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FILED

AUG 27 2010

JOHN F. MALONE
J.S.C.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
UNION COUNTY
DOCKET NO. UNN-C-85-09

PAULA T. DOW, Attorney General of the State of
New Jersey, and THOMAS R. CALCAGNI,
Acting Director of the New Jersey Division of
Consumer Affairs,

Plaintiffs,

v.

INDIANA NOVELTY INTERNATIONAL, INC.
d/b/a KIPP BROTHERS, JANE and JOHN DOES
1-20, individually and as owners, officers,
directors, shareholders, founders, managers,
agents, servants, employees, representatives and/or
independent contractors of INDIANA NOVELTY
INTERNATIONAL, INC. d/b/a KIPP
BROTHERS, and XYZ CORPORATIONS 1-20,

Defendants.

Civil Action

FINAL JUDGMENT AND ORDER

WHEREAS the Attorney General of the State of New Jersey ("Attorney General") is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq.

2009-040-9007

("Advertising Regulations"), and the Yo-Yo Waterballs Act, N.J.S.A. 2A:65B-1, et seq. ("Yo-Yo Waterballs Act");

WHEREAS the Director of the New Jersey Division of Consumer Affairs ("Director") is charged with the responsibility of administering the CFA, Advertising Regulations, and Yo-Yo Waterballs Act on behalf of the Attorney General;

WHEREAS this matter was opened to the Court on June 10, 2009, by the filing of a Complaint on behalf of the Attorney General and Director (collectively, "Plaintiffs")¹ pursuant to the provisions of the CFA, N.J.S.A. 56:8-2, 56:8-8, 56:8-11, 56:8-13 and 56:8-19, against defendant Indiana Novelty International, Inc. d/b/a Kipp Brothers ("Defendant"), alleging that Defendant, directly or through others, have engaged in conduct in violation of the CFA, Advertising Regulations and Yo-Yo Waterballs Act, in connection with its advertisement, sale and offer for sale of prohibited yo-yo waterballs to consumers in the State of New Jersey ("New Jersey");

WHEREAS, Plaintiffs, pursuant to R. 4:46-2, have moved for summary judgment against Defendant that includes a finding that Defendant's acts constitute multiple violations of the CFA, Advertising Regulations and Yo-Yo Waterballs Act, the issuance of permanent injunctive relief against future violations of the CFA, Advertising Regulations and Yo-Yo Waterballs Act, an award of the maximum civil penalties and reimbursement of attorneys' fees and investigative costs;

WHEREAS the Court having considered the pleadings filed in this action as well as the papers submitted in support of this motion, specifically the Statement of Material Facts Pursuant to

¹ This action was commenced on behalf of Anne Milgram, former Attorney General, and David M. Szuchman, former Director. In accordance with R. 4:34-4, the caption has been revised to reflect the current Attorney General and Acting Director.

R. 4:46-2(a), Brief, Certification of Jah-Juin Ho, with accompanying exhibits, and Certification of Aziza Salikhov, with accompanying exhibits; and


WHEREAS the Court being of the opinion that there exists no genuine issue of material fact and that Plaintiffs are entitled to summary judgment as a matter of law;

THEREFORE IT IS on this 27 day of August, 2010 ORDERED

AND ADJUDGED as follows:

1. Plaintiffs' motion for summary judgment is granted;
2. Defendant's advertisement, offer for sale and/or sale of prohibited yo-yo waterballs to New Jersey consumers comprises unconscionable commercial practices in violation of the CFA, N.J.S.A. 56:8-2;
3. Defendant's advertisement, offer for sale and/or sale of prohibited yo-yo waterballs to New Jersey consumers comprises multiple violations of the Advertising Regulations, N.J.A.C. 13:45A-9.2(a)(9);
4. Defendant's offer for sale and/or sale of prohibited yo-yo waterballs to New Jersey consumers comprises multiple violations of the Yo-Yo Waterballs Act, N.J.S.A. 2A:65B-2(a);
5. Defendant is permanently enjoined from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Advertising Regulations, N.J.A.C. 13:45A-9.1, et seq., and the Yo-Yo Waterballs Act, N.J.S.A. 2A:65B-1 et seq., including, but not limited to, the acts and practices alleged in the Complaint;
6. Defendant shall pay to the Division of Consumer Affairs civil penalties in the amount of \$ 54,300.00, in accordance with N.J.S.A. 56:8-13 and N.J.S.A. 2A:65B-2.

7. Defendant shall reimburse Plaintiffs for all attorneys' fees and costs incurred in connection with the prosecution of this action, in the amount of \$ 11,899.50, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.
8. Defendant shall reimburse Plaintiffs for their investigative costs and fees incurred in the investigation and prosecution of this action, in the amount of \$ 1122.00, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19.
9. Defendant shall pay the aggregate amount of \$ 67,321.50 within ten (10) days of the date of this Final Judgment and Order.
10. Nothing contained in this Final Judgment and Order, including the Court's determinations herein, shall bind or affect the rights of any persons not a party hereto, or preclude actions against any unnamed parties.
11. Nothing contained in this Final Judgment and Order shall bind or affect any position which any party may take in future or unrelated actions.
12. This Final Judgment and Order may be enforced only by Plaintiffs or Defendant.
13. This Court retains jurisdiction for the purpose of enabling Plaintiffs or Defendant to apply to this Court for any further orders and directions as may be necessary and appropriate for the enforcement of or compliance with this Final Judgment and Order.
14. A copy of this Final Judgment and Order shall be served upon all counsel of record within seven (7) days of the date of this Order.



HON. JOHN F. MALONE, P.J.CH.