



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

DMS Notice
QC – 08 – 9

November 24, 2008

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Tape-It, Inc Settlement

We have attached a stipulated final judgment and permanent injunction involving recent litigation against Tape-It Inc. for violations of the Fair Packaging and Labeling Act. We are very pleased with the fine work done by Fresno County Deputy District Attorney Alan Yengoyen and others representing the District Attorney in negotiating this settlement.

Fresno County should be sure to report these penalties in the County Monthly Report (CMR).

Sincerely,

A handwritten signature in blue ink that reads "Edmund E. Williams".

Edmund E. Williams

Cc QC Special Investigators
Kevin Masuhara, Director, County/State Liaison

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

TAPE-IT, INC., a New York corporation,

Defendant.

) CASE NO.

) **STIPULATED FINAL**
) **JUDGMENT AND PERMANENT**
) **INJUNCTION**

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, appearing through its attorney, Elizabeth A. Egan, Fresno County District Attorney, through Alan Yengoyan, Deputy District Attorney, and Defendant TAPE-IT, INC., appearing through its California attorney Ann G. Grimaldi of the law firm McKenna Long & Aldridge, LLP, and

All parties having stipulated and consented to this Stipulated Final Judgment without the taking of any evidence regarding any issue of law or fact; and

The Court having considered the pleadings, the stipulation of the parties, and good cause appearing:
IT IS HEREBY ORDERED THAT:

JURISDICTION

1. This Court has jurisdiction of the parties to this Stipulated Final Judgment and Permanent Injunction and of the subject matter in this action, and that the injunctive provisions in this Judgment are issued pursuant to Business and Professions Code § 17203.

APPLICABILITY

2. The provisions of this Stipulated Final Judgment and Permanent Injunction shall apply to the Defendant TAPE-IT, INC. and to its successors, subsidiaries, divisions, officers, directors, agents, employees, representatives, and all other persons and entities who act in concert with said Defendant who have actual or constructive notice of this Stipulated Final Judgment and Permanent Injunction, collectively referred herein as TAPE-IT

INJUNCTION

3. Pursuant to Business and Professions Code § 17203, as of the 30th day from the effective date of this stipulated judgment, TAPE-IT is hereby permanently enjoined and restrained by this Stipulated Final Judgment and Permanent Injunction in the State of California from directly or indirectly doing any of the following:

A) Violating California Business and Professions Code §§ 12602, 12605, 12611, and 17500 by distributing or causing to be distributed in commerce various types and sizes of its adhesive and packaging tape products using qualifying words or phrases that violate the Business and Professions Code § 12605, including but not limited to "For Use" or "Use", upon individual product labels, shipping box labels, and retail shelf display boxes appearing in conjunction with a separate statement of the net quantity of contents required by Business and Professions Code § 12603(b).

B) Notwithstanding any other terms and provisions of this stipulated judgment, TAPE-IT shall not be required to take any action with respect to retailers who have TAPE-IT adhesive tape and packaging tape products in their possession as of the effective date of this stipulated judgment, which retailers may sell through their inventory, however, TAPE-IT, INC. shall advise in writing within 30 days of the effective date of this stipulated judgment all of its known retail sellers that TAPE-IT adhesive tapes and packaging tapes should not be advertised or represented by such retail sellers to their customers of any "use" or "for use" product statement and upon shelf display boxes as set forth in Section 3.A of this stipulated judgment, and

C) Within 30 days of the effective date of this stipulated judgment, TAPE-IT shall remove from its company internet website any and all product quantity references and descriptions that are in

violation of Business and Professions Code § 12605(b) as set forth in Section 3.A of this stipulated judgment.

D) Within 30 days of the effective date of this stipulated judgment, TAPE-IT shall advise in writing all known wholesale and retail sellers that advertise its adhesive and packaging tapes that they should remove from their respective catalogs and internet websites any "Use" or "For Use" product description statements as set forth in Section 3.A of this stipulated judgment.

CIVIL PENALTIES AND COSTS

4. TAPE-IT shall pay a civil penalty pursuant to Business and Professions Code §§ 17206 and 17536 to the Plaintiff in the sum of NINETY-FOUR THOUSAND DOLLARS (\$94,000) along with interest accruing thereon at the rate of 5% per annum in nine (9) monthly payments of not less than \$10,500.00 on the unpaid balance. Payments shall be made payable to the "Fresno County District Attorney" commencing with the first payment due when the Defendant signs the Stipulation for Entry of Final Judgment and on the first day of December 2008 and on the first day of every month thereafter. Payments shall be mailed or delivered to the Fresno County District Attorney's Office, Consumer Protection Division, 1250 Van Ness Avenue, Second Floor, Fresno, California 93721. If any payment has not been paid in full and received by the Fresno County District Attorney by the 5th day of the month, the entire remaining balance with interest on \$94,000 shall be deemed due and owing.

5. Recognizing the infeasibility of identifying customers that purchased the TAPE-IT products that are the subject of the Complaint, and the impracticality of providing direct restitution to said consumers, and the disproportionate costs of making restitution to individual consumers, which would far exceed the benefit consumers would gain, pursuant to Business and Professions Code §§ 17203 and 17535, TAPE-IT shall pay ELEVEN THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$11,750) as and for cy pres restitution to the California Agriculture Commissioner and Sealer's Association Quantity Control Trust Fund established pursuant to the Judgment in the case of People of the State of California v. Safeway, Inc., et al, Sonoma County Superior Court case number 233008, filed July 7, 2003 by delivery to the Fresno County District Attorney on or before November 1, 2008.

6. Each party shall bear their own costs of suit incurred in this case, except that TAPE-IT, INC. shall pay filing fees in the amount of SIX HUNDRED EIGHTY DOLLARS (\$680.00) payable to the "Fresno County Superior Court" upon execution by the parties of the Stipulation for Entry of Final Judgment.

NO ADMISSION OF LIABILITY

8. This Judgment is not to be construed as an admission of liability by any party. This Judgment was entered into as a result of a stipulation of the parties, without admissions of fact or law, and without any admission by the Defendant or by any related party of liability, wrongdoing, illegality, or of any fact alleged in the Complaint.

RELEASE

9. Plaintiff, The People of the State of California, agrees that this Judgment shall have a res judicata effect and further agrees to release and discharge Defendant TAPE-IT and its parents, subsidiaries, affiliates, officers, employees, agents, representatives, successors and assigns, and all persons acting in concert or participation with defendant who have actual knowledge of this Judgment, from any claims, suits, demands, or complaints, pertaining to, or arising from, the alleged unlawful acts and practices described in the Complaint filed contemporaneously with this Stipulated Final Judgment, which acts occurred prior to the date of entry of this Judgment.

FULL AND FINAL ADJUDICATION

10. This Judgment represents a complete and final settlement of all claims that have been brought by Plaintiff against Defendant, and is deemed to a settlement for the entire State of California for all violations alleged in the Complaint. No circumstance or development will constitute grounds for seeking to void or overturn this Agreement, except for non-performance of the obligations contained herein or except where otherwise explicitly noted herein. This Judgment has been reviewed by the Court and the Court finds that this agreement has been entered into in good faith.

RETAINED JURISDICTION

11. Jurisdiction is retained for the purpose of enabling any party to this Judgment to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the carrying out of this Judgment, for the modification or termination of any of the injunctive provisions herein, for the enforcement of compliance herewith and for punishment of violations hereof.

12. This Judgment shall take effect immediately upon entry thereof.

DATED: _____ By: _____
JUDGE OF THE SUPERIOR COURT