

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 DAVID A.
THOMPSON OF PANASONIC IN
SUPPORT OF PLAINTIFFS' MOTION
FOR A PRELIMINARY INJUNCTION**

DECLARATION OF DAVID A. THOMPSON OF PANASONIC

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 Director of the Corporate Environmental Department of Panasonic Corporation of North America. Panasonic Corporation of North America ("Panasonic") is the principal North American subsidiary of Japan-based Panasonic Corporation, a world leader in electronic manufacturing and innovation. Panasonic markets, distributes, and services Panasonic-branded televisions, laptop computers, printers, and portable DVD players in the United States. I have worked in the consumer

electronics industry for 25 years with Panasonic and have experience in customer service, inventory procurement and management, business planning and environmental management. I have worked in environmental management since 1991 when Panasonic began to collect and recycle rechargeable batteries. I have been involved with electronic waste (“E-waste”) issues since 1996 when Minnesota established an E-waste recycling task force. I participated in US EPA’s National Electronics Product Stewardship Initiative (“NEPSI”), a multi-stakeholder effort launched in 2002 to develop and propose solutions for e-waste recycling across the United States.

3. My declaration describes the significant burdens and detrimental impacts that New York City’s “Electronic Equipment Collection, Recycling and Reuse” Law (“E-Waste Law”) and the rules promulgated thereunder (“E-waste Rules”) would impose on Panasonic, the environmental impacts of the direct collection mandate, the inconsistencies of the E-Waste Law that jeopardize Panasonic’s ability to comply, and the difficulties Panasonic faces in meeting the requirements for E-waste plans, which would be due within thirty days of any decision by the court to deny a preliminary injunction. I understand that my declaration will be used in support of the Plaintiffs’ motion for a preliminary injunction, seeking to, among other things, delay implementation of the E-waste Rules by the New York City Department of Sanitation (“DSNY”).

4. Panasonic and its U.S. subsidiaries employ approximately 5,145 people in the United States, with only 12 employees located in two small offices in New York City. Panasonic has only a minimal physical presence in New York City.

5. Panasonic is a member of both Plaintiff Consumer Electronics Association and Plaintiff Information Technology Industry Council.

6. Panasonic is committed to recycling used and unwanted electronic products. We support or play a leadership role in the operation of collection and recycling programs in all 50 U.S. states, including Maine, Maryland, Minnesota, Oklahoma, Oregon, Rhode Island, Texas, West Virginia, and Virginia, which have enacted legislation requiring collection and recycling of electronic products.

7. Panasonic is a worldwide environmental leader that has developed several recycling technologies. For example, it recently announced a new laser cathode ray tube (“CRT”) glass cutting technology that will improve the recyclability of used CRT TVs. Panasonic has previously developed technologies to eliminate lead from flat panel television screens, resulting in the annual reduction of 340 tons of lead from the ultimate waste stream based on our 2008 sales. Further, Panasonic is a founding partner in the US EPA’s Plug-In To E-Cycling Program whose strong commitment to the program has been recognized by EPA since the program’s inception in 2002. Additionally, Panasonic was recognized as the EPA Waste Wise Program’s Challenge Partner of the Year for our voluntary efforts to increase television recycling in the United States.

8. In further demonstration of our commitment to responsible recycling, Panasonic joined with Sharp Electronics Corporation and Toshiba America Consumer Products, LLC, to form the Electronic Manufacturers Recycling Management Company, LLC (“MRM”), an organization that is developing a national collection infrastructure that electronics manufacturers can utilize, both on a voluntary basis and in response to legal mandates, to offer collection and recycling opportunities to their customers. MRM now

manages over 300 collection sites nationwide. Panasonic utilizes the MRM network to offer recycling opportunities to its customers in all 50 states. One key component of MRM's programs is that collection is generally done through municipal or county governments, not electronics companies, and the electronics typically are brought by their owners to the collection sites. Additional information on MRM is available at www.MRMrecycling.com.

9. The vast majority of the products Panasonic sells into New York City are sold through retailers and to distributors who, in turn, sell to retailers. Only a very small number of products are sold directly to New York City residents via Panasonic's internet sales site.

10. The direct collection requirement of the E-Waste Law conflicts with our Company's fundamental commitment to environmental protection and stewardship. To Panasonic the direct collection requirement is unconscionable, as it would result in tens of thousands of additional truck rolls on New York City streets and the associated increase in greenhouse gases emissions, as well as other hazardous emissions associated with gasoline and diesel burning vehicles such as benzene, ethyl-benzene, toluene and xylene, all confirmed carcinogens. Starting in 2007, Panasonic's corporate parent committed to an absolute greenhouse gas emissions reduction of 300,000 tons from Panasonic factories world wide by the end of fiscal year 2010. That goal has already been achieved. The environmental damage of increased vehicle emissions and congestion is not offset by any significant improvement in how electronics currently are recycled and disposed of in New York. For additional information on Panasonic's

environmental policies and programs see <http://panasonic.net/csr/reports/pdf/csr2008.pdf> and http://panasonic.net/eco/env_data/back_number/pdf/edb08e.pdf

11. The New York City E-waste Law drastically diverges from other regional E-waste programs implemented throughout the United States, and Panasonic would be compelled to create and staff a whole new business infrastructure to ensure compliance. DSNY wrongly assumes Panasonic and other electronics manufacturers have the resources and logistical infrastructure necessary to implement a program of this size and complexity. To the contrary, Panasonic does not have an existing home-delivery infrastructure upon which to build an efficient system for collection of E-waste, let alone direct collection from residents' homes. The E-waste Rules will compel Panasonic to create an entirely new mechanism for directly collecting used electronics products from New York City residents' homes scattered across one of the world's largest cities. Panasonic also must establish a mechanism to accept and/or collect E-waste from businesses, non-profits and governmental agencies. This will require immense new expenditures that will significantly impact Panasonic.

12. Panasonic is committed to developing a sustainable electronics recycling program in the New York City area that is consumer-friendly, provides solid environmental stewardship and allows an efficient and reasonable means for manufacturers to comply. Panasonic is participating in and complying with numerous E-waste programs throughout the United States, many of which strike a balance that is reasonable and achievable for both consumers and manufacturers and do not impose excessive burdens on manufacturers. Even with the temporary delay of the implementation of the E-waste Program while the preliminary injunction motion is

determined, DSNY has set deadlines for manufacturers to submit formal plans that are impractical and extreme when compared to other programs. Of the several states that have enacted E-waste laws, none imposed the daunting challenge of manufacturer collection at the customer's residence, yet all provided substantially more time for manufacturers to prepare complying plans.

13. For example, Washington State passed its E-waste law in March of 2006. The Washington Department of Ecology ("DOE") rulemaking process consumed approximately 18 months. Manufacturers were then given approximately 6 months to develop plans and submit them to DOE for review by February 2008. With collection scheduled to begin January 1, 2009, manufacturers had 10 months to obtain DOE approval and then implement their collection plans. This time period was provided despite the fact that the Washington program did not require direct collection from residents' homes.

14. Oregon passed its E-waste law in June, 2007. Oregon did not go through a formal rulemaking process, but did establish a task force to establish guidelines for manufacturers, retailers, recyclers and collectors. Manufacturers were required to advise Oregon Department of Environmental Quality ("DEQ") by December 31, 2007 whether they intended to join the state-organized collection plan (an option not available to manufacturers in New York City) or submit an independent plan. Panasonic advised DEQ that we would undertake an independent group manufacturer plan through MRM. MRM hired a consultant in February 2008 to help organize a collection plan, which was submitted on July 15, 2008. Plans were not required to have a complete list of collection locations at the time of initial submittal. DEQ approved the MRM Group Manufacturer

Plan in November 2008 and MRM began implementing the plan January 1, 2009. Thus manufacturers had almost six months to develop a plan overview and another six months to flesh the plan out, obtain approval and implement the plan. Again, direct collection from residents' homes, and all of the additional logistical problems that entails, is not required in Oregon.

15. In addition to the environmental issues raised in paragraph ten above, there would be enormous costs and problems associated with direct collection from consumer's homes as required by the E-waste Law. Other challenges that must be addressed and for which infrastructure must be created include obtaining appropriate product packaging, delivery of product packaging to consumers, logistics for the removal of covered products from the homes of consumers, and delivery of covered products to specific locations for recycling. These issues, as well as the costs for the overall program, make it virtually impossible to comply with the mandated program.

16. It is not feasible for Panasonic to provide a definitive, detailed plan under the rules set by the DSNY in such a short period of time (now, within 30 days of an order by the court denying a preliminary injunction). As a result, Panasonic could face fines in the amount of \$1,000 per day under the E-waste Law. Panasonic is concerned that other fines associated with an inability to meet the annual per-pound recycling goals could result in substantial penalties, in particular \$50,000 for each percent it falls below the mandated standard imposed by the City. While Panasonic is committed to meeting collection targets, this type of target is not within its control as it is dependent on consumer behavior to achieve collection goals. Manufacturers cannot collect products unless their legal owners are willing to part with them.

17. Panasonic is also very concerned about the potential costs of compliance with the New York City E-waste Law. Virtually all televisions exceed the DSNY's 15-pound threshold which obligates manufacturers to undertake "direct collection" from residents (as opposed to residents dropping-off, for example). The costs to collect TVs directly from consumers homes, manage, and recycle could be as much as \$95 per unit based on a preliminary estimate from CEA, a significant burden in a highly competitive industry with razor-thin margins. No one can estimate how high the actual costs to implement and maintain the program may ultimately be with any certainty. It should be noted, for example, that the average weight of TVs being discarded today is about 56 pounds, but some larger CRT TVs can range up to approximately 225 pounds per unit.

18. Because of the way the City has structured its program, it is virtually impossible to predict how many units Panasonic will have to collect directly from residents' homes. However, based on our experience in other states, between 30,000 to 40,000 Panasonic brand TVs could be subject to direct collection in New York City each year. As noted this is only a crude estimate, but such quantities would translate to roughly 95 to 130 TVs per day based on a six-day work week. Note that this estimate does not include computers or monitors, many of which also would be subject to direct collection under New York City's E-waste program.

19. Based on the estimated cost of compliance, the E-waste Rules will cause the cost of each unit collected to exceed any profit derived from the original sale of the unit, thereby resulting in a crushing financial burden on Panasonic. This estimated cost of compliance does not even account for Panasonic's internal staff costs to manage plan submittal, contracts, and reporting.

20. Panasonic is also greatly concerned about the harmful impact the E-waste Law and Rules will have on the relationships between Panasonic and its resellers. Panasonic currently has contracts and other agreements with numerous national and regional retailers, wholesalers, and distributors that require Panasonic to sell specific products at specific prices. The new E-waste Rules in New York City add a significant and burdensome cost to each unit sold, a cost that Panasonic may not entirely be able to pass on to its customers. This could result in Panasonic carrying the majority of the financial burden of compliance with the E-waste Rules, as the existing contracts and agreements will be enforced and Panasonic's efforts to try to modify these contracts and agreements may not be successful. Assuming Panasonic could re-open these existing agreements to pass along the costs of compliance, doing so would damage the company in terms of the time and effort involved, and could diminish Panasonic's business reputation and good relationships with its business partners. Further, if Panasonic does raise the cost of its products to cover the New York City Law these costs will be borne by all US consumers who purchase Panasonic products, thus directly raising funds from non-New York City citizens to pay for the City's waste collection.

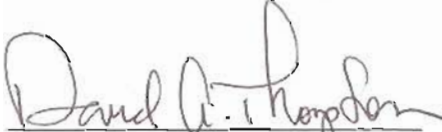
21. Cessation of sales in New York City is not a compliance option. Since Panasonic sells primarily to national retailers, it has no ability to direct or limit where its products are sold within the United States. In fact, any attempt by Panasonic to do so would likely disqualify Panasonic as a supplier or breach contractual obligations to national retailers, which could lead to a significant disruption of Panasonic's business. Panasonic also sells to some smaller retailers and wholesalers, and any attempt to direct or limit where the products are sold to those businesses could result in a loss of those

particular accounts. Therefore, Panasonic does not have the luxury of picking and choosing where the vast majority of its products are sold, at least not if it wants to stay in business.

22. Panasonic is also concerned about inconsistencies between the E-waste Law and the E-waste Rules. The statute and the implementing regulations potentially make two separate manufacturers responsible for collecting the same unwanted unit from the same consumer. Under the Law and Rules, the original manufacturer of a piece of electronic equipment is responsible for its collection and recycling, but this obligation will also extend to a different electronics manufacturer when a consumer purchases one of its products. For example, if the current owner of a Sony television decides to purchase a Panasonic television, both Sony and Panasonic must be willing to take the Sony television from that consumer. This raises uncertainties with regard to manufacturers' obligations and liability for fines. Until this conflicting requirement is resolved, Panasonic, unless it undertakes the collection of products that should legally have been collected by another manufacturer, is subject to penalties of up to \$1,000 per unit that it fails to collect.

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

Executed this 3rd day of August 2009 at Secaucus, NJ.


David A. Thompson