as televisions, New York City’s direct collection mandate causes its program to be more than six times the cost of processing the same product in any other jurisdiction.

9. Sharp’s experience in the State of Oregon further illustrates how burdensome and costly the New York City program is. The Oregon program is regulated by the State’s Department of Environmental Quality (“DEQ”). Using the target utilized by the Oregon DEQ to calculate a manufacturer’s obligation of 3.3 pounds, Sharp’s annual cost to operate the entire Oregon program is \$90,165. To recycle the same amount of products in New York City, based on the one estimate received by MRM would cost Sharp \$ 298,235 annually, or more than 3.3 times the cost, for the same amount of waste. Preliminary verbal estimates received by MRM from other recyclers who refused to quote the home collection service in writing priced this service in the range of \$100 per unit, putting Sharp’s total cost for the New York City nearly \$1.7 million annually. These excessive costs will have to be borne by Sharp itself, possibly in the form of job cuts, and/or passed along through increased prices on new products purchased by customers across the country.

10. New York City’s E-waste program inexplicably targets certain products and imposes unprecedented burdens and costs on that sector of industry. In contrast, Sharp room air conditioners, which are also sold in New York City and are classified under the Resource

Conservation and Recovery Act (“RCRA”) as the same type of hazardous waste as televisions, are collected and recycled by the City at no cost to the consumer or to Sharp. For these products, the City uses its extensive existing infrastructure and personnel at the Department of Sanitation to manage such waste. Under the City’s E-waste Law, however, all of the costs of recycling E-waste are borne by manufacturers, because the law prohibits manufacturers from charging any fees for the mandated services, including the “direct collection” service. Sharp must create and operate this infrastructure and provide all of the upfront and operational costs. However, excessive costs like these inevitably will have to be passed along to consumers nationwide in the form of higher product sales prices.

11. While Sharp has a well developed sales, marketing and distribution program in place for the various markets it sells into, it can neither control nor predict the domicile of end users, nor can it predict where those end users may transport their product after purchase. Therefore, its ability to incorporate the cost of collection and recycling into the sales price of its products sold within the City is limited at best. Sharp’s only real option would be to eventually spread this cost and those incurred through other such laws, to all citizens within the U.S. market. This means that citizens of California, where televisions are already assessed a recycling fee of up to \$25 to cover the cost of that state’s recycling program, are also forced to pay the cost of recycling televisions in New York City as part of their product price. Thus, the excessive costs of the City’s E-waste program ultimately will be borne by consumers everywhere, not just in New York City. Though a decision by Sharp to stop marketing its products in New York City could reduce its financial obligations under the law, such a move would result in a lack of competition and product, causing harm to Sharp, its retailers, consumers and other third parties. Such a consequence cannot be the intended effect of this law.

12. To reiterate, Sharp is a strong supporter of recycling. Prior to its participation in the MRM national network, Sharp was already providing consumers thousands of free recycling opportunities since 2001. Sharp has been recognized for these efforts every year by the U.S. Environmental Protection Agency as part of its “Plug into E-Cycling” program since its initiation as well as by the state of Pennsylvania and others. Sharp will continue to work through MRM to expand its voluntary network.

13. While Sharp can provide recycling opportunities for consumers through various methods, we cannot force the consumers to utilize them. Therefore, laws such as New York City’s E-waste Law, place an unusually severe strain on our resources by assessing stiff penalties if we fail to meet the mandated performance standards by retrieving sufficient numbers of end-of-life products owned by consumers and others. The burdens of the City’s law are exacerbated by the fact that it forces Sharp, which is not in the waste transportation or management business, to take title to waste and expose the company to potential liability under federal laws such as RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) while imposing no obligations on others in the distribution chain who also, for a time, had ownership of the product and also presumably profited from its sale. Our concerns are further exacerbated by the fact that the law requires Sharp to take responsibility for used products, referred to as “orphan waste,” it did not manufacture and never owned. Sharp should not be forced to take on liabilities for products with which it never had any association.

14. Sharp is also very concerned about the challenges it will face in meeting the requirements for submission of an E-waste plan, which now would be due within thirty days of any decision by the Court to deny a preliminary injunction. Manufacturers are required by the E-waste Rules to provide detailed information on how they will comply with every aspect of the

program. This includes details regarding contracts with third party service providers that will retrieve, manage, and recycle the used products for Sharp, with contract start and end dates. Forcing companies to find responsible service providers, enter into these types of commitments, and set forth details regarding those commitments within such a short time frame would, at best, be a monumental undertaking. Further, the requirements of the City law are such that Sharp would have to create, at our own cost, the equivalent infrastructure already in existence through the Department of Sanitation in order to meet the direct collection requirements of the New York City law.

15. On behalf of Sharp, I respectfully ask that the Court grant plaintiffs' application for a preliminary injunction.

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

Executed this 4 day of August 2009 at MAHWAN, New Jersey


Francis Marella