

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS S. SCAMAN and MARY
SCAMAN, individuals, and
MAX 2000, INC., a corporation,

Defendants.

Case No. _____

4:02cv01745CDP

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, United States of America, by its undersigned attorneys, alleges as follows:

NATURE OF THE CLAIM

1. Plaintiff brings this action to obtain a permanent injunction prohibiting defendants' violations of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. §§ 1261 *et seq.* and the regulations promulgated thereunder, 15 C.F.R. Part 1500.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337, and 1345 and 15 U.S.C. § 1267(a) and has personal jurisdiction over the defendants.

3. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391(b) and (c).

DEFENDANTS

4. Defendant Max 2000, Inc. (Max 2000) is a corporation existing under the laws of the state of Missouri, with its principal place of business located at 123 Apollo Blvd., Stanton, Missouri 63079. Max 2000 is a manufacturer, distributor, dealer, wholesaler, and retailer of fireworks products that are subject to the FHSA.

5. Defendant Thomas S. Scaman (Thomas Scaman) is the Manager of Max 2000. He resides at 123 Apollo Blvd., Stanton, MO. Until March 2002, Thomas Scaman was the President of, and transacted business through, Apollo of the Ozarks, Inc. (Apollo), a Missouri corporation with its principal place of business located at 123 Apollo Blvd., Stanton, Missouri 63079. Apollo was a manufacturer, distributor, dealer, wholesaler, and retailer of fireworks products that were subject to the FHSA. Apollo was liquidated pursuant to a Chapter 7 bankruptcy proceeding in 2001, and the corporation was dissolved by the state of Missouri in March 2002. At all times relevant to this complaint, Thomas Scaman has had knowledge of, and authority to control, the practices of Apollo and Max 2000.

6. Defendant Mary Scaman is the wife of defendant Thomas Scaman and is the President and Secretary of Max 2000. She also transacted business through, and was the Secretary of, Apollo. She resides at 123 Apollo Blvd., Stanton, MO. At all times relevant to this complaint, Mary Scaman has had knowledge of, and authority to control, the practices of Apollo and Max 2000.

THE FEDERAL HAZARDOUS SUBSTANCES ACT

7. The U.S. Consumer Product Safety Commission (CPSC) is an independent federal agency, authorized to administer the FHSA, 15 U.S.C. § 1261 *et seq.*

8. The CPSC is authorized by section (2)(q)(1)(B) of the FHSA, 15 U.S.C. § 1261(q)(1)(B), to declare a product a banned hazardous substance.

9. The FHSA prohibits the introduction or delivery for introduction in interstate commerce of fireworks that are banned hazardous substances. 15 U.S.C. § 1263(a).

10. The CPSC has determined by regulations at 16 C.F.R. §§ 1500.17(a)(3), (a)(8) and (a)(9) that certain fireworks are "banned hazardous substances" as defined in 15 U.S.C. § 1261(q)(1)(B) because such fireworks possess such a degree or nature of hazard that adequate cautionary labeling cannot be written and the public health and safety can only be served by keeping these articles out of interstate commerce.

11. Among the fireworks the CPSC has determined to be banned hazardous substances are firecrackers designed to produce audible effects, if the audible effect is produced by a charge of more than 50 milligrams of pyrotechnic composition, including kits and components intended to produce such fireworks. 16 C.F.R. § 1500.17(a)(8).

DEFENDANTS' VIOLATIONS OF THE FHSA

12. Since at least January 1998, defendants have been engaged in the manufacture, distribution, and sale in interstate commerce of firecrackers marketed and sold under the name "Pest Control Report 2000," also known as "PCR 2000", as well as under the name "Max 2000" (herein "PCR 2000").

13. The PCR 2000 device consists of a sealed cardboard tube with a fuse; the tube contains flash powder significantly in excess of the 50mg limit on pyrotechnic composition set forth in 16 C.F.R. § 1500.17(a)(8). In fact, the PCR 2000 device contains approximately 750 - 1,000 milligrams of flash powder.

14. The defendants have sold the PCR 2000 device without complying with 16 C.F.R. §§ 1500.17(a)(8)(i) - (ii), which specifies that firecrackers that exceed the pyrotechnic composition limits of 16 C.F.R. § 1500.17(a)(8) may be introduced, delivered for introduction, or received in interstate commerce only if all of the following conditions are met:

- (a) the fireworks are distributed to farmers, ranchers, or growers through a wildlife management program administered by a federal, State or local governmental agency; and
- (b) such distribution is in response to a written application describing the wildlife management problem that requires use of such fireworks, is of a quantity no greater than required to control the problem described, and is where other means of control is unavailable or inadequate.

15. The defendants failed to comply with 16 C.F.R. §§ 1500.17(a)(8)(i) - (ii) in their sales of the PCR 2000, notwithstanding the defendants' use, with some customers, of a form styled "Explosive Pest Control User Authorization" which supposedly demonstrated the customers' agricultural use of the PCR 2000 devices. On its face, the defendants' putative "User Authorization" form does not meet the requirements of 16 C.F.R. §§ 1500.17(a)(8) and was not used with all customers in any event.

16. In fact, commencing in 1998, defendants have routinely sold large quantities of the PCR 2000 to fireworks wholesalers and retailers, as well as gun and ammunition dealers, who had no bona fide agricultural need for these devices. These entities have, in turn, typically sold the PCR 2000 directly to consumers or otherwise introduced these devices into consumer channels of distribution through storefront businesses, retail catalogues, and Internet sales. The defendants' sales have included, but are not limited to, the following transactions:

- (a) By April 2000, more than 10,000 (ten thousand) PCR 2000 devices to Firequest, Inc., located in El Dorado, Arkansas;

- (b) By July 2000, nearly 400,000 (four-hundred thousand) PCR 2000 devices to All American Professional Fireworks, headquartered in Toledo, Ohio;
- (c) By March 2001, more than 450,000 (four-hundred-fifty thousand) PCR 2000 devices to All Purpose Ammo, LLC, also known as Planet Ammo, located in Seneca, South Carolina;
- (d) By May 2001, nearly 290,000 (two-hundred ninety thousand) PCR 2000 devices to Self Defense Supply, also known as South Summit, located in Richardson, Texas; and
- (e) In June 2002, more than 33,000 (thirty-three thousand) PCR 2000 devices to Astro Spectacular, Inc., located in Hooksett, New Hampshire.

17. By engaging in the acts and practices alleged herein, defendants have violated 15 U.S.C. § 1263(a) by introducing or delivering for introduction, or causing the introduction or delivery for introduction, in interstate commerce of devices that are banned hazardous substances.

18. Based on defendants' past and present course of conduct, there exists a substantial likelihood that, unless enjoined by this Court, defendants will continue to introduce, and deliver for introduction, in interstate commerce fireworks that are banned hazardous substances in violation of 15 U.S.C. § 1263(a).

19. As a consequence of defendants' violations as alleged above, the health and safety of the public have been jeopardized through defendants' dissemination of banned hazardous substances.

RELIEF REQUESTED

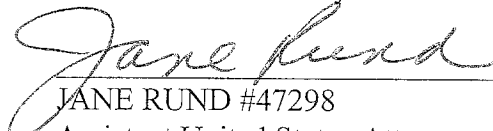
WHEREFORE, pursuant to 15 U.S.C. § 1267(a) and Rule 65 of the Federal Rules of Civil Procedure, plaintiff respectfully requests that this Court:

1. Permanently enjoin defendants, and each and all of their directors, officers, agents, employees, servants, attorneys, successors and assigns, and those persons in active concert or participation with them, from directly or indirectly selling, giving away or otherwise distributing, or causing to be distributed, any firecracker, including but not limited to the PCR 2000, that contains more than 50 milligrams of pyrotechnic composition, 16 C.F.R. § 1500.17(a)(8), and any kits and components intended to produce any such devices;
2. Grant plaintiff such other and further relief as the Court deems just and proper;
3. Award plaintiff judgment for its costs.

Respectfully submitted,

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