

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION )  
600 Pennsylvania Avenue, N.W. )  
Washington, DC 20580, )  
 )  
Plaintiff, )  
v. )  
 )  
TOYS "R" US, INC. )  
1 Geoffrey Way )  
Wayne, NJ 07470, )  
 )  
Defendant. )  
 )

Case: 1:11-cv-00635  
Assigned To : Collyer, Rosemary M.  
Assign. Date : 3/29/2011  
Description: General Civil

**COMPLAINT FOR CIVIL PENALTIES PURSUANT TO  
SECTION 5(l) OF THE FEDERAL TRADE COMMISSION ACT**

Plaintiff, the Federal Trade Commission ("FTC"), by its undersigned attorneys, alleges as follows:

**INTRODUCTION, JURISDICTION AND VENUE**

1. Plaintiff brings this action under Sections 16(a)(1) and 5(l) of the Federal Trade Commission Act, as amended, 15 U.S.C. §§ 56(a)(1) and 45(l), for civil penalties for violations of a final order to cease and desist issued by the Federal Trade Commission.

2. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 45(l) and 28 U.S.C. §§ 1331, 1337 (a), 1345, and 1355.

3. Venue is properly based in this District by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

4. Defendant Toys "R" Us, Inc. ("TRU") is a Delaware corporation with its principal

place of business located at 1 Geoffrey Way, Wayne, New Jersey, 07470. TRU is and has been at all times pertinent to this proceeding engaged in the sale of toys and various other child and baby products. TRU, at all times relevant to this proceeding, has been engaged in commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. Section 5(*l*) of the FTC Act, 15 U.S.C. § 45(*l*), authorizes this Court to award monetary civil penalties, to grant mandatory injunctions and to order such other and further equitable relief as appropriate for each violation of a Final Order of the FTC. The Court may award a civil penalty for each violation, or for each day of a continuing violation. For violations occurring before February 10, 2009, the maximum amount of civil penalty is \$11,000 per violation, or per day of a continuing violation, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54548 (Oct. 21, 1996); 74 Fed. Reg. 857 (Jan. 9, 2009). For violations occurring on or after February 10, 2009, the maximum amount of civil penalty is \$16,000 per violation, or per day of a continuing violation.

#### PRIOR FTC PROCEEDING

6. This complaint alleges violations of the order issued by the FTC on October 13, 1998, in *In the Matter of Toys "R" Us, Inc.*, FTC Docket No. 9278, 126 FTC 415 (1998).

7. In that case, the FTC issued an administrative complaint alleging that TRU violated Section 5 of the FTC Act, 15 U.S.C. § 45.

8. The complaint alleged that TRU's importance as a provider of distribution to manufacturers of toys and related products gave it the ability to exercise market power over those manufacturers.

9. The complaint alleged that TRU used its power to gain agreements or understandings with various suppliers relating to toy sales to warehouse clubs. The complaint also alleged that TRU facilitated understandings among competing manufacturers to achieve unity of action among them relating to their dealings with warehouse clubs.

10. TRU denied the allegations of the complaint and a trial was held before an administrative law judge commencing March 5, 1997. The trial lasted 43 trial days. On September 25, 1997, the administrative law judge issued his initial decision finding that TRU had violated Section 5 of the FTC Act as alleged in the complaint. TRU appealed this decision, and on October 13, 1998, the FTC issued its Opinion of the Commission upholding the complaint and issuing a Final Order (“Order”). The Order became final on December 18, 1998. The Commission stayed the requirements of Paragraphs II.C. and II.E. of the Order until the appeal was decided. TRU appealed the FTC Opinion and on August 1, 2000, the Seventh Circuit upheld the FTC finding of violation and the Order. *Toys “R” Us, Inc. v. FTC*, 221 F.3d 928 (7<sup>th</sup> Cir. 2000). The Commission’s stay ended on or about August 1, 2000.

#### THE ORDER

11. In addition to prohibiting the illegal conduct alleged in the complaint, the Order contains additional requirements.

12. Paragraph II.B. of the Order prohibits TRU from “urging, inducing, coercing, or pressuring, or attempting to urge, induce, coerce, or pressure, any supplier to limit supply or to refuse to sell toys and related products to any toy discounter.” The Order defines “toys and related products” as “any product that is sold by [TRU].” The Order defines “toy discounter” as “any retailer of toys, including but not limited to membership retail outlets such as Price-Costco, Sam’s Club, and BJ’s Wholesale Club, that sells toys at discounted prices.”

13. Paragraph II.C. of the Order prohibits TRU from “requiring, soliciting, requesting or encouraging any supplier to furnish information to [TRU] relating to any supplier’s sales or actual or intended shipments to any toy discounter.”

14. Paragraph IV.B. of the Order requires TRU to “maintain and make available to the staff of the Federal Trade Commission for inspection and copying, upon reasonable notice, all records of communications with suppliers of [TRU] relating to any aspect of actual or potential purchase or distribution of toys and related products, and records of any action taken in connection with any activity covered by paragraphs II and III of this order.”

### **VIOLATIONS ALLEGED**

#### **FIRST COUNT**

##### **TRU Violated Paragraph II.B. of the Order**

15. Plaintiff realleges and incorporates by reference paragraphs 1 to 14 above.

16. In addition to operating toy stores under the Toys “R” Us banner, TRU operates stores for infants and juveniles under the Babies “R” Us (“BRU”) banner. BRU is a part of TRU and is subject to the requirements of the Order. Among other products, BRU buys and distributes breast pumps from Medela, Inc. (“Medela”), high chairs and strollers from Peg Perego USA, Inc. (“Peg Perego”), car seats and strollers from Britax Child Safety, Inc. (“Britax”), and various products from Graco Children’s Products, Inc. (“Graco”) and Kolcraft Enterprises, Inc. (“Kolcraft”).

17. At various times in the period from 1999 to 2005, BRU complained to Peg Perego about discounting of Peg Perego products by toy discounters and Peg Perego’s supply of product to toy discounters.

18. At various times in the period from 2000 to 2010, BRU complained to Graco about

discounting of Graco products by toy discounters and Graco's supply of product to toy discounters.

19. At various times in the period from 2002 to 2004, BRU complained to Medela about discounting of Medela's products by toy discounters.

20. At various times in the period from 2003 to 2009, BRU complained to Britax about discounting of Britax products by toy discounters and Britax's supply of product to toy discounters.

21. In 2005, BRU complained to Kolcraft about discounting of Kolcraft product by a toy discounter.

22. Complaints by BRU to a supplier about discounting by a toy discounter may lead the supplier to limit supply or refuse to sell to the toy discounter.

23. The conduct alleged in Paragraphs 17 - 21 inclusive violated Paragraph II.B. of the Order.

## SECOND COUNT

### TRU Violated Paragraph II.C. of the Order

24. Plaintiff realleges and incorporates by reference paragraphs 1 to 16 above.

25. At various times in the period from 2000 to 2010, BRU requested information from Graco or encouraged Graco to furnish information about its supply of product to toy discounters.

26. At various times in the period from 2001 to 2005, BRU requested information from Peg Perego or encouraged Peg Perego to furnish information about its supply of product to toy discounters.

27. At various times in the period from 2002 to 2010, BRU requested information from Kolcraft or encouraged Kolcraft to furnish information about its supply of product to toy

discounters.

28. At various times in the period from 2004 to 2009, BRU requested information from Britax or encouraged Britax to furnish information about its supply of product to toy discounters.

29. The conduct alleged in Paragraphs 25 - 28 inclusive violated Paragraph II.C. of the Order.

### THIRD COUNT

#### TRU Violated Paragraph IV.B. of the Order

30. Plaintiff realleges and incorporates by reference paragraphs 1 to 16 above.

31. After the Order became final, TRU did not adopt any specific program or procedure to assure compliance with and did not comply with the requirement of Paragraph IV.B. of the Order to maintain all records of communications with suppliers relating to any aspect of actual or potential purchase or distribution of toys and related products.

32. During at least some of the period after the Order became final, TRU's document preservation policy treated at least some communications with suppliers as General Business Records, which were to be maintained for no more than three years. Consequently, TRU failed to preserve some communications with suppliers.

33. TRU's practice was to delete email files of persons who left the company. TRU did not vary this practice for those persons who communicated with suppliers. Consequently, TRU failed to preserve some email communications with suppliers.

34. As a result of these practices, TRU did not maintain all records of communications with suppliers relating to any aspect of actual or potential purchase or distribution of toys and related products.

35. TRU was in continuous violation of Paragraph IV.B. of the Order from December

18, 1998, until at least on or about May 17, 2010.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

36. That the Court adjudge and decree that Defendant TRU violated Paragraph II.B. of the Order in each instance in which it complained to a supplier about discounting of the supplier's product or about the supply of product to a toy discounter; that Defendant TRU violated Paragraph II.C. of the Order in each instance it sought information from a supplier about the supply of product to a toy discounter; and that Defendant TRU violated Paragraph IV.B. of the Order for each day it failed to maintain all records of communications with suppliers relating to any aspect of actual or potential purchase or distribution of toys and related products;

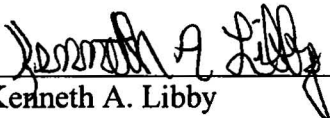
37. That this Court enter judgment against TRU for an appropriate civil penalty as provided by law, 15 U.S.C. § 45(*l*), and the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and FTC Rule 1.98, 16 C.F.R. § 1.98;


38. That Plaintiff have such other and further relief as the Court may deem just and proper; and


39. That Plaintiff be awarded its costs of this suit.


Dated: March 29, 2011

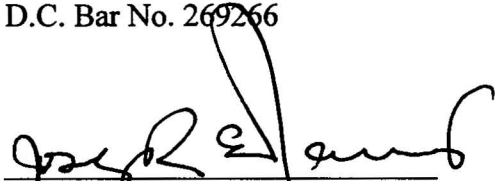
FOR THE PLAINTIFF FEDERAL  
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