

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

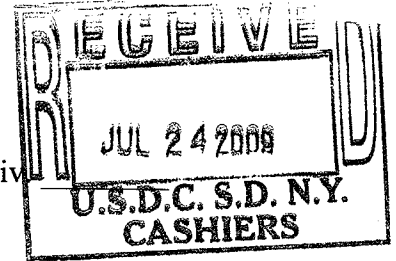
CONSUMER ELECTRONICS ASSOCIATION,
INFORMATION TECHNOLOGY INDUSTRY
COUNCIL, and ITAC SYSTEMS, INC.,

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.



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COMPLAINT

Plaintiffs Consumer Electronics Association, Information Technology Industry Council,
and ITAC Systems, Inc., for their Complaint hereby allege as follows:

INTRODUCTION

1. Plaintiffs are two major trade associations and a company that are damaged by recently enacted City of New York ("City") laws and regulations for managing electronic waste ("E-waste") that are arbitrary, capricious, illegal, and unconstitutional, and impose crushing costs and excessive burdens on Plaintiffs. Plaintiffs agree with Defendant Mayor Bloomberg, who vetoed part of this law, declaring that the law was illegal and unconstitutional (the veto was later overridden). Plaintiffs now seek preliminary and permanent injunctive relief and damages from the illegal E-waste program, which exceeds the authority of the City of New York to regulate interstate commerce. Although the E-waste Program purports to regulate in the City of New York only, the E-waste Program in fact has an extraterritorial reach that controls manufacturers'

conduct beyond the boundaries of City and imposes liability for electronic goods sold long ago by other manufacturers. A preliminary injunction is critical to bar a July 31, 2009 deadline that mandates Plaintiffs' member companies to, among other things, submit plans to directly collect and recycle E-waste from every City resident, at each company's sole cost and expense, regardless of the connection of the company to the old equipment or its current owner. Plaintiffs also ask that the City be ordered to conduct adequate environmental reviews for a program of this scope, as required under state and City laws, which were effectively ignored by the City in its haste to enact a new program for electronic waste.

2. Plaintiffs constitute the consumer electronics industry, which is committed to and has great experience recycling electronic products in jurisdictions world-wide and has worked successfully with many governmental entities to craft sustainable and effective E-waste programs. Many of the industry's leading companies have well-publicized, nationwide "take-back" programs in place whereby members of the public can return used electronics products to manufacturers to ensure proper management, recycling and reuse.

3. Information technology ("IT") and consumer electronics manufacturers also participate in 19 mandatory take-back programs in states throughout the United States. In addition, Plaintiffs are meeting mandatory take-back requirements throughout the European Union and in Japan. Upon information and belief, however, New York City is the first municipality to impose a mandatory E-waste law. While each of the other state programs imposes some burdens on manufacturers, none remotely approaches the draconian level of burdens that New York City's E-waste program imposes on Plaintiffs. Working in some cases directly and in other instances through the trade associations, Plaintiffs attempted over the last

several years to work with the City to develop a reasonable and effective recycling program, but their suggestions were rejected and efforts at dialogue and negotiation rebuffed.

4. The New York City E-waste program (hereinafter, the “E-waste Program”) that is the subject of this lawsuit is comprised of (i) two laws enacted by the City Council in 2008 (Local Laws 13 and 21, collectively the “E-waste Law”); (ii) rules finalized on April 15, 2009, by the Department of Sanitation (“E-waste Rules”) to implement the E-waste Law; and (iii) E-waste plan submission materials issued on or about the same time as the E-waste Rules directing Plaintiffs and hundreds of companies to file by July 31 detailed plans and commitments to implement the E-waste Law and its regulations. The E-waste Program imposes mandates worldwide on any person involved in the manufacture, assembly, branding, licensing, or sale of a vast array of electronic goods sold at any time in the City or sold at other locations and brought into the City by current or past owners, excluding only a modest number of retail outlets. These persons are all labeled “manufacturers” under the E-waste Program.

5. The E-waste Program requires that these manufacturers build an unprecedented waste management infrastructure and deploy personnel and resources to directly collect electronic waste from any resident in the City for free, including directly retrieving from residences old televisions, computers, monitors, printers, and many other electronic devices greater than 15 pounds. For electronic items 15 pounds or less, the manufacturers are individually responsible for establishing drop-off points for the equipment, or establishing a program for the packaging and mail-back of the electronic equipment solely at the manufacturer’s expense. If the manufacturer wants to rely solely on the drop-off option for these “smaller” items, it must provide at least 59 drop-off locations across the City.

6. The E-waste Program imposes joint and several, retroactive liability on the Plaintiffs and hundreds of other businesses around the globe whose electronic equipment ends up in New York City. By July 31, Plaintiffs and other manufacturers must certify which companies are responsible for which brands of electronic goods, an impossible task from a legal, logistical and business perspective, because many companies can be “responsible” for the same covered device given the law’s excessively broad definition of “manufacturer.” In addition, many brands of televisions and other electronic equipment have passed through multiple owners over the last thirty years or more.

7. As the E-waste Program is implemented over the next two years, it will require manufacturers to retrieve the equipment they sold, or, at times, their competitors’ equipment, simply upon a phone call or email request from a City resident. By 2011, Plaintiffs and other manufacturers will be required to retrieve “orphan waste” that is of the “type” the manufacture sells or sold, upon the request of a City resident, regardless of origin and regardless of whether the manufacturer makes a new sale or still manufactures, assembles, licenses, brands or sells that “type” of equipment.

8. The E-waste Program is enforced against manufacturers through an array of fees, fines, penalties, and mandatory performance standards. By 2012, each manufacturer must retrieve a volume of electronic waste in the City equal to 25% of the volume (by weight) it sells in the City. The requirement grows to 65% by 2018, and has no rational relationship to the life span of electronic goods or the impossibility of calculating manufacturer quotas due to the fact that few of the covered manufacturers have the ability to calculate their “sales,” if any, to New York City residents. These targets are completely arbitrary in that they mistakenly assume a manufacturer has the ability and legal authority to require equipment owners to relinquish

ownership of their equipment. Yet, a manufacturer that fails to meet a performance standard will be subject to a \$50,000 penalty for each percentage point that the manufacturer falls below the standard.

9. A manufacturer that fails to retrieve or accept for return a piece of covered electronic equipment is subject to a \$2,000 penalty for each piece of equipment. Thus, a product that a manufacturer sold years ago at some fraction of this amount could result in a \$2,000 penalty being imposed years later. Astonishingly, this penalty even extends to situations where a manufacturer fails to retrieve or accept orphan waste, which it never manufactured, owned, sold, or controlled, let alone profited from by putting it into commerce. A manufacturer that fails to submit a required E-waste plan on July 31 or annual reports thereafter is subject to a penalty of \$1,000/day.

10. The retrieval requirements imposed on Plaintiffs extend beyond City residents and include all City businesses, non-profits, and government agencies. For these office locations, manufacturers must provide services to collect and/or accept electronic waste that “must be at least reasonably accessible.” Manufacturers are barred from charging any fees for this work, with the sole exception of for-profit companies with over fifty employees.

11. The E-waste Program’s burdens are being suffered now by Plaintiffs and will come to a head on July 31, 2009, when Plaintiffs and other manufacturers must submit and certify “E-waste plans” to somehow implement the mandates. Among many other requirements set forth in the City’s forms for the E-waste plans, the manufacturers must identify the specific contractors, personnel, and methods they will use to begin retrieving electronic goods across the City. They must also identify details regarding service provider contracts (including start and

end dates), the fate and destination of the collected goods, and how their recycling will comply with all City, state, and federal laws.

12. The E-waste Program is not environmentally responsible, as the City could have and would have discovered had it complied with New York State and City laws by conducting an appropriate environmental impact review. The Department of Sanitation (“Department”) effectively wrote itself out of the program when it adopted the E-waste Rules, placing all collection, management and recycling/reuse burdens solely on manufacturers. Despite its extensive existing infrastructure and workforce, and its traditional role with respect to the collection of waste in the City, the Department literally has no further obligation to even facilitate the collection of these used products. Instead, retrieving more than 3,000 electronic devices per day will require hundreds of new trucks on City streets, increasing traffic congestion and exacerbating air and noise pollution and releasing additional carbon-dioxide emissions (which is totally at odds the goals of the Mayor’s congestion pricing proposal. *See* http://www.nyc.gov/html/planyc2030/html/plan/transportation_congestion-pricing.shtml (last visited July 23, 2009). In contrast, residents and businesses currently bring electronics to voluntary recycling collection centers, or place them curbside for pick up by Department of Sanitation. This practice is now prohibited under the new program.

13. Plaintiffs and other manufacturers estimate that their damages from the City’s illegal E-waste Program will exceed \$200 million per year. The costs of the direct collection requirement of the City’s E-waste Program are projected to be, on a per pound basis, 10 times more expensive than the total cost of collection and recycling of other e-waste programs in California and Maine. This is because the burden of the E-waste Program rests entirely on the shoulders of manufacturers, and requires them to implement direct collection methods at

residences. The City has enacted an E-waste regulatory scheme that departs dramatically from programs embraced by other state governments by imposing a direct collection obligation on manufacturers. Even in the states where manufacturers are required to take on the primary role in managing E-waste, they are granted sufficient flexibility in how they implement the program, so as to avoid the extraordinarily excessive burdens that the City's E-waste Program imposes on interstate commerce. No other take-back program anywhere in the world has ever mandated the approach currently taken by the City. Indeed, the City itself, with an unparalleled and extensive waste collection infrastructure already in place, stated publicly last year on the Department of Sanitation's website that for the City to operate this type of program would be cost prohibitive: "Due to high labor and transportation costs, it is cost prohibitive to collect [electronic equipment] directly from homes." *See* DSNY Website, <http://home2.nyc.gov/html/nycwasteless/html/recycling/electronicfaq.shtml> (last visited July 17, 2008). (As explained below, by July 28, 2008, this language was removed from the Department's website shortly after a City official was told of its existence.)

14. The E-waste Program discriminates against out-of-state manufacturers that lack facilities in the City to accommodate the collection process. The program is therefore *per se* illegal under the dormant Commerce Clause. The City's E-waste Program also violates the dormant Commerce Clause because the burdens imposed by the program on interstate commerce far outweigh the local benefits to City residents, by, among many others things, mandating that manufacturers collect used electronics directly from residents' homes at a cost to be borne solely by manufacturers and eventually passed along to consumers everywhere in the form of higher product prices. Thus, consumers everywhere will end up subsidizing the unprecedented costs of New York City's program.

15. Similarly, the City's targeted and excessive regulation of only manufacturers of certain electronic equipment while excluding from any regulation manufacturers of other types of electronic equipment and "bulky" wastes (such as appliances) that contain the same materials that the City claims can harm the public health and welfare, violates Plaintiffs' right to equal protection under the Fourteenth Amendment. Defendants' imposition of joint and several and retroactive liability on manufacturers also violates manufacturers' constitutional rights under the Due Process, Takings, and Contracts Clauses of the United States Constitution. Under 42 U.S.C. § 1983, in addition to being entitled to injunctive relief against the City's E-waste Program, Plaintiffs are entitled to damages and an award of attorneys' fees as a result of these constitutional violations.

16. Defendants also violated state law because the E-waste Rules are arbitrary and capricious and were formulated and adopted without any rational basis. Defendants' far reaching regulation of manufacturers' conduct beyond the jurisdictional boundaries of New York City exceeds the City's police power authority. Lastly, Defendants failed to adequately consider and address the potential environmental impacts of the E-waste Program, and specifically the mandates set forth in the E-waste Rules and the E-waste plan forms, in violation of the State Environmental Quality Review Act ("SEQRA") and the City's counterpart environmental review law, the City Environmental Quality Review ("CEQR").

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343 (section 1983 jurisdiction) and 28 U.S.C. § 2201 (declaratory judgment). This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367. Jurisdiction also lies pursuant to 28 U.S.C. § 1332 (diversity jurisdiction) because there is complete diversity between the parties and damages exceed \$75,000.00.

18. For purposes of the declaratory relief sought in this Complaint, an actual case or controversy exists between Plaintiffs and Defendants as a result of New York City's enactment of Local Laws 13 and 21, and the Department of Sanitation's promulgation of rules pursuant thereto, and implementation thereof. Plaintiffs seek a declaratory judgment pursuant to 28 U.S.C. § 2201 and related preliminary and permanent injunctive relief pursuant to Fed. R. Civ. P. 65, including a temporary restraining order.

19. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

PARTIES

20. Plaintiff Consumer Electronics Association ("CEA") is a leading trade association comprised of over 2,200 companies within the United States' consumer technology industry. CEA members lead the consumer electronics industry in the development, manufacturing, and distribution of audio, video, mobile electronics, communications, IT, multimedia, and accessory products, as well as related services that are sold through consumer channels. Members range from multi-national corporations to small, specialty niche companies. CEA is actively involved, on behalf of its members, with electronics equipment take-back programs around the country. CEA is organized under the laws of the Commonwealth of Virginia.

21. Plaintiff Information Technology Industry Council ("ITI") is a 93-year-old trade association comprised of 42 companies. Its members consist of leading manufacturers and suppliers of computers, telecommunications, business equipment, software, and IT services. ITI has established an Environmental Leadership Council which represents almost 70 of the principal manufacturers of IT equipment, wireless, and consumer electronics devices, and other electronics and high-tech equipment. These companies are leaders in innovation and sustainability and are at the forefront of voluntary product stewardship efforts. ITI represents its

