

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

09 Civ. 6583 (WHP)

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,

**DECLARATION OF MICHAEL
MOSS OF SAMSUNG IN
SUPPORT OF PLAINTIFFS'
MOTION FOR A
PRELIMINARY INJUNCTION**

Defendants.

DECLARATION OF MICHAEL MOSS OF SAMSUNG

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 Environmental Compliance Senior Manager at Samsung Electronics America, Inc. ("Samsung"). I have served as an environmental manager at Samsung for eight years, and I have been actively involved in recycling and managing discarded electronics product ("E-waste") issues for the company for the past seven years. I am also responsible for state and federal E-waste compliance programs, and I served as the manager of Samsung Recycling Direct SRD program development for 3 years.
3. I submit this declaration to state the unprecedented burdens the City of New York's "Electronic Equipment Collection, Recycling and Reuse" Law ("E-waste

Law”) and the rules issued to implement the program (“E-waste Rules”) will place on Samsung, and the program’s incompatibility with sustainable recycling.

4. Samsung manufactures and markets a wide range of consumer electronics products, including televisions, computer monitors, printers, laptops, and portable digital music players (“MP3 players”). Samsung is a member of the Consumer Electronics Association and participates in the Information Technology Industry Council’s Environmental Leadership Council.

5. Samsung’s United States headquarters is located in Ridgefield Park, New Jersey. Samsung has no corporate offices in the City of New York (“NYC” or “City”). Samsung’s only physical presence in the City is the “Samsung Experience” located in the Time Warner Center in Manhattan. The Samsung Experience is a 10,000-square-foot interactive emporium of virtual reality experiences that features Samsung products in unique technology demonstrations. The Samsung Experience is not a store and is not equipped to deal with or otherwise support E-waste collection or management of any kind.

6. Samsung’s products are distributed in a variety of ways. Authorized dealers purchase products from Samsung and sell them to the public at retail stores, through online e-commerce websites, and over the telephone. Authorized distributors resell Samsung products to retailers, installation, and integration companies who perform custom installation in consumers’ homes/businesses, and via Internet retailers. Unauthorized dealers purchase products from Samsung’s authorized dealers or distributors and resell them, typically via their own websites. Samsung has no ability through any of these channels to restrict where products are sold. Dealers and

distributors may allocate products among retail locations as they choose, and internet sales may go anywhere. Moreover, neither Samsung nor any of its distribution channels has any ability to prevent the sale of Samsung products outside of the City to consumers who live in, or subsequently move to, the City.

7. Samsung has grave concerns with the requirements of the NYC E-waste Rules. Particularly troubling is the E-waste Rules' requirement that manufacturers collect used electronics products directly from residents' homes. No other E-waste program requires direct collection. Free E-waste collection and handling services also must be provided to non-profit organizations, governmental agencies, and for-profit business with 50 employees or less, regardless of the amount or type of E-waste involved.

8. The cost and burdens of the NYC program will undermine Samsung's existing environmental initiatives. Samsung's overall environmental stewardship was established as a global Green Management policy in 1992. It consists of five components: the greening of management, process, product, workplace, and communities. Samsung's U.S. voluntary E-waste recycling program, the *Samsung Recycling Direct* ("SRD") program, is sustainable, convenient and effective, and it upholds the highest standards of responsible electronics recycling.

9. Through the SRD program Samsung already collects enormous volumes of E-waste around the country. Samsung provides no-fee collection of Samsung products at approximately 200 convenient collection centers covering all 50 states, including in the City; numerous no-fee public collection events; and free mail-back for recycling of mobile phones and printer toner cartridges. The effectiveness of the SRD program are

shown by its results. In the first six months of 2009, Samsung collected five million pounds of E-waste, without implementing door-to-door collection as mandated by NYC.

10. Samsung's SRD program demonstrates that people are more than willing to take action to recycle E-waste when reasonable and convenient opportunities are available. Manufacturers continue to find ways to provide convenient and efficient drop-off and other recycling opportunities. Indeed, Samsung has been pursuing plans to expand its voluntary nationwide recycling program going forward but the City's E-waste program, in particular the door-to-door collection requirement, will undermine those efforts due to the significant added costs that the City's program will impose on Samsung. Samsung therefore strongly opposes door-to-door collection requirement, which Samsung has shown is unnecessary to recover significant volumes of E-waste. The City's direct collection requirement is economically wasteful and will significantly deplete the limited resources Samsung has available to implement the SRD program.

11. Samsung is eager to act responsibly and appropriately to collect and process E-waste. Samsung develops an annual budget to promote a variety of environmental programs, which includes the SRD program. Because available resources are limited, Samsung always seeks to maximize the value of every dollar spent to benefit society as a whole. The City's direct collection mandate will negatively impact the goal of E-waste recycling by causing Samsung to divert valuable resources from its voluntary nationwide program. Less money will be available to help communities in New York, neighboring states, and many other states across the nation.

12. The costs that Samsung will be forced to expend to implement such a direct collection program are immense. Based on preliminary estimates, and assuming

collection rates reach levels similar to other states Samsung eventually will need to expend up to \$10 million per year to directly retrieve its products (and those of other manufacturers) from City residents' homes and conduct the other activities required under the City's E-waste program. Specifically, direct collection in the City will increase Samsung's annual costs from between \$1 million and \$3 million up to \$10 million. Stated differently, Samsung estimates that over 70% of the total cost of the NYC program may be attributable to the door-to-door collection requirement.

13. These are necessarily only estimates, because Samsung has no practical way to track precisely how many products it sells in the City. Nor does Samsung know how many consumers may request door-to-door collection. Nevertheless, the costs will be immense.

14. Such a significant increase in costs may be very difficult for Samsung to fully incorporate into the price of new products. Consequently, in addition to reducing available funds for Samsung's environmental programs, costs of the NYC E-waste program may adversely impact Samsung's ability to innovate and possibly even the ability to employ in the U.S. Even if the all added costs could be incorporated into the price of new Samsung products, consumers everywhere would be faced with higher product prices, impacting the consumer demand on future purchases and harming Samsung's business.

15. Ultimately, some portion of the costs of the NYC program will be passed to all consumers in the form of higher retail prices -- in effect an invisible tax imposed by NYC on consumers everywhere. Thus, most of program's costs eventually will be borne by consumers outside New York City.

16. This is neither sustainable as a business practice nor justifiable, especially considering the fact that Samsung and other companies are already providing and further developing convenient and effective alternatives for City residents to recycle their E-waste responsibly.

17. DSNY also appears to wrongly assume that electronics manufacturers like Samsung have logistical resources to implement this large program. To the contrary, Samsung, like most manufacturers, does not have an existing home-delivery infrastructure upon which to build an efficient system for direct collection of E-waste from homes. As noted above, Samsung distributes products through dealers and distributors to retail locations. These dealers and distributors decide whether and on what terms to provide home delivery. Samsung's products are packaged far from New York City, in locations such as Mexico and Asia, and they are sent to U.S. distributors without any way of knowing if individual units will be delivered to New York City or some other location.

18. The E-waste Rules will require Samsung to create from whole cloth a corporate mechanism for collecting used Samsung products (and in some instances other manufacturers' products) from homes spread across the City. This will require vast changes to Samsung's corporate infrastructure and disrupt Samsung's existing operations and practices, including requiring modifications to business plans and alterations to sales and marketing programs.

19. The door-to-door collection requirement will harm Samsung's reputation among its customers and potential customers. In order to comply with requirement, Samsung will have to take on the risk of managing a direct collection infrastructure that,

as noted above, is not part of the company's current business experience. To the extent Samsung is unsuccessful in managing these unfamiliar new activities, it may suffer consumer anger and harm to its business reputation. For example, if consumers are required to wait at home for hours for a collection agent to arrive, they may develop negative views of Samsung as a business, despite the fact that the company is not in the waste collection business. Poor performance could result in poor image because Samsung's image will be showcased by third-party individuals who are engaged in picking up materials from residences. Samsung has little or no control over these critical interfaces with residents and consumers. Consumers, however, will target the blame on the manufacturer tagged with the responsibility to collect the products that are being disposed, and not the third-party service provider actually undertaking the collection. Consumers simply will not make this distinction.

20. The E-waste Rules will also significantly disadvantage Samsung as compared to its competitors. Unlike Samsung, electronics manufacturers like Dell and others sell directly to and have a connection with individual consumers. These direct-sale manufacturers already have the distribution channel infrastructure needed to leverage the direct collection of used electronics in place. Moreover, many of the electronics manufacturers that will be impacted by this law manufacture products that are lighter in weight than televisions, thereby reducing the costs of collection for these manufacturers. Samsung has no such luxury; televisions generally weigh significantly more than most other electronics, and Samsung will be burdened to a far greater extent than other manufacturers.

21. The E-waste Rules also provide for significant monetary penalties. Although Samsung will make every effort to comply with the law and rules should they be upheld, the vagueness of the requirements and the basic unsustainability of the burdens the NYC program imposes may leave Samsung exposed to penalties, perhaps due to simple miscalculation, regardless of its best efforts. For example, should Samsung fail to achieve the law's mandatory performance collection standards, which are based on product sales in NYC (which will be very difficult to accurately determine), Samsung will face a penalty of \$50,000 for each percentage it falls below the standard. Negative publicity associated with the imposition of such penalties could also adversely impact Samsung's reputation with consumers.

22. In sum, the City's new E-waste program, and in particular the direction collection requirement, will undermine and jeopardize the valuable work Samsung has been undertaking of its own accord, through the SRD program, to address environmental concerns related to E-waste.

23. Samsung also complies with recycling laws in other states. The Minnesota recycling law which, unlike the NYC E-waste program, allows complete flexibility for manufacturers to collect and process E-waste in the most effective and efficient manner consistent with sustainable practices. Samsung also complies with the Texas recycling law for information technology products, which requires manufacturers to take responsibility for recycling their own brand of products and provides some flexibility —much more than the E-waste Rules—to design convenient programs in the most effective and efficient manner.

24. In all cases, Samsung has collected sufficient amounts of E-waste to meet the goals of these recycling programs and regulations, without the burden of free door-to-door pick up. Samsung has found that people are willing to do their part as part of their environmentally responsible lifestyle by bringing their products to convenient drop-off locations and recycling events or paying a small fee for door-to-door collection.

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

Executed this 5th day of August, 2009 at Rancho Dominguez, California.



A handwritten signature in blue ink, reading "Michael Moss", is written over a horizontal line.

Michael Moss