

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 WILLIAM  
TARADAY OF TOTEVISION IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR A PRELIMINARY INJUNCTION**

**DECLARATION OF WILLIAM TARADAY OF TOTEVISION**

1. The following facts are true to my own personal knowledge and if called as a witness I could so testify.
2. I am President and majority owner of RGA & Associates, Ltd. d/b/a ToteVision ("ToteVision"), which is based in Seattle, Washington. ToteVision has no facilities or employees located anywhere near New York City.
3. I have been involved in the manufacture and distribution of video electronics since 1981. ToteVision is a small company with modest revenue and currently employs 10

people. ToteVision manufactures liquid crystal display (“LCD”) monitors and other products such as closed circuit televisions (“CCTVs”). ToteVision is a member of Consumer Electronics Association, a trade association and a Plaintiff in this case.

4. I am providing this declaration to express my deep concerns, on behalf of my company and employees, at the numerous excessive and onerous burdens and obligations that New York City’s recently enacted E-waste Law and the regulations promulgated thereunder (“E-waste Rules”) impose on ToteVision and other small companies that manufacture consumer electronics products. ToteVision simply cannot comply with these requirements and remain economically viable. I am also extremely concerned about the requirement that ToteVision submit an E-waste management plan that meets all of the requirements of the City’s new law and regulations, especially if we have to do so within 30 days if the court denies plaintiff’s motion for a preliminary injunction. In fact, because of the way the law is structured, ToteVision may never be able to submit a fully compliant plan. If ToteVision fails to submit a plan or submits a non-compliant plan, it may be subject to a penalty of \$1000 per day.

5. I understand that this declaration will be used in support of a motion for a preliminary injunction to delay implementation of the E-waste Rules.

6. I am only now beginning to appreciate the burdens that this new program will place on a small company like ToteVision. ToteVision’s LCD monitors, which provide our primary revenue stream, and possibly other equipment we sell, fall within the scope of New York City’s new E-waste program. The NYC E-waste Law and Rules will have a substantial and harmful effect on our ability to remain in business.

7. New York City does not appear to appreciate that many small electronic manufacturers take our responsibilities to the environment and the public very seriously. However, to remain in business, each company must tailor its efforts to reflect its resources.

8. ToteVision is a company with a “green” mission, and we recognize and accept our responsibility with respect to recycling of products that we sell. Early on, we encouraged our suppliers in Asia to incorporate energy-saving LED backlights into our monitors, replacing energy hogging cold cathode fluorescent tube backlights. We have established as a ToteVision standard a requirement that all of our monitors be free from lead, mercury, cadmium, hexavalent chromium, and brominated flame retardants such as PBB and PBDE. These are exactly the types of compounds of concern that New York City has identified to justify its new E-waste program. Yet, the program offers no relief from its requirements for companies that have already committed the resources to rid their products of these compounds in order to avoid any possible impact to the environment.

9. ToteVision’s green efforts extend beyond the materials standards we have for our equipment. For many years, as incorporated into our standard warranty statement, we have encouraged the end user to retain original packing material for use in shipping the equipment to our facility for service. We intend to expand the statement to include “for use in e-cycling.” NYC’s requirement that we provide “any container needed for mail back” comes after the fact for discontinued models, is redundant for current models, and is extremely burdensome and impracticable. In the case of discontinued models, packing material is not readily available and would be prohibitively expensive to recreate.

10. NYC's requirement that we accept our competitors' equipment on a one-to-one basis is in essence a one-for-two requirement in that we would be obligated to retrieve a competitor's product at the time we sell one of our own to a New York City resident and still be required to retrieve our equipment at the end of its useful life. If New York City had at least limited a company's obligations to its own products, small companies like ToteVision would not be saddled with the burden of having to accept and manage our competitors' products.

11. NYC's requirements that we accept orphan waste initially on a one-to-one purchase basis and on an open ended basis beginning in 2011, places an unacceptable financial burden on us that cannot be quantified because the cost has the ability to mushroom without limit. And, if we ever refuse to accept one of these products (which we never owned to begin with), we will be subject to a \$2000 penalty each time.

12. A number of our larger LCD monitors exceed the 15 pound weight threshold, where "direct collection" is required. In fact, our largest monitor is approximately 90 pounds. Because ToteVision is not physically close to New York City, we have no ability to retrieve old equipment ourselves. The only way we could meet the City's requirements is to provide packaging materials and have the monitor shipped back to us. This would be prohibitively expensive for ToteVision.

13. We also sell small high definition LCD monitors with TV tuner functionality. For example, we manufacture an HD LCD monitor with TV tuner with a 10.4-inch screen. It weighs approximately 3.3 pounds. Yet, New York City's E-waste Law and Rules impose take-back obligations by "type" of product. So, under NYC's E-waste program, unbelievably, any time we

sell one of our small LCD TV monitors to someone in New York City, ToteVision can be forced to provide packaging materials, and retrieve and manage a large 52-inch television we never even owned. Note that, while a modern 52-inch television can weigh approximately 80 to in excess of 100 pounds, an older large TV set can weigh even more. And, ToteVision must do this without being able to charge any fee whatsoever. It is easy to see how this type of obligation could drive a small company like ToteVision out of business.

14. New York City has also adopted performance standards that arbitrarily require ToteVision to collect, by July 1, 2012, 25% of our average annual sales, by weight, into the City. By 2018, the collection obligation grows to a staggering 65%. If ToteVision fails to meet these standards, it will be subject to a \$50,000 penalty for each percentage point that it falls below the performance standard.

15. Where this equipment will be located in year 2012 or thereafter is not now known or knowable, and whether or not the end user will provide the significant level of cooperation necessary to meet these mandated e-cycling standards is also unknowable and therefore extremely problematic. ToteVision (or any other company for that matter) simply has no ability to determine when a product reaches the end of its useful life or when an end user decides the product is no longer wanted or needed. Therefore, ToteVision cannot possibly determine when these products will be “collectible” such that its ability to meet these performance standards is in its own control. Thus, NYC is subjecting companies like ToteVision to arbitrary penalties without any rational justification.

16. I can say with virtual certainty that if other cities and states throughout the United States were to adopt similar laws and regulations, we would be forced out of business. The fees alone (a \$1,500 fee for submitting a required E-waste management plan and a \$1,250 fee each time we submit an annual report), would vastly exceed company income, and would force us to close our business.

17. ToteVision is already grappling with electronics take back laws in various parts of the country, including in my home state of Washington. Many of these other programs impose significant burdens (in the form of registration fees and the like) on small companies like ToteVision, but none of them come close to what New York City is doing.

18. I am also very troubled by New York City's requirement that companies submit E-waste management plans to the DSNY in such a short period of time. Due to the vast differences between the law and the final E-waste Rules, ToteVision is only beginning to understand the scope of the City's E-waste program and yet the plan we are required to submit must include information showing how ToteVision will comply with virtually every requirement of the E-waste law. Among other things, we must identify the specific contractors, personnel, and methods we plan to use to retrieve electronic goods across the City. We have to provide details on the fate and destination of the retrieved goods and how their recycling will comply with all applicable legal requirements and laws. ToteVision simply cannot afford the time and resources needed for such an undertaking.

19. New York City's "one size fits all" approach simply does not work for small companies like ToteVision.

20. I respectfully ask that the Court grant consumer electronics manufacturing companies, including small companies like ToteVision, relief from this law and prohibit New York City from implementing its mandates until it fashions a reasonable and efficient program that will not drive companies like ToteVision out of business.

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

Executed this 3rd day of August 2009 at Seattle, Washington.



William Taraday