

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 MICHAEL
DROESE OF TTE TECHNOLOGY,
INC. IN SUPPORT OF PLAINTIFFS'
MOTION FOR A PRELIMINARY
INJUNCTION**

DECLARATION OF MICHAEL DROESE OF TTE TECHNOLOGY, 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 the General Manager of Business Support for TTE Technology, Inc. ("TTE"), a Delaware company involved in the manufacture, sale, and distribution of RCA-branded televisions in the United States. I am also a member of TTE's Board of Directors and a corporate officer holding the title of Vice President. I have worked in the consumer electronics industry for 37 years with companies such as RCA, GE, Thomson and TTE. I have expertise in the areas of accounting and finance, general management, sales, supply chain, marketing, market analysis, e-business, legal, information technology,

risk management and after sales. I have been involved with electronic waste (“E-waste”) issues since shortly after the formation of TTE in July, 2004.

3. My declaration addresses the significant burdens and detrimental impacts that New York City’s “Electronic Equipment Collection, Recycling and Reuse” Law (“E-waste Law”) will impose on TTE and its economic viability. I understand that my declaration will be used in support of the plaintiffs’ motion for a preliminary injunction, seeking, among other things, to delay enforcement of the rules that the Department of Sanitation (“DSNY”) recently adopted (“E-waste Rules”). I understand that fully compliant E-waste management plans will be required within 30 thirty days if the court denies plaintiffs’ preliminary injunction motion.

4. TTE is a member of several trade organizations, including both CEA and ITI, and employs 35 people in the United States, none of whom are located in New York State or New York City. TTE has no physical presence in New York City.

5. TTE participates in all recycling programs as required by existing legislation throughout the United States, including in Maine, Maryland, West Virginia, Minnesota, and Oregon. Further, the RCA-branded television internet site (<http://tv.rca.com/en-us/wheretorecycle.html>) contains language stating TTE’s commitment to environmental stewardship and provides information on electronics recycling programs available to the public.

6. TTE sells televisions to retailers and to distributors who, in turn, sell to retailers. TTE does not sell directly to consumers via the internet or any other means. TTE’s sales into New York City are minimal. In 2008, for example, TTE shipped a total of thirteen (13) televisions into New York City, the majority to fulfill TTE’s limited

warranty that provides consumer exchanges if a television fails within the first year of operation. Thus, TTE essentially made no profit from sales into the New York City market in 2008. Yet, despite these minimal sales, TTE must comply with all of the requirements of the City's E-waste program, including the obligation to accept another manufacturer's product of the same type if we make a sale, or even without a sale, beginning in 2011.

7. Since TTE 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 TTE to do so would likely disqualify TTE as a supplier to national retailers, which could lead to a significant disruption of TTE's business. TTE 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, TTE 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.

8. As TTE has no presence in New York and a limited staff in the United States, TTE's only option to meet the plan submission requirement is to participate in a group manufacturer plan. As of now, we do not have adequate information about any such group plans.

9. In addition, TTE has a licensing relationship with a third party company, under which it utilizes the "RCA" brand on televisions sold in the United States. As there are other consumer electronics products sold under the RCA label by companies other than TTE, it will be extremely difficult, if not impossible, to finalize the numerous issues and agreements necessary for one company to take responsibility of each

company's products and brands in New York City, as required under the E-waste Rules, in so short a time.

10. As a manufacturer of RCA-branded televisions in the United States, various definitive agreements between TTE and third party companies will need to be in place prior to plan submission, because the Department is requiring specific information in that regard. Specifically, it is required that plan materials set forth, where multiple manufacturers are "responsible" for a brand (like RCA), the identification of the manufacturer taking "sole responsibility" for the brand. With millions of covered products having been manufactured by multiple companies over the last ten-to-fifteen years, obtaining definitive agreements between multiple companies to determine overall responsibility for each brand of electronics in New York City could take many months, if not years, to resolve, assuming a resolution that is compliant with the City's E-waste Program is even possible.

11. Moreover, TTE will need to enter into agreements with various third parties to govern the logistics of removing covered products from the homes of consumers in New York City. It will take considerable time just to formulate these agreements, let alone finalize and execute them. Yet, information regarding these agreements also must be provided in the E-waste plan. Unresolved issues surrounding product packaging, delivery of product packaging to consumers, logistics for the removal of covered products from the homes of consumers, delivery of covered products to specific locations for recycling, the actual recycling of covered products, as well as the costs for the overall program, are all significant logistical and financial hurdles to compliance.

12. The burdens are exacerbated by the program's requirement that any modification of a plan must be approved by DSNY, and, with respect to E-waste collection, the modification must be approved before the change can be implemented. This makes no sense, especially given that the program's collection requirements are already so costly and onerous. TTE will be essentially locked into commitments it is required to make to submit a complete plan until and unless DSNY approves the change, which can take as long as two months.

13. TTE could face exorbitant fines if TTE cannot fully comply with the substantive requirements of the law, including annual reporting and meeting per-pound recycling goals on an annualized basis. The latter requirement could expose TTE to a penalty of \$50,000 for each percent it falls below the mandated standard imposed by the City.

14. TTE is also very concerned about the potential costs of compliance with the New York City E-waste Law. Virtually all televisions exceed the Department's 15-pound threshold where manufacturers are obligated to undertake "direct collection" from residents (as opposed to residents dropping-off, for example). The costs to collect, manage, and recycle just the RCA-branded televisions in New York City could easily exceed four million dollars annually. If TTE is required to comply with the City's door-to-door collection requirement for this brand, this is a cost that TTE simply cannot afford.

15. TTE has demonstrated its continued commitment to realistic and sustainable E-waste recycling programs throughout the United States; the E-waste Rules as set forth by the Department of Sanitation, however, are not realistically attainable.

16. The estimated cost of compliance with the E-waste Rules on a per-unit basis greatly exceeds any profit derived from the original sale of the unit, and additionally imposes costs on the company to hire individuals to ensure proper plan submission and future compliance. Quite simply, TTE cannot afford the proposed per-unit costs required for compliance under the current legislation. In addition, TTE has licensed the use of the “RCA” brand on its televisions since 2004; however under the current regulations TTE could be held responsible for products using the RCA label manufactured and sold prior to 2004. This potential undue cost burden places a significant financial uncertainty on TTE.

17. TTE is not currently staffed to properly provide the direct collection pickup service for its products in New York City as envisioned by the new E-waste Rules. Aside from the incredibly high costs associated with such a service, the logistical components of compliance would greatly exceed the company’s available staff and resources. In today’s economic climate, it would be difficult for TTE to add personnel to its staff to ensure compliance, or retain another company to perform this task.

18. TTE’s projected costs for compliance with the E-waste Rules places a burden on the company that it cannot afford unless the regulations are implemented with some fundamental changes. TTE may need to modify its sale of products to the New York City area in order to limit its exposure to E-waste costs, specifically those relating to the door-to-door pickup required under the regulations. A modification of the sale of products to the New York City area could result in a loss of market share as well as regional customers/retailers that are solely located in or around the New York City area. Simply put, if the financial burdens imposed by the “door-to-door” aspect of the E-waste

Rules cause each product sold within the New York City area to result in a significant monetary loss on a per-unit basis, it could result in TTE seeking potential alternatives to selling those products into the New York City area so as to avoid a financial loss.

19. If TTE is compelled to explore the possible reduction of the number of products sold into the New York City area, and/or fails to adequately comply with the E-waste Rules with respect to plan submission, annual reporting, and meeting per-pound annual recycling goals, the company's business reputation and the good will that has been built up for so many years will be negatively impacted.

20. Because the New York City E-waste Rules are so drastically divergent from other regional E-waste programs implemented throughout the United States, TTE will be compelled to modify its current business practices to ensure compliance. As noted above, staffing may need to be adjusted, which in this economic climate is excessively burdensome. The E-waste Rules' potential negative impact on existing retailer relationships is also of great concern to TTE. Many of the potential changes that may occur with retailers are not known at this time, but any cost shifts will most likely be borne by TTE.

21. TTE currently has contracts and other agreements with numerous national and regional retailers, wholesalers, and distributors that typically require TTE 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 TTE may not entirely be able to pass on to its customers. This could result in TTE carrying the majority of the financial burden of compliance with the E-waste Rules, as the existing contracts and agreements will be enforced and TTE's efforts to modify these contracts and agreements,

at a minimum, will take a significant amount of time and effort. Assuming TTE seeks to re-open these existing agreements to pass along the costs of compliance, doing so would greatly impact the company in terms of the time and effort involved, and could impact TTE's business reputation and good relationships with its business partners.

22. TTE is committed to developing a sustainable electronics recycling program in the New York City area, specifically under a program that is both consumer-friendly as well as affordable. The program must provide solid environmental stewardship while also providing an efficient and achievable means for manufacturers to comply. TTE is participating in and complying with numerous E-waste programs throughout the United States, many of which strike a balance for both consumers and manufacturers and do not impose excessive burdens on manufacturers. It is our hope that the current E-waste program will be modified to strike that balance.

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

Executed this 4th day of August 2009 at INDIANAPOLIS, IN.


Michael Droese