

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, ) CIVIL NO. \_\_\_\_\_  
 )  
 v. )  
 )  
 NICHOLAS BORRELLI, )  
 )  
 Defendant. )

**COMPLAINT FOR INJUNCTION**

**NATURE OF THE CLAIM**

1. Plaintiff brings this action to obtain permanent injunctive relief for Defendant's violation of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. § 1261 *et seq.*

**JURISDICTION AND VENUE**

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

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

**DEFENDANT**

4. Defendant Nicholas Borrelli is a resident of Munhall, Pennsylvania. At all times material to the Complaint, Nicholas Borrelli received and stored banned hazardous substances at his residence in Munhall, Pennsylvania.

**THE FEDERAL HAZARDOUS SUBSTANCES ACT**

5. 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.*

6. The CPSC is authorized by the FHSA, 15 U.S.C. § 1261(q)(1)(B), to promulgate regulations declaring a product a banned hazardous substance.

7. The CPSC has determined by regulations at 16 C.F.R. §§ 1500.17(a)(3) and (a)(8) that certain fireworks components are “banned hazardous substances” as defined in 15 U.S.C. § 1261(q)(1)(B).

8. The CPSC regulations specify that “components” that are “intended to produce” banned fireworks are also banned hazardous substances. 16 C.F.R. §§ 1500.17(a)(3) and (a)(8).

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

**THE DEFENDANT’S VIOLATION OF THE FHSA**

10. On or around September 7, 2000, Nicholas Borrelli, in Munhall, Pennsylvania, received aluminum powder from Iowa Pyro in Stanwood, Iowa.

11. On or around March 25, 2002, Nicholas Borrelli, in Munhall, Pennsylvania, received aluminum powder from a supplier in Charleston, West Virginia.

12. On or around August 15, 2002, Nicholas Borrelli, in Munhall, Pennsylvania, received tubes, caps and plugs from Iowa Pyro in Stanwood, Iowa.

13. On or around May 29, 2007, Nicholas Borrelli, in Munhall, Pennsylvania, received lead antimony from United Nuclear in Edgewood, New Mexico.

14. In or around December, 2007, Nicholas Borrelli, in Munhall, Pennsylvania, received aluminum powder from a supplier in Ralston, Nebraska.

15. On or around March 18, 2008, Nicholas Borrelli, in Munhall, Pennsylvania, received fuse and plugs from CannonFuse.com in Milltown, Montana.

16. On or around March 21, 2008, Nicholas Borrelli, in Munhall, Pennsylvania, received end caps from Firefox Enterprises in Pocatello, Idaho.

17. All of the components identified in paragraphs 10 through 16 are commonly used to make illegal fireworks devices.

18. On March 28, 2008, the Allegheny County Police Bomb Squad discovered 3,221 illegal fireworks devices at Nicholas Borrelli's residence. The Bomb Squad also discovered end caps, glue, tubes, and many pounds of precursor chemicals used to make illegal fireworks devices.

19. Since at least September, 2000, the Defendant has violated 15 U.S.C. § 1263(a) by causing the introduction and delivery for introduction into interstate commerce components intended to produce fireworks that are banned hazardous substances.

20. Based on Defendant's course of conduct, there is a substantial likelihood that, unless restrained by order of this Court, Defendant will continue to cause the introduction and delivery for introduction into interstate commerce, fireworks components that are banned hazardous substances in violation of 15 U.S.C. § 1263(a).

**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) Enter a Permanent Injunction that restrains and enjoins Defendant, and those persons in active concert or participation with him, from:

(a) participating in any transaction that involves buying, selling, receiving, distributing or giving away fireworks devices, or components used to manufacture fireworks devices, including but not limited to, fuels, oxidizers, tubes, fuse and end caps;

(b) manufacturing any fireworks devices;

(c) storing fireworks devices, or components used to manufacture fireworks devices, including but not limited to, fuels, oxidizers, tubes, fuse and end caps; and

(d) violating 15 U.S.C. § 1263(a) by causing the introduction or delivery for introduction in interstate commerce of banned hazardous substances.

(2) Require the Defendant, within ten (10) calendar days of the entry of this Court's Order, to destroy, at his own cost, the inventory of any and all fireworks devices, or components used to manufacture fireworks devices, including but not limited to, fuels, oxidizers, tubes, fuse and end caps, currently in his control and possession.

(3) Grant Plaintiff judgment for such other and further equitable relief that the Court deems just and proper.

Dated this 15th day of July, 2010.

Respectfully submitted,

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UNITED STATES DISTRICT COURT  
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 NICHOLAS BORRELLI, )  
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 Defendant. )  
 \_\_\_\_\_ )

CIVIL NO. 10-929

**JUDGE McVERRY**

**CONSENT DECREE OF PERMANENT INJUNCTION**

The United States of America, Plaintiff, having filed a Complaint for Injunction against Defendant Nicholas Borrelli, and Defendant having waived service of process, appeared, and consented to the entry of this Decree in settlement of the injunctive action, without admitting the allegations in Plaintiff's complaint, and the United States of America having consented to this Decree in settlement of the injunctive action:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

I. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331, 1337, and 1345 and 15 U.S.C § 1267(a) and has personal jurisdiction over Defendant. Venue in this district is proper under 28 U.S.C. §§ 1391(b) and (c).

II. The Complaint for Injunction states a claim for relief against Defendant under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. § 1261 et seq., and the regulations issued thereunder.

III. For purposes of this Decree, the following definitions shall apply:

A. "Oxidizer" means ammonium nitrate, potassium chlorate, sodium chlorate, potassium perchlorate, sodium perchlorate, potassium nitrate, sodium nitrate, barium nitrate, strontium nitrate, or potassium permanganate.

B. "Fuel" means aluminum and aluminum alloys, magnesium, magnesium/aluminum alloy (magnalium), antimony sulfide, antimony trisulfide, potassium benzoate, sodium benzoate, sodium salicylate, sulfur, titanium, zinc, zirconium, or zirconium hydride.

C. "Defendant" means Nicholas Borrelli, and those persons in active concert or participation with him.

D. "Banned hazardous substances" have the meaning set forth at 15 U.S.C. § 1261(q)(1), and include "[f]ireworks devices intended to produce audible effects (including but not limited to cherry bombs, M-80 salutes, silver salutes, and other large firecrackers, aerial bombs, and other fireworks designed to produce audible effects, and including kits and components intended to produce such fireworks) if the audible effect is produced by a charge of more than 2 grains of pyrotechnic composition. . . ." 16 C.F.R. § 1500.17(a)(3). They also include "[f]irecrackers designed to produce audible effects, if the audible effect is produced by a charge of more than 50 milligrams (.772 grains) of pyrotechnic composition . . . including kits and components intended to produce such fireworks . . ." 16 C.F.R. § 1500.17(a)(8).

IV. Defendant is hereby permanently restrained and enjoined from:

(a) participating in any transaction that involves buying, selling, receiving, distributing or giving away fireworks devices, or components used to manufacture fireworks devices, including but not limited to, fuels, oxidizers, tubes, fuse and end caps;

(b) manufacturing any fireworks devices; and

(c) storing fireworks devices, or components used to manufacture fireworks devices, including but not limited to, fuels, oxidizers, tubes, fuse and end caps.

V. Defendant is hereby further permanently restrained and enjoined from violating 15 U.S.C. § 1263(a) by causing the introduction or delivery for introduction in interstate commerce of banned hazardous substances.

VI. Within ten (10) calendar days of the entry of this Decree, Defendant shall destroy, at his own cost, the inventory of any and all fireworks devices, or components used to manufacture fireworks devices, including but not limited to, fuels, oxidizers, tubes, fuse and end caps, currently in his control and possession. Defendant shall comply with all laws relating to the proper and safe destruction of such fireworks devices and components. Within ten (10) calendar days of destroying all such fireworks devices, or components used to manufacture fireworks devices, including but not limited to, fuels, oxidizers, tubes, fuse and end caps, Defendant shall submit to the CPSC a declaration, signed under penalty of perjury, that sets forth precisely what fireworks devices, or components used to manufacture fireworks devices, including but not limited to, fuels, oxidizers, tubes, fuse and end caps, were destroyed.

VII. To ensure continuing compliance with the terms of this Decree, investigators with the CPSC shall be authorized to make inspections, at their discretion and without prior notice, of Defendant's residence or any other location under his control, and to take samples, copies of documents, and photographs. Such inspection authority granted by this Decree is apart from and in addition to the authority to make inspections under 15 U.S.C. §§ 1270 and 1271. Such inspections shall be authorized upon presentation of a copy of this Decree and government credentials. During any such inspections, Defendant shall cooperate fully with the CPSC investigators

by, among other things, promptly providing any investigator with all requested documents and immediate access to any of Defendant's residence or any other location under his control.

VIII. Within ten (10) calendar days of entry of this Decree, Defendant shall provide CPSC with an affidavit acknowledging receipt of the signed Order and Defendant's compliance with this Decree.

IX. If Defendant violates this Decree and is found in civil or criminal contempt thereof, Defendant shall, in addition to other remedies, reimburse Plaintiff for its attorney fees (including overhead), investigational expenses, and court costs relating to any contempt proceedings.

X. All notifications, correspondence, and communications to the CPSC required by this Decree shall be addressed to: (a) the Director of Compliance and Field Operations, United States Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814, or (b) to such other addresses or facsimile numbers as CPSC may later provide in writing to Defendant.

XI. This Court retains jurisdiction of this action for the purposes of enforcing or modifying this Decree and for the purpose of granting such additional relief as hereafter may be necessary or appropriate.

SO ORDERED:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

We hereby consent to entry of the foregoing Decree.

FOR THE PLAINTIFF:

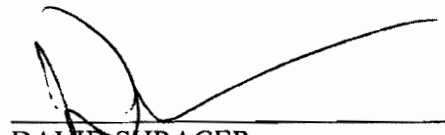
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Dated: 7/14/10