

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO.: 05-cv-00907-ODS

BABY-TENDA CORPORATION,

Defendant.

AMENDED COMPLAINT FOR INJUNCTION

Plaintiff, the United States of America, by its undersigned attorneys, for its complaint alleges that:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337, and 1345, and 18 U.S.C. §§ 709 and 1345.
2. Venue in the Western District of Missouri is proper under 28 U.S.C. § 1391(b) and (c).

NATURE OF THE CLAIM

3. Plaintiff brings this action to prevent continued misappropriation of government agency names and logos.

DEFENDANT

4. Defendant Baby-Tenda Corporation (“Baby-Tenda”) is a corporation organized and existing under the laws of Missouri, located at 123 South Belmont Blvd., Kansas City,

Missouri, 64123. Defendant manufactures children's products, such as cribs and combination high chair/tables, which are shipped and sold through interstate commerce.

5. Baby-Tenda's products are marketed, at least in part, through a nationwide network of distributors who sell the furniture to consumers. Baby-Tenda distributors hold "safety seminars" around the country to which they invite new parents and couples expecting children. These seminars are actually sales presentations for Baby-Tenda products.

6. Many invitations to the "safety" shows do not mention Baby-Tenda at all. Instead, the invitations state that the shows are sponsored by fictitious groups such as the "Advisory Council on Child Safety" or the "Child Safety Group" of a particular state, such as the "Virginia Child Safety Group."

MISAPPROPRIATION OF GOVERNMENT AGENCY NAMES AND LOGOS

7. At least some Baby-Tenda distributors advertise their seminars using invitations and other materials that display the names or logos of the U.S. Consumer Product Safety Commission ("CPSC") and/or the National Highway Traffic Safety Administration ("NHTSA") in such a way as to falsely imply that these government agencies sponsor or co-sponsor the shows. At least some Baby-Tenda distributors also claim during the presentations that Baby-Tenda products are endorsed, approved, or certified by the CPSC.

8. Contrary to these assertions by Baby-Tenda distributors, the CPSC and NHTSA are in no way connected with the seminars. These government agencies have never sponsored any Baby-Tenda seminar or sales presentation, nor have they ever endorsed, approved, or certified any Baby-Tenda product.

9. The false suggestion of CPSC or NHTSA sponsorship or product approval and the misappropriation of government agency names and logos by Baby-Tenda distributors are

fraudulent and deceptive sales practices designed to boost attendance and sales at Baby-Tenda seminars through false pretenses.

10. Baby-Tenda has the authority to terminate a distributorship if a distributor disseminates advertising or promotional material that falsely claims government sponsorship of Baby-Tenda seminars, unless the company approves in advance the use of such false claims.

11. The government previously contacted Baby-Tenda regarding the misappropriation of government agency names and logos by its distributors. In a letter dated December 8, 1995, the Department of Justice wrote David Jungerman, the President of Baby-Tenda, regarding a distributor who employed some of the deceptive practices described above. The Department requested a written response describing what corrective action Baby-Tenda planned to take. The Baby-Tenda distributor responded with a letter stating that he would remove the CPSC logo from his sales materials.

12. Despite the government's prior notice to Baby-Tenda regarding this type of misappropriation by its distributors, Baby-Tenda distributors in multiple states continued to misappropriate agency names and logos in the manner described above. For example:

a) Boyd Hedleston, a Baby-Tenda distributor in Virginia, used seminar invitations claiming sponsorship by the CPSC and NHTSA from at least July 2001 to at least October 2004. These invitations falsely stated that the seminars were "sponsored by Babe Tenda Company in conjunction with the Consumer Product Safety Commission and the National Highway Traffic Safety Administration." Hedleston included these claims of sponsorship to increase the number of attendees to his shows. He sent the invitations to thousands of consumers twice a month.

b) Tammy Collins, a consumer in Rhode Island, received an invitation by mail to a 2005 seminar that included the CPSC logo. The Baby-Tenda distributor who presented the seminar collected the invitations from attendees at the door. After the seminar, Ms. Collins and her husband purchased Baby-Tenda furniture, in part because they were led to believe that Baby-Tenda products were endorsed by the CPSC.

c) Dixie Piscitello, a consumer in Wisconsin, attended a Baby-Tenda seminar in 2001 or 2002 during which Defendant's distributor and the promotional materials he used claimed that Baby-Tenda products were approved or certified by the CPSC. After the seminar, Ms. Piscitello and her husband purchased Baby-Tenda furniture, in part because they were led to believe that Baby-Tenda products were endorsed by the CPSC.

13. The actions of Boyd Hedleston and the experiences related by the consumers listed above show that, despite knowledge of past distributor misappropriation of government agency names and logos, Defendant failed to adequately review distributor promotional materials. Defendant's actions or inactions also allowed distributors to make false claims of government sponsorship to consumers.

14. Defendant states that it cannot use its authority to stop distributors from making false government sponsorship claims because firing a distributor would decrease Defendant's revenue.

INJUNCTION

15. Based on Defendant's past and present course of conduct, there is a substantial likelihood that, unless restrained by order of this Court, Defendant's distributors will continue to misappropriate government agency names and logos, and that Defendant will do little or nothing to stop it.

16. The misappropriation of government agency names or logos, as described above, violates 18 U.S.C. § 709, which states:

[w]hoever . . . falsely advertises or otherwise represents by any device whatsoever that his or its business, product, or service has been in any way endorsed, authorized, or approved by . . . the Government of the United States, or any agency thereof . . .

is subject to a fine or imprisonment. 18 U.S.C. § 709 (4th paragraph) (emphasis added). That same section also authorizes injunctive relief to stop such violations “upon complaint by any duly authorized representative of any department or agency of the United States.” 18 U.S.C. § 709 (emphasis added).

17. The misappropriation of government agency names or logos, as described above, constitutes mail fraud in violation of 18 U.S.C. § 1341. For example:

a) As part of a scheme devised to defraud consumers, Boyd Hedleston, Defendant’s distributor, caused to be sent through the mails from 2001 to 2004 thousands of invitations falsely stating that his seminars were “sponsored by Babe Tenda Company in conjunction with the Consumer Product Safety Commission and the National Highway Traffic Safety Administration.” Hedleston knew that this claim was false. One set of such invitations, mailed in or about September 2004, advertised a seminar held by Hedleston on October 2 and 3, 2004, in Raleigh, North Carolina. Consumers attending this show and other Hedleston shows would have reasonably believed, based on the explicit language in the invitations, that government agencies sponsored, approved, or endorsed Baby-Tenda seminars. Consumers were more likely to attend the sales presentations as a result and, therefore, to buy Baby-Tenda products they might not otherwise have purchased.

b) As part of a scheme devised to defraud consumers, Keith Dahms, Defendant's distributor, caused to be sent through the mails in 2001 or 2002 invitations to a "Getting Ready for Baby" show that claimed the seminar was sponsored by the "Advisory Counsel on Child Safety - Baby Tenda Wisconsin." Dahms sent one such invitation, for a seminar in Appleton, Wisconsin, to Dixie Piscitello. Ms. Piscitello and her husband attended the seminar, during which, in furtherance of the scheme to defraud, Dahms knowingly and falsely claimed Baby-Tenda products were approved or certified by the CPSC. After the seminar, Ms. Piscitello attempted to locate other brands of products similarly "approved" by the CPSC, but found none. On that basis, she decided to purchase Baby-Tenda furniture for hundreds of dollars more than she would have otherwise paid for similar furniture that was not "approved."

c) As part of a scheme devised to defraud consumers, Michael Angelo, Defendant's distributor, caused to be sent through the mails in or about July 2005 invitations to a "Getting Ready for Baby" show that included the logo of the CPSC in such a manner as to indicate government sponsorship. Angelo sent one such invitation to Tammy Collins. Ms. Collins and her husband attended the seminar in Warwick, Rhode Island, on July 30, 2005. After the seminar, Ms. Collins purchased a Baby-Tenda feeding table for hundreds of dollars more than she would have spent for a competing product, in part because she was led to believe that Baby-Tenda furniture was endorsed by the CPSC.

This Court is authorized to enjoin such violations under 18 U.S.C. § 1345.

18. The misappropriation of government agency seals on sales materials, as described above, constitutes a violation of 18 U.S.C. § 506, which prohibits the knowing use of any falsely made seal "of any department or agency of the United States, or any facsimile thereof." 18

U.S.C. § 506; see also United States v. Spencer, 18 Fed. Appx. 734, 735 (10th Cir. 2001) (reproduction of Navy seal on letter).

19. This Court may also enjoin the misappropriation of government agency names and logos, as described above, through the exercise of its own equitable powers. See United States v. U.S.I.A. Homes, Inc., 409 F. Supp. 483, 485-86 (E.D.N.Y. 1976) (enjoining misappropriation of government agency name). The use of government agency names or logos to create a false suggestion of government association with Baby-Tenda products or seminars is fraudulent by its very nature, serves no legitimate business function, and is calculated to mislead the public.

PRAYER

WHEREFORE, plaintiff respectfully requests that this Court:

20. Permanently restrain and enjoin Defendant, and each and all of its distributors, officers, agents, employees, attorneys, successors and assigns, and those persons in active concert or participation with them, from misappropriating government agency names and logos and from falsely claiming government endorsement or certification of Defendant's products;

21. Require Defendant to obtain written assurance from its current and future distributors that they will not misappropriate government agency names and logos or falsely claim government endorsement or certification of Defendant's products;

22. Require Defendant to periodically obtain copies of the invitations and other promotional materials used by its distributors, and to take appropriate action should it discover misappropriation of government agency names and logos; and

23. Grant Plaintiff judgment for its costs and such other and further relief as it deems necessary and proper.

DATED: June 8, 2007.

Respectfully submitted,

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