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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION,
HUDSON COUNTY
DOCKET NO. HUD-C-133-08

ANNE MILGRAM, Attorney General of the
State of New Jersey, DAVID M. SZUCHMAN,
Director of the New Jersey Division of
Consumer Affairs, and LOUIS E.
GREENLEAF, Superintendent of the State of
New Jersey, Office of Weights and Measures,

Plaintiffs,

v.

TARGET CORPORATION OF MINNESOTA,
JANE AND JOHN DOES 1-20, individually and
as owners, officers, directors, shareholders,
founders, managers, agents, servants, employees,
representatives and/or independent contractors
of TARGET CORPORATION OF
MINNESOTA, and XYZ CORPORATIONS 1-
20,

Defendants.

FILED Civil Action
SEP 3 - 2008

THOMAS P. OLIVIERI, P.J.Ch.

COMPLAINT

Plaintiffs Anne Milgram, Attorney General of the State of New Jersey ("Attorney General"),
with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, David M. Szuchman,

Director of the New Jersey Division of Consumer Affairs (“Director”), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, and Louis E. Greenleaf, Superintendent of the New Jersey Office of Weights and Measures (“Superintendent”), with offices located at 1261 Routes 1 & 9 South, Avenel, New Jersey, by way of this Complaint state:

PRELIMINARY STATEMENT

1. With the end of the summer and the beginning of the school season, many families in the State of New Jersey (“State” or “New Jersey”) are busy shopping for school supplies and other necessities. In these difficult economic times, consumers are searching for the best product at the best value, while retail establishments are aggressively competing for consumers’ business, among other things, by advertising weekly specials. Target Corporation of Minnesota (“Target” or “Defendant”) is among those retailers that advertises and sells merchandise, among other things, through stores located in the State.

2. Commencing August 25, 2008, investigators from the New Jersey Division of Consumer Affairs (“Division”) and the New Jersey Office of Weights and Measures (“Office of Weights and Measures”) conducted inspections within twenty-one (21) of the forty (40) Target retail stores within the State. Consequently, the investigators found that those Target retail stores, among other things: (1) were offering for sale and/or selling non-prescription drugs and infant formula beyond their expiration dates; (2) were selling a variety of merchandise, through the use of scanners, at prices in excess of the price listed at the point of display; (3) were failing to post the selling price of merchandise; (4) were failing to post raincheck policies; (5) were not maintaining a sufficient quantity of advertised sales merchandise; and (6) were failing to post a bicycle safety statement promoting the use of helmets. As detailed below, such conduct is deceptive and in violation of the

New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), the Weights and Measures Act, N.J.S.A. 51:1-1, et seq. (“Weights and Measures Act”), related statutes and regulations, as well as a prior Consent Order entered into with the Division.

PARTIES AND JURISDICTION

3. The Attorney General is charged with the responsibility of enforcing the CFA, N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. (“CFA Regulations”). The Director of the Division is charged with the responsibility of administering the CFA and the CFA Regulations on behalf of the Attorney General.

4. Pursuant to N.J.S.A. 51:1-42, the New Jersey Office of Weights and Measures (“Office of Weights and Measures”) in the Department of Law and Public Safety, is charged with the responsibility, among other things, of establishing a uniform standard of weights and measures and to provide penalties for the use of other than standard or legal weights and measures, as provided in the Weights and Measures Act, N.J.S.A. 51:1-1, et seq.

5. The Superintendent is charged with the responsibility of administering the Weights and Measures Act, and all regulations promulgated thereunder, N.J.A.C. 13:47B-1.1 et seq. and 13:47K-1.1 et seq. (“Weights and Measures Regulations”).

6. By this action, the Attorney General, Director and Superintendent (collectively, “Plaintiffs”) seek injunctive and other relief for violations of the CFA, the CFA Regulations and/or the Weights and Measures Act. Plaintiffs bring this action pursuant to their authority under the CFA and/or the Weights and Measures Act, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and/or 51:1-103. Venue is proper in Hudson County, pursuant to R. 4:3-2, because it is a county in which the cause of action arose and/or in which the defendant has conducted business.

7. Defendant Target is a Minnesota corporation established on May 22, 1996. Upon information and belief, at all relevant times, Target has maintained a principal place of business at 1000 Nicollet Mall TPN-945, Minneapolis, Minnesota 55403.

8. As of May 22, 1996, Target has been authorized to conduct business as a foreign corporation in New Jersey. Target's registered agent in the State is Corporation Trust Company, 820 Bear Tavern Road, West Trenton, New Jersey 08628.

9. Upon information and belief, John and Jane Does 1 through 20 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of Target who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

10. Upon information and belief, XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

A. Advertisement and Retail Sale of Merchandise:

11. At all relevant times, Defendant has been engaged in the business of operating retail stores in the State and elsewhere. Upon information and belief, these stores engage in the retail sale of a wide assortment of merchandise including, but not limited to, infant formula, non-prescription drugs, health and beauty aids, cosmetics, clothing, school and stationary supplies, electronics, and music and entertainment products.

12. Upon information and belief, Defendant advertises and otherwise offers merchandise for sale to consumers in this State and elsewhere through various mediums including, but not limited to, television commercials, newspaper advertisements, advertising circulars and internet web sites including, but not limited to, www.target.com.

13. Upon information and belief, at all relevant times, Defendant has been engaged in the operation of forty (40) retail stores in the State under the name "Target" (hereinafter "Target Stores").

14. Upon information and belief, at all relevant times, Defendant has also conducted the retail sale of merchandise in this State and elsewhere through internet web sites including, but not limited to, www.target.com.

B. Prior Division Investigation and Settlement:

15. On May 27, 2003, Defendant entered into a Consent Order with the Division ("May 2003 Consent Order"). At that time, Defendant was similarly engaged in the operation of retail stores in the State. The Division alleged that Target violated the CFA, specifically N.J.S.A. 56:8-2.27, by selling or offering to sell merchandise including, but not limited to, infant formula and non-prescription drugs that have passed their expiration date.

16. As further reflected in the May 2003 Consent Order, Target agreed to "cease and desist from displaying for sale, offering for sale, or selling the following items after their expiration date: a. Non Prescription (over the counter) drugs; b. infant formula; and c. cosmetics," at its retail stores located at 570 Route 70, Brick, New Jersey ("Target- Brick"), 543 River Road, Edgewater, New Jersey ("Target- Edgewater"), and 1331 Hooper Avenue, Toms River, New Jersey ("Target-Toms River"). Without admitting liability, Target agreed to pay a civil penalty of \$3,500.00,

pursuant to N.J.S.A. 56:8-13, and to reimburse the Division's investigative costs in the amount of \$500.00, pursuant to N.J.S.A. 56:8-11.

17. The May 2003 Consent Order further provided that "[a]fter signing of this Consent Order, if the Target stores in Brick, NJ, Edgewater, NJ and/or Toms River, NJ, engage in any acts or practices which constitute a violation of this Consent Order, those stores shall be subject to the imposition of enhanced penalties pursuant to N.J.S.A. 56:8-13."

C. Plaintiffs' Current Investigation:

18. During the period of August 25, 2008 through August 29, 2008, Defendant had been engaged in the operation of forty (40) retail stores in the State which included the following:

<u>Store Number</u>	<u>Store Location</u>	
1153	570 Route 70	Brick, New Jersey
	200 Promenade Blvd	Bridgewater, New Jersey
1158	2703 Route 541	Burlington, New Jersey
1085	2137 Route 38	Cherry Hill, New Jersey
1467	45 Central Avenue	Clark, New Jersey
1822	30 Kingsland Road	Clifton, New Jersey
2104	4004 Route 130 N.	Delran, New Jersey
	1900 Deptford Center Rd.	Deptford, New Jersey
1491	130 State Route 10	East Hanover
1345	70 Princeton Highstown Rd.	East Windsor, New Jersey
1263	543 River Road	Edgewater, New Jersey
1055	100 Parsonage Road	Edison, New Jersey
1365	751 Route 73 S.	Evesham, New Jersey
1175	632 Route 46 East	Fairfield, New Jersey
1330	630 Main Street	Hackensack, New Jersey
1823	4955 Route 9 South	Howell, New Jersey

1886	100 14 th Street	Jersey City, New Jersey
1315	621 W. Edgar Rd.	Linden, New Jersey
2392	209 Stafford Park Blvd.	Manahawkin, New Jersey
1184	55 US Hwy 9	Manalapan, New Jersey
1109	380 Consumer Square	Mays Landing, New Jersey
1192	2105 Route 35	Middletown, New Jersey
1152	400 Ryders Lane	Milltown, New Jersey
2170	2100 N. 2 nd Street	Millville, New Jersey
2256	4196 US Highway 1	Monmouth Junction, New Jersey
1917	4 Centerton Road	Mount Laurel, New Jersey
1865	7101 Tonnelle Avenue	North Bergen, New Jersey
1378	2331 State Route 66	Ocean, New Jersey
1464	1204 New Brunswick Ave.	Phillipsburg, New Jersey
1151	500 Nassau Park Blvd.	Princeton, New Jersey
2247	94 State Route 23	Riverdale, New Jersey
1864	381 Mount Hope Ave.	Rockaway, New Jersey
2181	487 Cross Keys Road	Sicklerville, New Jersey
1929	5000 Hadley Center Dr.	South Plainfield, New Jersey
1154	1331 Hooper Avenue	Toms River, New Jersey
1132	4001 Black Horse Pike	Turnersville, New Jersey
1084	2690 Route 22 East	Union, New Jersey
2141	2235 Springfield Avenue	Vauxhall, New Jersey
1133	1139 White Horse Road	Voorhees, New Jersey
1155	1515 US Highway 22	Watchung, New Jersey

19. During the period of August 25, 2008 through August 29, 2008, Defendant offered for retail sale at the above-referenced Target Stores a wide assortment of merchandise including, but not limited to, infant formula, non-prescription drugs, health and beauty aids, cosmetics, clothing, school and stationary supplies, electronics, and music and entertainment products.

COUNT I

**VIOLATION OF THE CFA BY DEFENDANT
(SALE OF EXPIRED MERCHANDISE)**

20. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 19 above as if more fully set forth herein.

21. The CFA, specifically N.J.S.A. 56:8-2.27, provides, in pertinent part:

It shall be an unlawful practice for any person to sell or offer to sell to the public:

- a. any non-prescription drug, infant formula or baby food, which is subject to expiration dating requirements issued by the federal Food and Drug Administration, if the date of expiration has passed. . . .

22. At least during the period of August 25, 2008 through August 29, 2008, Defendant was engaged in the retail sale of non-prescription drugs and/or infant formula subject to the expiration dating requirements of N.J.S.A. 56:8-2.27 at Target Stores in the State including, but not limited to, the following:

<u>Store Number</u>	<u>Store Location</u>	
1153	570 Route 70	Brick, New Jersey
1822	30 Kingsland Road	Clifton, New Jersey
1263	543 River Road	Edgewater, New Jersey
1365	751 Route 73 S.	Evesham, New Jersey
1886	100 14 th Street	Jersey City, New Jersey
1330	630 Main Street	Hackensack, New Jersey
1109	380 Consumer Square	Mays Landing, New Jersey
2170	2100 N. 2 nd Street	Millville, New Jersey
1865	7101 Tonnelle Avenue	North Bergen, New Jersey

23. The non-prescription drugs and/or infant formula found to have been offered for sale and/or sold beyond its expiration date at the above-referenced Target Stores include, but are not limited to, the following: (a) Enfamil Enfacare Lipil; (b) Enfamil Next Step Lipil; (c) Enfamil Prosobee Lipil Infant Formula; (d) Nestle Good Start Supreme Soy Infant Formula; (e) Children's Tylenol Meltaways; (f) Delsym Cough Suppressant; (g) Nicotine Polacrilex Gum; (h) Sudafed PE Nasal Decongestant; (i) Target Cold Head Congestion; (j) Target Maximum Strength Nasal Decongestant; (k) Target Pain Reliever- Extra Strength; and (l) Target Night Time Cold Relief.

24. Each offer for sale and/or sale of a non-prescription drug and/or infant formula beyond its expiration date comprises a separate violation of the CFA, N.J.S.A. 56:8-2.27.

COUNT II

VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES) (SALE OF EXPIRED MERCHANDISE)

25. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 24 above as if more fully set forth herein.

26. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise. . .

27. At all relevant times, Defendant has advertised and been engaged in the retail sale of a wide assortment of merchandise in Target Stores within the State including, but not limited to, non-prescription drugs, health and beauty aids, and infant formula.

28. In so doing, Defendant has engaged in the use of unconscionable commercial practices which include, but are not limited to, the following:

- a. Offering for sale and/or selling non-prescription drugs beyond their expiration date; and
- b. Offering for sale and/or selling infant formula beyond its expiration date.

29. Each unconscionable commercial practice by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT III

**VIOLATION OF THE CFA BY DEFENDANT
(UNCONSCIONABLE COMMERCIAL PRACTICES,
FALSE PROMISES AND MISREPRESENTATIONS)
(SALE OF MERCHANDISE AT PRICE IN EXCESS OF POSTED PRICE)**

30. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 29 above as if more fully set forth herein.

31. At all relevant times, Defendant has advertised and been engaged in the retail sale of a wide assortment of merchandise in Target Stores within the State including, but not limited to, infant formula, non-prescription drugs, health and beauty aids, cosmetics, clothing, school and stationary supplies, electronics, and music and entertainment products.

32. At all relevant times, Defendant has employed the use of scanners to determine the value of merchandise sold at Target Stores within the State.

33. During the period of August 25, 2008 through August 29, 2008, merchandise sold by Defendant in the State was found to have scanned at a price in excess of the price listed at the point of display including, but not limited to, at the following Target Stores:

<u>Store Number</u>	<u>Store Location</u>	
1153	570 Route 70	Brick, New Jersey
1158	2703 Route 541	Burlington, New Jersey
1822	30 Kingsland Road	Clifton, New Jersey
1345	70 Princeton Highstown Rd.	East Windsor, New Jersey
1263	543 River Road	Edgewater, New Jersey
1055	100 Parsonage Road	Edison, New Jersey
1365	751 Route 73 S.	Evesham, New Jersey
1175	632 Route 46 East	Fairfield, New Jersey
1886	100 14 th Street	Jersey City, New Jersey
1330	630 Main Street	Hackensack, New Jersey
1823	4955 Route 9 South	Howell, New Jersey
1184	55 Route 9	Manalapan, New Jersey
1109	380 Consumer Square	Mays Landing, New Jersey
2170	2100 N. 2 nd Street	Millville, New Jersey
1917	4 Centerton Road	Mount Laurel, New Jersey
1865	7101 Tonnelle Avenue	North Bergen, New Jersey
1151	500 Nassau Park Blvd.	Princeton, New Jersey
2181	487 Cross Keys Road	Sicklerville, New Jersey
1154	1331 Hooper Avenue	Toms River, New Jersey
1132	4001 Black Horse Pike	Turnersville, New Jersey
1084	2690 Route 22 East	Union, New Jersey

34. The merchandise found to have scanned at a price in excess of the price listed at the point of display at the Target Stores include, but are not limited to, the following: (a) Bayer Low Dose "Baby" Aspirin; (b) Casual Home Twin Sheet Set; (c) Chef Boyardee Beefaroni; (d) Children's Zyrtec Allergy; (e) Chrome 3 Tier Wire Shelves; (f) Compass; (g) Conair Curling Iron; (h) Crayola Color Explosion; (i) Go Create! Friendship Bracelets; (j) It's So Me! Messenger Bag; (k) Lexmark Print Cartridge; (l) Magnets; (m) Mucinex DM; (n) Nature Made Vitamin C; (o) One-A-Day Men's Formula; (p) Pennzoil Motor Oil 10W-30- .1 quart; (q) Pledge Lemon; (r) Ronzoni Whole Wheat Blend Pasta; (s) Rose Art Super Scrapbook Set; (t) Scissor - 6"; (u) Sharpee Accents; (v) Stanley Brand 9" Locking Pliers; (w) Star Wars: The Legacy Collection General Grievous Figurine; (x) Tylenol Sinus Congestion and Pain and (y) Zantac- 75 mg.

35. Defendant's conduct in violation of the CFA includes, but is not limited to, the following unconscionable commercial practices, false promises and/or misrepresentations:

- a. Selling merchandise to consumers at prices that exceed the price posted at the point of display or otherwise; and
- b. Misrepresenting to consumers at the point of display or otherwise, the price of merchandise offered for sale at Target Stores.

36. Each unconscionable commercial practice and/or misrepresentation by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT IV

VIOLATION OF THE WEIGHTS AND MEASURES ACT BY DEFENDANT (IMPROPER PRICE SCANNING)

37. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 36 above as if more fully set forth herein.

38. The Weights and Measures Act, N.J.S.A. 51:1-1 et seq., governs the use of a weight and measure in the State.

39. At all relevant times, Defendant has been engaged in the retail sale of merchandise at Target Stores within the State. Such merchandise constitutes a “commodity” within the meaning of the Weights and Measures Act, N.J.S.A. 51:1-2(a).

40. At all relevant times, Defendant has employed the use of scanners to determine the value of merchandise sold at Target Stores within the State. Such scanners constitute a “weight and measure” within the meaning of the Weights and Measures Act, N.J.S.A. 51:1-2(e).

41. The Weights and Measures Act provides in pertinent part:

1. No person shall:

.....

(4) Misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, count, or time, or represent the price in a manner calculated or tending to mislead or in any way deceive a person.

[N.J.S.A. 51:1-97(a)(4).]

42. During the period of August 25, 2006 through August 29, 2006, commodities sold by Defendant in the State were found to have scanned at a price in excess of the price listed at the point of display including, but not limited to, at the Target Stores referenced in paragraph 32 above.

43. The commodities found to have scanned at a price in excess of the price listed at the point of display at the Target Stores include, but are not limited to, those referenced in paragraph 33 above.

44. Each commodity having a list price that is contrary to the price that was calculated through the weight and measure device at the Target Stores comprises a separate violation of the Weights and Measures Act, N.J.S.A. 51:1-100.

COUNT V

**VIOLATION OF THE CFA BY DEFENDANT
(FAILURE TO DISPLAY SELLING PRICE)**

45. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 44 above as if more fully set forth herein.

46. The CFA requires that persons offering merchandise for sale display the selling price, as follows:

It shall be an unlawful practice for any person to sell, attempt to sell or offer for sale any merchandise at retail unless the total selling price of such merchandise is plainly marked by a stamp, tag, label or sign affixed to the merchandise or located at the point where the merchandise is offered for sale.

[N.J.S.A. 56:8-2.5.]

47. In addition, the CFA provides:

For purposes of this act, each day for which the total selling price is not marked in accordance with the provisions of this act for each group of identical merchandise shall constitute a separate violation of this act an the act of which this act is a supplement.

[N.J.S.A. 56:8-2.6.]

48. During the period of August 25, 2008 through August 29, 2008, merchandise offered for sale and/or sold by Defendant did not include a plainly marked total selling price including, but not limited to, at the following Target Stores:

<u>Store Number</u>	<u>Store Location</u>
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1153	570 Route 70	Brick, New Jersey
1822	30 Kingsland Road	Clifton, New Jersey
1345	70 Princeton Highstown Rd.	East Windsor, New Jersey
1055	100 Parsonage Road	Edison, New Jersey
1330	630 Main Street	Hackensack, New Jersey
1823	4955 Route 9 South	Howell, New Jersey
1184	55 Route 9	Manalapan, New Jersey
2170	2100 N. 2 nd Street	Millville, New Jersey
1917	4 Centerton Road	Mount Laurel, New Jersey
1151	500 Nassau Park Blvd.	Princeton, New Jersey
1132	4001 Black Horse Pike	Turnersville, New Jersey
1084	2690 Route 22 East	Union, New Jersey

49. The merchandise found not to include a plainly marked total selling price affixed to the merchandise or located at the point of display in the Target Stores included the following: (a) Backyard Discovery Bliss Sleeping Bag Combo; (b) Balboa Park TV Stand; (c) Burt's Bees Head to Toe Starter Kit; (d) Casual Home Mission Dresser; (e) Class Act 3-Ring Binder; (f) Crayola Beginnings; (g) Disney CampRock; (h) Fruit of the Loom Men's V-Neck Shirts; (i) Giovanni Organic Hair Cream; (j) Honeywell Air Circulator Fan; (k) Igloo Playmate Elite Cooler; (l) Kleenex 200 ct.; (m) Lexmark Color Printer; (n) Lexmark Fax; (o) On-the-Go First Aid Kit; (p) Photo Frames - 4"x4"; (q) Pedigree Adult Dog Food; (r) Pro Spirit 20" Duffel; (s) Sterilite Containers; (t) Sticker Dispensers; (u) Swim Vest Speedo; and (v) Wear Ever 11" Griddle.

50. Each instance and each day where Defendant offered for sale and/or sold merchandise without labeling or displaying the total selling price constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.5 and N.J.S.A. 56:8-2.6.

COUNT VI

**VIOLATIONS OF THE CFA BY DEFENDANT
(FAILURE TO POST A RAINCHECK POLICY)**

51. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 50 above as if more fully set forth herein.

52. The Raincheck Policy Disclosure Act, N.J.S.A. 56:8-2.28 et seq. ("Raincheck Act") requires that:

Every retail mercantile establishment which issues rainchecks to consumers for the sale of advertised merchandise that is not available throughout the advertised period shall conspicuously post its raincheck policy on a sign in at least one of the following locations:

- a. Affixed to a cash register or location of the point of sale;
- b. So situated as to be clearly visible to the buyer;
- c. Posted at each store entrance used by the public;
- d. At the location where the merchandise was offered for sale;
- e. In an advertisement for merchandise; or
- f. Printed on the receipt of sale.

53. At least during the period of August 25, 2008 to August 29, 2008, Defendant failed to post a raincheck policy in Target Stores which include, but are not limited to, the following:

<u>Store Number</u>	<u>Store Location</u>	
1153	570 Route 70	Brick, New Jersey
1822	30 Kingsland Road	Clifton, New Jersey
1345	70 Princeton Highstown Rd.	East Windsor, New Jersey
1055	100 Parsonage Road	Edison, New Jersey
1330	630 Main Street	Hackensack, New Jersey

1823	4955 Route 9 South	Howell, New Jersey
1154	1331 Hooper Avenue	Toms River, New Jersey
1084	2690 Route 22 East	Union, New Jersey

54. Each Target Store in which a raincheck policy is not posted, constitutes a separate violation of the Raincheck Act, each of which constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT VII

VIOLATION OF THE ADVERTISING REGULATIONS BY DEFENDANT FAILURE TO MAINTAIN SUFFICIENT QUANTITY OF MERCHANDISE

55. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 54 above as if more fully set forth herein.

56. The Merchandise Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., promulgated pursuant to the CFA (“Advertising Regulations”), address, among other issues, general advertising practices and price reduction advertisements.

57. Specifically, the Advertising Regulations governing general advertising practices provide, in relevant part:

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

1. The failure of an advertiser to maintain and offer for immediate purchase advertised merchandise in a quantity sufficient to meet reasonably anticipated consumer demand therefor. When an advertisement states a specific period of time during which merchandise will be available for sale, a sufficient quantity of such merchandise shall be made available to meet reasonably anticipated consumer demand during the stated period. When no stated period

appears in the advertisement, a sufficient quantity of merchandise shall be made available to meet reasonably anticipated consumer demand during three consecutive business days commencing with the effective date of the advertisement. . . .

[N.J.A.C. 13:45A-9.2(a)(1).]

58. During the period of August 25, 2008 to August 29, 2008, Defendant advertised the availability of sales merchandise at Target Stores including, but not limited to, the following:

<u>Store Number</u>	<u>Store Location</u>	
1153	570 Route 70	Brick, New Jersey
1055	100 Parsonage Road	Edison, New Jersey
1263	543 River Road	Edgewater, New Jersey
1365	751 Route 73 S.	Evesham, New Jersey
1886	100 14 th Street	Jersey City, New Jersey
1184	55 Route 9	Manalapan, New Jersey
1365	761 Route 73 South	Marlton, New Jersey
2170	2100 N. 2 nd Street	Millville, New Jersey
1151	500 Nassau Park Blvd.	Princeton, New Jersey
1154	1331 Hooper Avenue	Toms River, New Jersey
1132	4001 Black Horse Pike	Turnersville, New Jersey

59. The merchandise advertised for sale but not maintained in sufficient quantities at the above-referenced Target Stores includes, but is not limited, to the following: (a) Aipek MPVE Digital Camcorder; (b) Avery Two-tone Binder; (c) Blank Media; (d) 8 Sheet Diamond Cutter; (e) Lexmark Z2300; (f) Lexmark X2600; (g) Nikon Coolpix Digital Camera; (h) NFL Jerseys - Men's; (i) Panasonic Dect 6.04 Handset Phone; and (g) Schwinn Bicycle.

60. Each failure by Defendant to maintain a sufficient quantity of sales merchandise constitutes a separate violation of N.J.A.C. 13:45A-9.2(a)1 and a per se violation of the CFA.

COUNT VIII

**VIOLATION OF THE BICYCLE SAFETY
ACT AND REGULATIONS**

61. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 60 above as if more fully set forth herein.

62. The Act concerning Bicycle and Motorized Bicycle Regulation, N.J.S.A. 39:4-10.3 ("Bicycle Safety Act"), addresses, among other issues, the notification to be provided as to the required use of a helmet by riders under the age of 17. The Bicycle Safety Act provides, in pertinent part, that:

- a. A person regularly engaged in the business of selling or renting bicycles shall post a sign at the point where the sale or rental transaction is completed stating: "STATE LAW REQUIRES A BICYCLE RIDER UNDER 17 YEARS OF AGE TO WEAR A HELMET." The size of the sign shall be at a minimum 15 inches in length and 8 inches in width. . . .

[N.J.S.A. 39:4-10.3(a).]

63. The Regulations Governing Toy and Bicycle Safety, N.J.S.A. 13:45A-24.1 et seq., promulgated pursuant to the CFA ("Bicycle Safety Regulations"), address among other things, the required bicycle safety statement to be posted by retailers. In particular, the Bicycle Safety Regulations, N.J.A.C. 13:45a-24.4, provide that:

- (a) In addition to the notices required by N.J.S.A. 39:4-10.3 to be posted, a bicycle safety statement promoting the use of helmets shall be prominently affixed to every new or used bicycle offered to be sold or sold at retail by a person in the business of selling bicycles. The statement shall be attached to the seat, handlebar or, if in the form of a decal, to the top tube of the bicycle or, if unassembled, prominently printed on or firmly attached to the outside of the box or carton containing the unassembled bicycle.

- (b) The statement may be in the form of the warning card, "This Bike is Missing One Part," designed by the New Jersey Coalition for Prevention of Developmental Disabilities. . . .

Alternatively, the statement promoting the use of bicycle helmets may be in the form of a tag, notice, or decal designed by the bicycle supplier or retailer, provided the wording is clear and concise, appears in no less than 20-point type if in the form of a tag or notice and no less than 18-point type if in the form of a decal, and is printed in boldface capital letters, in color contrasting with the background. The tag or notice shall be made of cardboard, durable paper or plastic, and shall be no smaller than four inches by six inches if in the form of a tag or notice and no less than one by two inches if in the form of a decal; it may be covered by transparent plastic but shall not be obscured.

- (c) A statement promoting the use of bicycle helmets that is contained within the text of the owner's manual, shall not satisfy the requirement.

64. At least during the period of August 25, 2008 to August 29, 2008, Defendant offered bicycles for sale, yet failed to provide the bicycle safety statement in Target Stores which include, but are not limited to, the following:

<u>Store Number</u>	<u>Store Location</u>	
1263	543 River Road	Edgewater, New Jersey
1365	751 Route 73 S.	Evesham, New Jersey
1175	632 Route 46 East	Fairfield, New Jersey
1330	630 Main Street	Hackensack, New Jersey
1823	4955 Route 9 South	Howell, New Jersey
1184	55 Route 9	Manalapan, New Jersey
2170	2100 N. 2 nd Street	Millville, New Jersey
1865	7101 Tonnelle Avenue	North Bergen, New Jersey
2181	487 Cross Keys Road	Sicklerville, New Jersey
1154	1331 Hooper Avenue	Toms River, New Jersey
1084	2690 Route 22 East	Union, New Jersey

65. Each Target Store which offers bicycles for sale and fails to post the bicycle safety statement, constitutes a separate violation of the Bicycle Safety Act and Bicycle Safety Regulations, each of which constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT IX

**VIOLATION OF THE MAY 2003
CONSENT ORDER BY DEFENDANT**

66. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 65 above as if more fully set forth herein.

67. Pursuant to the May 2003 Consent Order, Defendant, among other things, agreed to comply with N.J.S.A. 56:8-2.27 and to cease and desist from offering for sale or selling non-prescription drugs, infant formula and/or baby food beyond its expiration date.

68. Additionally, Defendant agreed that any future violations of the May 2003 Consent Order by Target- Brick, Target- Edgewater, Target- Toms River would subject Defendant to the imposition of enhanced penalties pursuant to N.J.S.A. 56:8-13.

69. As set forth herein, the Target- Brick and Target- Edgewater continue to engage in acts and practices in violation of the CFA, specifically N.J.S.A. 56:8-2.27.

70. Such conduct comprises second and subsequent violations of the CFA, subject to a penalty of not more than \$20,000 per violation pursuant to N.J.S.A. 56:8-13, as well as other relief provided by N.J.S.A. 56:8-18.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that the acts and omissions of Defendant constitute multiple violations of the CFA, N.J.S.A. 56:8-1 et seq., the Weights and Measures Act, N.J.S.A. 51:1-1 et seq., the Raincheck Act, N.J.S.A. 56:8-2.28, the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., the Bicycle Safety Act, N.J.S.A. 39:4-10.3 and the Bicycle Safety Regulations, N.J.A.C. 13:45A-24.1 et seq.;
- (b) Permanently enjoining Defendant and its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the violations of the CFA, N.J.S.A. 56:8-1 et seq., the Weights and Measures Act, N.J.S.A. 51:1-1 et seq., the Raincheck Act, N.J.S.A. 56:8-2.28, the Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., the Bicycle Safety Act, N.J.S.A. 39:4-10.3 and the Bicycle Safety Regulations, N.J.A.C. 13:45A-24.1 et seq., including, but not limited to the acts and practices alleged in this Complaint;
- (c) Directing Defendant to remove all expired non-prescription drugs and/or infant formula from any Target Store in the State;
- (d) Directing Defendant to arrange for the destruction of any non-prescription drug and/or infant formula that is removed from any Target Store in the State;
- (e) Directing the assessment of restitution amounts against Defendant to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (f) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the Weights and Measures Act, N.J.S.A. 51:1-1 et seq.;
- (g) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (h) Assessing penalties against Defendant for violation of a prior cease and desist order, in accordance with N.J.S.A. 56:8-18;
- (i) Directing the assessment of costs and fees, including attorneys' fees, against Defendant for the use of the State, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and

- (j) Granting such other relief as the interests of justice may require.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By:  _____

Jah-Jum Ho

Deputy Attorney General

Dated: September 3, 2008
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the Weights and Measures Act, N.J.S.A. 51:1-1 et seq., the Bicycle Safety Act, N.J.S.A. 39:4-10.3 and relevant regulations, is not the subject of any other action pending in any other court of this State. I am aware that private contract and other actions have been brought against the Defendant, but have no direct information that any such actions involve consumer fraud allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

Jah-Juin Ho
Deputy Attorney General

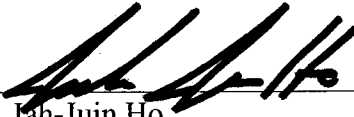
Dated: September 3, 2008
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General Jah-Juin Ho is hereby designated as trial counsel for this matter.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____


Jah-Juin Ho
Deputy Attorney General

Dated: September 3, 2008
Newark, New Jersey