

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 MARK SMALL
OF SONY ELECTRONICS IN
SUPPORT OF PLAINTIFFS'
MOTION FOR A PRELIMINARY
INJUNCTION**

DECLARATION OF MARK SMALL OF SONY ELECTRONICS, INC.

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

2. I am currently employed by Sony Electronics Inc. ("Sony") serving as Vice President for Corporate Environment Safety and Health. I am a graduate of City College of New York and have a Ph.D. in atmospheric chemistry from the University of Maryland. I have been an employee with Sony for eighteen years and have been involved with recycling of electronic products since 1991, including managing Sony's implementation of the first national consumer electronics collection and recycling program in the United States ("U.S.").

3. New York City's "Electronic Equipment Collection, Recycling and Reuse Law" ("E-waste Law"), and implementing rules adopted by the City's Department of Sanitation ("E-waste Rules," collectively with the E-waste Law, the "E-waste Program"), impose enormous and unsustainable burdens on electronics manufacturers like Sony. The program requires Sony to compile massive amounts of data and information, to make impossible long-term forecasts regarding electronic wastes, and to enter long-term contracts now with third-party service providers for a vast E-waste collection, management, and recycling obligation.

4. The E-waste Program will also create tremendous confusion among electronics' consumers, resulting in significant harm to Sony's brand name and reputation and undermining Sony's current recycling and environmental initiatives.

Background

5. Since the early 1960s, Sony has been involved in the manufacturing, marketing, or sale in the United States of professional and consumer electronics and information technology products. Sony has approximately 4,500 employees in the U.S.

6. Sony sells or has sold the following Sony-branded products that qualify as "covered electronic equipment" ("CEE") under the City's E-waste Program: televisions; personal computers (portable notebooks and desktops); computer keyboards and mice; printers; computer monitors; and battery powered portable digital music players with memory capability. Sony also markets and sells other products (*e.g.*, digital cameras, camcorders, stereo receivers, and digital video discs/Blu-ray players) that are not covered by the E-waste Program.

7. In the U.S., Sony's products are sold directly through its SonyStyle online and retail stores, and through a distribution network of over one thousand independent authorized third party resellers which sell via traditional retail stores, clubs, catalogs, online stores, and similar channels. Sony estimates that approximately 440 authorized resellers may market and sell Sony product to residents of the state of New York, but these resellers determine in their discretion the locations where they sell the products. Also, despite Sony's best efforts to ensure that its products are sold only through authorized vendors, a significant number of unauthorized resellers also sell products in the City. Sony is therefore unable to estimate the number of its products that are sold annually in the City.

8. Sony's primary business operation in the City is a SonyStyle retail store located at 550 Madison Avenue (the "NY SonyStyle Store"). Sony currently employs approximately 51 workers in the City.

9. Sony is a member of Plaintiffs Consumer Electronics Association and the Information Technology Industry Council.

The Submission of a Complete and Acceptable E-waste Plan is Unachievable

10. The E-waste Rules impose staggering requirements for the collection of CEE directly from New York City residences and the provision of similar services to businesses and offices, that Sony – and to the best of my knowledge – no other similarly situated CEE manufacturer has conducted anywhere in the world. It is very difficult to even know how to proceed with the preparation of a plan at this time, since many of the law's requirements could be impacted by the current litigation. As I understand it, plans would be due within 30 days of a decision by the court if the plaintiffs' motion for a

preliminary injunction is denied. This is an extremely short time frame to prepare a plan. The City has supplemented the Rules with lengthy forms, requiring even more specific data on sales, production and distribution. The E-waste plan forms also require Sony to provide detailed information regarding any specific service providers it intends to use and the specific terms of their contracts. Because it has only a very limited physical presence in the City, Sony necessarily will have to rely exclusively on third-party service providers to collect and manage E-waste. Such information cannot be provided until Sony has actually selected service providers and entered into contracts with them.

11. In order to complete E-waste Plan, Sony also must make expensive, long-term decisions regarding product packaging, delivery of packaging to consumers, means of removal of covered products from the residences, delivery of covered products to specific locations for recycling, and the actual recycling of collected products.

12. The effort to assemble the information necessary to complete the E-waste Plan is a daunting task, even under the best of circumstances. For a company the size of Sony, completing all of the mandated components the E-waste Plan, without a single pilot program or real-world market trial, is virtually impossible. Sony could try to seek multiple waivers from these requirements, but in order to do so, Sony would have to demonstrate that it is “unable” to comply -- an excessive and, at best, uncertain standard to meet. The failure to submit a fully compliant plan subjects a manufacturer to \$1000/day penalties.

The “Direct Collection” Requirement and Other Provisions of the E-waste Program Impose Unprecedented and Unsustainable Burdens

13. As a result of the “direct collection” requirement alone, Sony may be forced to incur ten million dollars or more per year in costs to pick up electronic products

directly from residences across the City and provide similar services to businesses, non-profits and government offices. Because the E-waste Law prohibits manufacturers from charging any fees for the vast majority of collection services required under the E-waste Program, these costs must be borne by the manufacturers and ultimately their customers in the form of higher product prices.

14. The cost estimate range is large because Sony cannot predict real-world consumer behavior in a highly congested and densely populated area such as New York City. The anticipated volume of products will, however, require Sony to establish a local dispatch center or other system for receiving calls and dispatching local collection service providers. In addition, Sony currently estimates that it will be required to employ up to five common carriers or package collection companies with a total fleet of 30 trucks to meet the direct collection requirement. With some products such as a large cathode ray tube television weighing as much as 350 pounds, at least two to three employees will be required to man each truck. Sony further estimates that it will require at least four consolidation sites (such as small warehouses) that are readily accessible by the collection trucks and the larger trucks used to transport consolidated CEE out of the City. Sony currently has no such locations at its disposal.

The E-waste Program Will Cause Confusion Among Electronics Consumers, Irreparably Harm Sony's Brand Name and Reputation and Expose Sony to Uncertain and Open-Ended Liabilities.

15. Sony has one of the most well respected brand names in the world. Sony has worked extremely hard to ensure that its name is synonymous with integrity, quality, and ingenuity. Sony's efforts include the development of an existing nationwide electronics "Take Back" program (discussed more below) which provides standardized

recycling services for all Sony-branded products at no cost to the consumer. The City's E-waste Program undermines Sony's recycling efforts.

16. As explained above, many of the products that Sony sells are now covered by the E-waste Program (*e.g.*, televisions and computers), but many others are not (*e.g.*, stereo receivers and DVD players). As a result, different types of Sony products will be subject to inconsistent standards and different recycling programs. A consumer now must first figure out whether the equipment she wants to discard is CEE or not, and then determine which set of take back requirements apply. This will cause consumer confusion, and inevitably lead to dissatisfaction and frustration. This in turn will lead to a loss of consumer goodwill and business reputation, and harm to the Sony brand. The potential damage posed to Sony's brand name as a result of the implementation of the City's E-waste Program, therefore, cannot be quantified.

17. Additional consumer confusion and dissatisfaction will be caused by the E-waste Program's mandate that Sony and other manufacturers collect and manage "orphan waste" (*i.e.*, where the "manufacturer cannot be identified or is no longer in business and for which no successor-in-interest has been identified."). Many different companies have sold CEE over the years. While some of these companies have gone bankrupt or dissolved (potentially a source of "orphan waste"), others have simply been involved in corporate mergers and acquisitions where the original corporate name no longer exists (not "orphan waste"). City residents will not be readily able to make this distinction. Instead, they will conclude that the product is orphan waste and look to high profile companies like Sony to take the waste even though it legally is not required to do so. This creates an untenable position for Sony because it rightfully could decline to

accept this waste, but doing so will adversely impact Sony's strong reputation for consumer satisfaction.

18. The E-waste Program's requirement that manufacturers provide point-of-sale information explaining how consumers can secure collection of discarded items will also lead to a mass of different recycling communications to City residents as each company tries to explain what goods are covered and how its program works. The point-of-sale requirement will also inevitably lead to New-York-City-specific recycling information being disseminated to many consumers residing outside of New York City, who will attempt to use the program. Once this information is disseminated, any effort to limit this expensive program to covered goods and consumers in New York City will injure Sony's brand not only in New York City, but throughout the U.S.

19. The E-waste Law also requires Sony to meet specific performance standards based on actions of consumers that are not in its control. These performance standards require Sony to collect 25% of its annual sales in the City, by weight, by 2012, eventually increasing to 65% by 2018. These standards are unworkable for several reasons.

- First, Sony cannot control whether consumers will participate in the program -- which, after all, requires consumers to set up appointments for collection, meet the carriers, order and use packaging material, and other affirmative steps. For the past year and a half, Sony has held over 100 E-waste collection events nationwide. With each event, however, Sony has had no control over how many people show-up or what they bring. Under E-waste Program where the burdens on consumers are even more confusing and complicated, participation will be even less predictable.
- Second, as noted above, Sony cannot accurately calculate its sales in the City because of how Sony products are sold through third parties and the atomized nature of retail sales of electronics.

- Third, as an established company, Sony will be at a significant disadvantage as new companies enter the market because performance standard thresholds are based on each company's prior three years of sales data in the City. Thus, as a practical matter, new entrants' obligations will be significantly less than those of established companies.

20. Even though it has no means by which to ensure it can meet these performance standards, the E-waste Law subjects a manufacturer to a \$50,000 penalty for each percentage it falls below the performance standards.

The E-waste Rules Undermine Sony's Existing, Successful Environmental Recycling Programs

21. The City apparently has given little to no thought to the direct adverse environmental impacts its E-waste Program will cause or how the program will interfere with existing successful recycling programs.

22. The E-waste Rules' "direct collection" mandate is grossly inefficient and will cause adverse environmental impacts by adding a new fleets of trucks to New York City streets, increasing traffic congestion and air pollution. The City's E-waste Program also forces companies like Sony to add to the waste stream because it requires manufacturers to offer and provide, free of charge, packaging materials for consumers to use to return their used products to the manufacturer. This will add a significant amount of excess waste in packaging, taping, and insulation materials.

23. The implementation of the City's E-waste Program will disrupt Sony's own well-respected environmental recycling programs. Sony has a long and proud history of selling products designed to minimize the impact on the environment. This ranges from providing industry-leading stewardship of our products when they reach "end-of-life" and to improving the environment generally:

- Sony is a leading member of the Electronic Product Environmental Assessment Tool (“EPEAT”) program, an Environmental Protection Agency (“EPA”)-sponsored rating system for information technology products that ranks products on 51 environmental criteria, including electronics recycling.
- Sony is a member of EPA’s SmartWay program, a “branding” program that rewards companies that employ environmentally-sound transportation options.
- Sony Electronics’ corporate parent, Sony Corporation joined the World Wildlife Federation’s (“WWF’s) “Climate Savers” partnership under which it committed to reducing its worldwide greenhouse gas (“GHG”) emissions by seven percent by 2010 as compared to 2000 levels.
- Sony ceased manufacturing any televisions or monitor picture tubes that contain lead in 2006 and started implementation of lead-free soldering in its products in 1999.
- All internal Sony groups and Sony suppliers must comply with Sony’s green partner program. Details about the program are attached as an exhibit to this declaration.
- Sony is in full compliance with 19 different E-waste laws and regulations in 19 other states in the United States, none of which imposes an inefficient “direct collection” mandate.

24. In 2007, Sony created the “Sony Take Back Program,” the first nationwide electronics recycling program in which the manufacturer takes back and recycles – at no charge to the consumer – *any* of its branded products. In addition, Sony will take back products of other manufacturers at a nominal fee to the consumer. This nationwide program provides 275 drop-off locations in 262 cities for recycling, including three locations in the City for certain products. Furthermore, Sony has sponsored over 100 voluntary E-waste recycling events around the country including the City. In addition to these events, Sony often offers consumers an incentive to recycle their old or used products by giving them a coupon for their old or used products to be used toward the

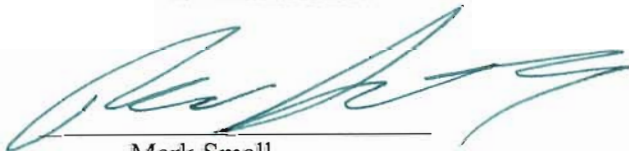
purchase of a new Sony product. Since the inception of the Sony Take Back Program, Sony has collected for responsible recycling over 18 million pounds of E-waste.

25. The implementation of the City's E-waste Program will irreparably harm Sony's efforts to expand and improve its nationwide Take Back Program, and the reputation Sony has earned within the industry and its customer base for being a responsible recycler. Sony has spent millions of dollars and thousands of hours to establish its nationwide recycling program to ensure that it is inclusive of all Sony brands and meets the highest standards of collection and recycling. Sony will lose, at a minimum, a substantial portion of this monetary and time investment in order to reshape its program and divert resources to comply with the City's E-waste Program.

26. Sony's voluntary program currently covers every product it makes and mandates that those products be recycled under industry-leading environmental standards. The annual cost of Sony's compliance with the City's E-waste Program alone could easily exceed the total cost of Sony's successful nationwide recycling program. Indeed, the excessive costs of the City's E-waste Program provides a substantial business disincentive for Sony to continue its voluntary electronics recycling efforts, especially given the confusion that two different programs will foster among consumers. This will have the direct opposite effect of the E-waste Law's goal, resulting in fewer, not more products, being recycled.

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

Executed this 6 day of August 2009 at _____.



Mark Small