

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  
TIMOTHY MCGRADY OF LG  
ELECTRONICS USA, INC. IN  
SUPPORT OF PLAINTIFFS'  
APPLICATION FOR  
PRELIMINARY INJUNCTION**

**DECLARATION OF TIMOTHY MCGRADY OF LG ELECTRONICS USA, INC.**

I, TIMOTHY MCGRADY, declare as follows:

1. I am currently an Environmental Manager for LG Electronics USA, Inc. ("LGEUS") located at 1000 Sylvan Avenue, Englewood Cliffs, New Jersey 07632. I have been employed by LGEUS since May of 2007. I submit this declaration in support of Plaintiffs' Motion for a Preliminary Injunction. I make this declaration based upon personal knowledge as to the facts stated herein.
2. LGEUS is a sales subsidiary of parent company LG Electronics, Inc. ("LG"), a \$45 billion global technology leader with headquarters in Seoul, South Korea. In the United States, LG employs more than 2,000 people, including a small number of whom live and work in New York. LGEUS does not maintain any retail sales facilities anywhere in the United States, including New York City.

3. LGEUS markets, sells, distributes and services products manufactured by LG, including televisions and computer monitors within the United States. Other than replacement or repair parts, LGEUS makes no direct sales to households in the United States and has no retail or physical sales presence within New York State and New York City.

4. LGEUS is a member of the Consumer Electronics Association (“CEA”) as well as the Information Technology Industry Environmental Leadership Council (“ITI”).

5. As the Environmental Manager for LGEUS, I have had extensive experience in analyzing electronic waste laws and the entities to which they apply. Moreover, I have had considerable experience in developing, implementing and maintaining electronic waste collection and recycling programs for LGEUS. Prior to my employment with LGEUS, I became an expert on the European Union Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment Directive (“RoHS”) and provided consultation to companies on the requirements of the EU RoHS Directive; the EU RoHS Directive is a sister to the EU Waste Electrical and Electronic Equipment Directive (“WEEE”). I regularly participate in industry trade association conferences on the subject of electronic waste collection and recycling.

6. LGEUS has proactively developed several collection and recycling programs within the United States including a free cell phone mail-back system, a national electronic waste program in partnership with Waste Management Recycle America and sponsorship of free collection events around the country. Further information on LGEUS’s extensive electronic waste recycling efforts may be found at the following URLs:

(1) <http://www.lge.com/us/general/publicnotices/lg-electronics-and-waste-management-the-lg-electronics-recycling-program.jsp> (2) [http://www.lge.com/about/sustainability/take-back\\_recycling.jsp](http://www.lge.com/about/sustainability/take-back_recycling.jsp) and (3) <http://www.lge.com/us/mobile-phones/eco-mobilization.jsp>.

7. I have reviewed New York City's electronic waste program ("E-waste Program") comprised of (a) New York City Local Laws 13 and 21 (collectively, "E-waste Law") and (b) the New York City Department of Sanitation ("DSNY") final rules on Electronic Equipment Collection, Recycling and Reuse ("E-waste Rules"). From my review of the E-waste Program, I understand that televisions and monitors marketed, sold, distributed, and serviced by LGEUS in the United States are defined as "covered electronic equipment" ("CEE") under the New York City E-Waste Law and Rules.

8. I understand that the E-waste Laws and Rules will impose numerous requirements on LGEUS, including among others, that it: submit a plan for implementing NYC Local Laws No. 13 and No. 21 for approval to the DSNY; provide for collection of LG brands of televisions and computer monitors from NYC persons free of charge; provide, on a 1 for 1 sales basis and free of charge, collection, handling and recycling or reuse to all persons of NYC who purchase an LG brand of covered electronic equipment (regardless of the brand owned by the purchaser); by 2011, collect on demand orphan waste of any type that is sold by LG; and meet performance standards based on percentages of its sales weight in NYC or pay civil penalties. As described herein, implementing compliance with the E-waste Program presents significant legal, contractual, logistical and financial hurdles for LGEUS.

9. LGEUS has little control over the destination of its consumer products. Upon importation, products are transported to one of three locations: 1) an LGEUS distribution center (located in California, New Jersey, Illinois, Texas, Georgia, Oregon and Florida); 2) a retailer distribution center (located throughout the country); or 3) a distributor distribution center (located throughout the country). Products are delivered to retailer and distributor locations as a condition of a sale, and at that point LGEUS has no further control over the distribution of LG's

products. The only further interaction LGEUS may have with products sold to household consumers via retailers is if there is a return or repair under warranty. Tracking the sale of these products after they have left LGEUS's control will be extremely difficult, if not impossible, and in all events, will impose massive burdens on LGEUS's financial and human resources that would appear to extend in perpetuity.

10. LGEUS is involved in commercial sales to corporations, governments and non-government organizations. The impact of the E-waste Program on commercial sales will be harmful to LGEUS in that it will require arduous labor in reviewing contracts going back many years. It will also require LGEUS to offer expensive collection services—which currently are non-existent and will be extraordinarily difficult and expensive to establish, particularly in such a short time period—to many businesses, government and non-government organizations free of charge and to do so retroactively. This effectively will amend the terms of any original contracts to impose new quasi-contractual obligations to those parties and will negatively impact sales margins from past sales contracts.

11. For example, in some cases, sales are made to centralized management companies such as regional buying groups or national/regional dealer organizations who contract sales for many locations, some of which may be located within New York City and may be considered New York City "persons." Contracts of this sort are boilerplate legal sales contracts and did not and do not currently contain language regarding the take back or recycling of LG's products. The E-waste Program will require LGEUS not only to produce specific language in contracts where a New York City business may be involved in a new sale, but that LGEUS review all previous and existing contracts to determine if sales were made to New York City persons. It will need to do so because any previous or existing contract where a sale was made to a New

York City business likely will have to be amended in order to offer take back and collection services to that New York City business.

12. The same obligations would apply where LGEUS has had or will have contracts with government and non-government organizations. The New York City laws and rules require LGEUS to collect unwanted electronic equipment from all government agencies within New York City free-of-charge. So if LGEUS makes or has made a sale to a federal agency with offices in New York City, LGEUS presumably would have to collect any unwanted televisions or monitors free-of-charge from those New York City offices, even though the pricing and sale was set in Washington, DC and the contract did not stipulate free collection and recycling.

13. As discussed, the unwanted electronic equipment that LGEUS must collect within New York City is limited to televisions and computer monitors. CRT televisions collected as electronic waste weigh on average 60 pounds each and CRT monitors weigh on average 31 pounds each. Since both product types are on average greater than 15 pounds, the E-waste Program limits LGEUS's collection options to "direct collection" methods as to these products.

14. I understand that "direct collection" includes providing collection directly from New York City residents' homes. Although collection is not required from inside such home, curbside collection is prohibited. As the DSNY publicly stated on a "Frequently Asked Questions" section of its website, such direct collection methods are prohibitively expensive. In addition, such direct collection methods are logistically difficult, not only for LGEUS, but for owners of LG brand products as well, because those owners will have to schedule times when they will be at home to facilitate the collection.

15. I understand that "direct collection" also could include a mail-back program. Doing so for televisions will be prohibitively expensive, will be inconvenient to owners of LGEUS's

covered products and will cause additional waste to be created in the form of packing and shipping materials. As was stated above, televisions offered for collection weigh on average 60 pounds. Those weighing over 70 pounds will require use of heavy equipment, such as trucks with lift gates. If offered at all, such services are offered at a premium by parcel services and common carriers. Thus, obtaining collection and shipping services through parcel services and common carriers for large televisions would be extremely costly.

16. The cost of collecting these items directly from New York City residents will be prohibitive for LGEUS. LGEUS has little or no physical presence within New York City. In order to meet the direct collection requirements of the New York City rules, LGEUS will have to do one of the following: 1) contract with a third party for collection and/or recycling; or 2) finance and develop a new collection infrastructure.

17. The determination of the annual sales of LG's televisions and monitors (in pounds) to New York City "persons" as defined in the E-waste Law and Rules is very difficult, if not impossible. A sale of an LG product may be made to a non-resident of New York City at a retail location within New York City. However, because residency is not established at point of sale by the retailer and no such information has been made available to LGEUS, LGEUS cannot determine whether a sale within New York City was made to a New York City person or to a resident of another location. Conversely, a New York City person may purchase an LG product outside of New York City and bring the product into New York City. LGEUS has no way of capturing or even estimating such sales to New York City persons. A simple calculation of the population ratio of New York City to the United States times the national sales of LG's CEE is not, in LGEUS's estimate, a reliable means of estimating the sales of covered products within

New York City. Such a calculation ignores demographic and geographic influences over electronic product sales.

18. The estimation of how many CEEs might be returned to LGEUS from New York City persons on an annual basis is difficult to determine, if not impossible. LGEUS has no means to determine how many LG-brand televisions and monitors are currently held by New York City persons or how many of those products may be nearing the end of their useful lives. LGEUS cannot predict how many products of the same type may be offered for return when sales of televisions and monitors are made to New York City persons. These are important factors in calculating the rate and weight of returned products, which will determine the scope of the collection system required. As quotations from third parties for collection services are based on the weight and number of products to be collected, it is exceedingly difficult for LGEUS to gauge and compare costs of collection systems.

19. Scheduling collections and the act of collecting unwanted products directly from residents presents major logistical problems. These issues are difficult to gauge for reasons given above. LGEUS would have to require New York City residents to be at home on a certain day for a particular period in order to allow access to their residence for collection of their unwanted products. In order to make collection more efficient, pick-ups would have to be scheduled in advance; even so, such a plan would not eliminate duplicate trips to the same building for collection. As concerns the number of trucks required for pick-ups, LGEUS can only guess at that number, since the number of products returned depends entirely on the decisions of New York City residents and has nothing to do with the number of products being sold in New York City at this time.

20. Based on the estimated installed base of Zenith-, Goldstar- and LG-brand products, LGEUS predicts annual collection of as many as 60,000 televisions and monitors from New York City residents. LGEUS believes that the cost for third-party collection easily could cost millions of dollars per year.

21. If LGEUS decided to finance and develop its own collection system, it would have to purchase trucks or vans, hire employees to drive the vehicles and make collections, rent warehouse space for aggregation of the electronics, and then transport them to properly licensed recyclers. The annual recurring cost to LGEUS would be high in the aggregate, and on a per unit basis.

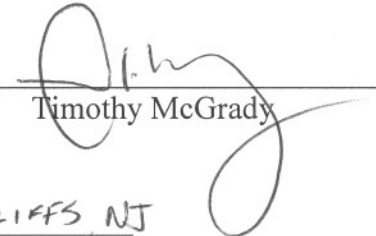
22. There are other, hidden costs in complying with the New York City E-Waste Program. First, since the CEE cannot be left curbside for pick-up, New York City residents would be required to go back home or stay home from work in order to allow building access. Such a requirement would create ill-will toward LGEUS, particularly so if the resident purchased an LG-brand product and had to go back home or stay home for new product delivery from a retailer as well. Second, all of the extra trucks and extra trips made by both LGEUS and residents would add to already congested New York City traffic. Third, all that extra travel would increase exhaust and greenhouse gas emissions. Indeed, LGEUS's collection program presumably would be only one of many operating within New York City.

23. The performance standard imposed by the New York City E-waste Law and Rules will be difficult, and perhaps unfeasible, to meet. According to the E-waste Program, beginning in 2012, LGEUS must collect at least 25% of its average New York City sales. The requirement grows to 65% by 2018. LGEUS will be subjected to a \$50,000 fine for each percentage point that the collection amounts are below the performance target. LGEUS cannot compel owners of

electronic equipment to offer it for collection and recycling. If a collection system is in place, residents will decide to use it or they will decide not to use it. LGEUS has no control over that decision.

24. The excessive burden created by New York City's E-waste Program is exacerbated by the short time allotted to prepare and submit a detailed plan for implementing it. LGEUS is committed to realistic and sustainable electronic recycling programs and has consistently participated in existing programs mandated by other states. The short time allotted does not allow LGEUS to fully explore collaborative efforts with other manufacturers, government agencies and/or retailers in order to determine if such relationships might offer a more equitable, convenient and environmentally responsible solution to the issues presented by the New York City E-waste Law and Rules. Typically, manufacturers are given a year or more to prepare compliant programs addressing the requirements of state electronic waste laws.

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

  
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Timothy McGrady

Executed this 24<sup>th</sup> day of July, 2009 in ENGLEWOOD CLIFFS, NJ