

**CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS**

DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

RAINBOW USA INC.

Respondent.

CONSENT ORDER

Violation No. GL 2533864

RAINBOW USA, INC. ("Respondent") consents to this Consent Order ("CO" or "Agreement") to settle the above captioned violations with the New York City Department of Consumer Affairs ("DCA" or "the Department") and agrees as follows:

Definitions

- 1) For the purposes of this Agreement and only as relates to this Agreement, the following definitions shall apply:
 - a. "Advertisement" shall mean all labels, packaging, promotional materials, statements, visual descriptions, in store signage, or other representations of any kind disseminated in print, orally, or electronically by or on behalf of Respondent to New York City consumers including, but not limited to, mailings, postcards, flyers, signs, billboards, banners, circulars, newspaper print advertisements, circulars, television advertisements, internet advertisements and radio advertisements.
 - b. "Clear and conspicuous" and "clearly and conspicuously" mean that the statement, representation, or term is so presented as to be easily readable, readily apparent, and understood by the audience to whom it is addressed. Factors to be considered for this purpose include, but are not limited to, clarity of language, relative type size, font, color contrast, location within an advertisement or other documents, and proximity to the statement or representation to which it applies.

Injunctive Relief

- 2) Respondent shall not sell or offer for sale fake guns in New York City that do not comply with the requirements of §10-131(g) (“the fake gun law”) of the Administrative Code of the City of New York (“the Code”).
- 3) Respondent agrees that it shall not advertise nor promote fake guns for sale in its New York City stores that do not comply with the requirements of §10-131(g) of the Code. If Respondent advertises or promotes such products in media intended for circulation in New York City and the Tri-State area, Respondent shall include the following statement, “It is illegal to sell, offer for sale, or possess this product in NYC.” This statement shall be easily legible and conspicuous.
- 4) If Respondent advertises fake guns on its website that do not comply with §10-131(g) of the Code, Respondent shall insert the phrase "Not available in New York City" in a clear and conspicuous manner, next to the fake gun.
- 5) Within fifteen (15) days of the execution of this Agreement, Respondent shall send a letter, attached as Addendum A, to the distributor of the below fake gun explaining that this item is illegal in New York City as it does not comply with §10-131(g) of the Code.

a. JARU Battle Force Dart Shot SKU #0016221319

- 6) Within fifteen (15) days of the execution of this Agreement, Respondent shall provide an affidavit to the Department describing its compliance with paragraph 5, to which it shall attach a copy of the letter.

Fines

- 7) Respondent shall pay a total fine of \$60,000.00 to settle the above- captioned violation.

Policies and Training

- 8) Respondent shall develop and implement policies and procedures to ensure that fake guns that do not comply with §10-131(g) of the Code are not sold or offered for sale in NYC. The policies and procedures shall include provisions for:
 - a. providing all current employees and future employee within thirty (30) days of the hiring of that employee, who may have any responsibility related to advertising, marketing, ordering, shipping, displaying stocking, or, displaying, stocking, or selling merchandise relevant to this CO, in New York City, whether or not the employee works in New York City,

with a summary of the fake gun law and of the legal consequences associated with violating such provisions;

b. such distribution shall continue for a three (3) year period.

9) Within fifteen (15) days of the execution of this Agreement, Respondent shall:

- a. promulgate the policies and procedures required by paragraph 8 of this agreement;
- b. distribute a copy of such policies and procedures to all of employees in the New York City and to its employees outside of New York City with responsibilities relevant to this CO (i.e. employees responsible for advertising, marketing, ordering merchandise, and shipping merchandise); and
- c. appoint a Compliance Officer responsible for ensuring adherence to the terms of this CO and to the policies, protocols and procedures implemented in conformance with this CO; and
- d. provide proof of compliance with this paragraph to the Department.
- e. The Compliance Officer described in paragraph 9^e shall serve for a minimum of three (3) years.

Compliance

10) The Compliance Officer, identified in paragraph 9, shall also perform the following functions:

- a. reviewing each form of Respondent's advertising that contains advertisements for fake guns in media intended for circulation in New York City, to ensure compliance with this Agreement and with all other applicable laws;
- b. performing random, unannounced inspections at Respondent's stores located throughout New York City to ensure compliance with the Agreement, including performing a minimum of four (4) inspections per week from the time period between October 1, 2013 and November 1,

2013 and at least one inspection in each of the Respondent's stores located in NYC for all other time periods;

- c. reviewing random samples of invoices of fake gun products for Respondent's NYC stores to ensure that Respondent has not purchased any fake guns that violate §10-131(g) of the Code;
- d. reviewing the new policies and procedures implemented by Respondent, as per paragraphs 8-9 above, to ensure the policies and procedures are being properly followed;\
- e. reporting to the Department's counsel all violations of this Agreement that he/she identifies within twenty-four (24) hours of discovery of the violation;
- f. all violations must be reported by letter sent to the following address:

NYC Department of Consumer Affairs
Legal Division
Broadway, 9th floor
New York, NY 10004

- g. submitting quarterly reports to the Department on his/her activities beginning on January 31, 2013 and concluding on December 31, 2013. The quarterly reports must include descriptions of every violation of the policies and procedures required by paragraph 8-9 of this agreement and the actions, including imposition of discipline, that the Respondent has implemented to correct the violation.

Consequences of Breach

- 11) Respondent agrees that upon proof of any future violation of §10-131(g) of the Code by Respondent, at any New York City location owned or operated by Respondent, the Department shall be entitled to the maximum fine allowed by law for each violation of §10-131(g) of the Code and not less than \$500.00 for each breach of the terms of this settlement Agreement, which constitutes a violation of Title 6 of the Rules of the City of New York ("RCNY") §6-42(c).
- 12) Respondent understands that after a total of three (3) violations of §10-131(g) of the Code within a two (2) year period, the Department may seal the premises where the violations occurred for a maximum of five (5) consecutive days.

Waiver of Appeals

COMPANY POLICY AND PROCEDURES ON SALE OF TOY GUNS

Rainbow USA, Inc., has adopted a policy not to sell toy or fake guns at any of our New York City locations.

Under New York City law, it is unlawful to sell or offer for sale any toy or imitation firearm unless the entire exterior surface of the toy or imitation firearm is colored white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, or made of transparent or translucent materials. Selling or offering to sell a toy or imitation firearm which does not comply with the law is a violation punishable by a monetary fine and/or imprisonment.

Although New York City allows toy guns to be sold if they are transparent, translucent, or made in the bright, neon-like colors described in the law, we have decided as a Company not to sell even legally-permissible toy guns in our stores in the five boroughs of New York City.

We do not presently sell or advertise toy guns on our eCommerce site or other media. Should we decide to do so in the future, we will provide a conspicuous statement that toy guns or toy firearms will not be sold to purchasers in New York City or for use in New York City unless they are in compliance with New York City law.

By signing below, you acknowledge that you understand the provisions of the New York City law on toy guns, and Rainbow's policy. If you are ever asked to engage in behavior which, in your view, would violate either that law or Company policy, please report it immediately to the Human Resources Department.

Name of Employee (print)

Job Title/Position

Signature of Employee

Date

Store Number (or Home Office)