

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 JEFFREY  
WHITELAW OF MITSUBISHI  
DIGITAL ELECTRONICS AMERICA,  
INC. IN SUPPORT OF PLAINTIFFS'  
MOTION FOR A PRELIMINARY  
INJUNCTION**

**DECLARATION OF JEFFREY WHITELAW OF MITSUBISHI DIGITAL  
ELECTRONICS AMERICA, INC.**

1. The following facts are true to my own personal knowledge and if called as a witness I could so testify.
2. I am the Vice President Human Resources and Administration at Mitsubishi Digital Electronics America, Inc. ("MDEA"). I have worked in the consumer electronics products field for almost 30 years and have been employed at MDEA for the last 21 years. I have held various engineering and management roles and have had responsibility for MDEA's environmental affairs for a number of years. I have also been involved in working with other states, such as Minnesota and Oregon, to implement their electronic waste ("E-waste") programs for MDEA.

3. My declaration addresses the harmful effects and excessive and onerous burdens that New York City's "Electronic Equipment Collection, Recycling and Reuse" Law ("E-waste Law") will impose on MDEA, its employees, and business. I understand that my declaration will be used in support of the plaintiffs' motion for a preliminary injunction to delay the implementation of the rules that the New York City Department of Sanitation ("DSNY") recently adopted ("E-waste Rules").

4. MDEA is a manufacturer of high-end televisions and other consumer and professional products. In comparison to other television manufacturers, however, MDEA is relatively small, with only about 450 employees in the United States. MDEA is not a large corporation with unlimited resources to fund the City's recycling programs.

5. MDEA is a member of several trade organizations, including both the Consumer Electronics Association and the Information Technology Industry Council.

6. We create the final design of our televisions in California and manufacture our televisions in Mexico. Our products are sold through our sales organization to various stores and distributors, not directly to the general public.

7. MDEA is a subsidiary of Mitsubishi Electric Corporation of Japan, but is a separate and distinct business entity. MDEA's employees are mostly based in North America. MDEA maintains only a small sales staff in the State of New York area and has no physical presence in the City at all.

8. MDEA generally works with the Electronic Manufacturers Recycling Management Co. ("MRM") on our recycling programs. Programs in other states, however, do not require, as the City's new E-waste program does, the retrieval of used electronics products directly from residents' homes. As such, while still burdensome,

these other state programs are realistic and achievable, and far less costly, for electronics manufacturers. Our consistent experience has been that customers who have enjoyed their products for a number of years (typically 7 years or more) have had no problems taking their products to designated drop-off locations where we, in most states, then coordinate, through MRM, the recycling of these products.

9. MDEA is committed to supporting a realistic and sustainable recycling program as well as other aspects of environmental protection. One hundred percent of our 2009 TV product line is in conformity with the voluntary U.S. EPA Energy Star Tier 1 standards, and many of these TVs also comply with Tier 2 standards not yet in effect. Our products also comply with mandatory requirements such as the "CPSIA of 2008" law for limiting lead in consumer products, the new California Air Resources Board standards for formaldehyde emissions, and the California Energy Commission power limits.

10. We have been working closely with MRM over several years to implement and support a nation-wide recycling program. Also, we were one of the first companies to implement a Restriction of Hazardous Substances program which exceeds the standards mandated by the State of California. MDEA goes to great lengths to avoid and minimize the use of the precise hazardous materials the City is concerned with such as lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls and polybrominated diphenyl ether. Despite its claimed purpose to minimize environmental impacts associated with these materials, New York City's sweeping program makes no distinction between companies in terms of their efforts to implement such initiatives.

11. MDEA strongly objects to the City's requirements for filing E-waste Plans with DSNY. MDEA, along with MRM, will be required to undertake an expansive due diligence effort just to lay the groundwork to complete the plan. Formulating, drafting and finalizing such a broad-sweeping plan will take a significant amount of time and resources to complete and places burdens on MDEA that it has never had to deal with before under any other E-waste program. This work is made more difficult due to the fact that the final E-waste Rules deviate so significantly from the E-waste Law. This just adds to the confusion and problems facing manufacturers trying to prepare plans, which would be due within 30 days of a decision by the court, if it denies plaintiffs' motion for a preliminary injunction.

12. Although no one could have anticipated the cost of recycling when designing and manufacturing televisions over the past 30 years, many of those products are now being discarded. To address this issue, we are willing to support a workable and reasonable program to recover and recycle these products; however, New York City's program is not rational and places excessive burdens and costs solely on manufacturers.

13. The requirements of the City's E-waste Rules will be significantly more demanding than those of other jurisdictions with which we have worked, and the cost of the City's program will be prohibitive. MDEA works with MRM in many states as we do not have the resources or funds to have a program of our own. Yet, the City's E-waste program will effectively require us to set up a program in NYC, possibly through one or more third party providers, to comply with the residential collection requirement for products greater than 15 pounds in weight, a move that is cost prohibitive and extremely difficult to implement. Daniel M. Butturini, an expert in solid waste and logistics, has

calculated that it will cost approximately \$121, and possibly more, to retrieve each television from a resident. Most of MDEA's products are older CRT based products weighing in excess of 100 pounds. Mr. Butturini also calculated that of the total residential waste, 47.9 million pounds are covered electronic waste weighing more than 15 pounds under the New York City E-Waste Program. He also estimated the cost of direct collection of this electronic waste to be \$173,400,000. Dividing the two translates to approximately \$3.62 per pound. Using these numbers, and assuming a television weight of 100 pounds, the pickup cost would be about \$362. Quite frankly, we simply do not have the funds to finance such a program based on either estimate. This program could cause us to consider leaving the TV business. At the very least, these E-waste Rules could force us to stop selling televisions and other electronic goods in NYC in an attempt to avoid the requirements of the law. Even this drastic step would not relieve us of the burdens of the City's E-Waste Program since (1) the law applies retroactively, and (2) MDEA products that we sell in other jurisdictions could eventually be generated as waste in the City.

14 If MDEA has to stop selling its products in the New York City area and/or fails to adequately comply with the City's E-waste Law with respect to its detailed plan submission requirements, annual reporting, or meeting per-pound annual performance collection standards that the City has established, MDEA will lose market share and/or be exposed to excessive and arbitrary penalties, and will lose business reputation and good will that MDEA has carefully and prudently built up over many years.

15. The E-waste Rules, and in particular the home direct collection requirement, are not even rationally calculated to achieve the recycling objective. DSNY already has

trucks on the streets of NYC to pick up trash, and they have a program in place to pick up other bulk items such as appliances. Logistically and financially, it does not make sense to place more trucks on the streets of NYC.

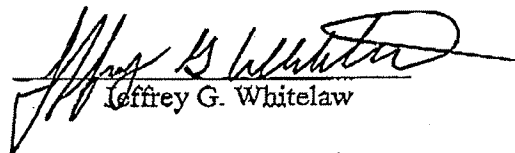
16. In addition to the pickup requirements, the law's performance standards, which will require manufacturers to collect specific percentages of products each year or face a \$50,000 penalty for each percentage the manufacturer is below the mandated standard, is grossly unfair. These standards are based on the unfounded notion that a manufacturer can "force" City residents to recycle their products and do so with that manufacturer. It is not fair to impose exorbitant penalties on a manufacturer for something it cannot control.

17. Again, MDEA is committed to working with NYC to develop an achievable, reasonable, cost effective and sustainable recycling program. However, the industry's legitimate concerns have been ignored in New York City and an economically crippling program has been forced upon manufacturers nationwide.

18. MDEA respectfully asks the Court to enjoin the City's implementation of its E-waste program.

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

Executed this 5 day of August 2009 at Irvine, CA.

  
Jeffrey G. Whitelaw