



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

January 8, 2009

DMS Notice
QC – 09 – 2
Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: **RECKITT BENCKISER, INC., (Mucinex)**

Attached is a stipulated final judgment and permanent injunction involving recent litigation against Reckitt Benckiser, Inc. for violations of the Fair Packaging and Labeling Act (Business and Professions Code 12606). The settlement includes \$66,000 in cost reimbursements, and \$228,461.17 in penalties.

We are very pleased with the continued support and fine work of the Shasta, Sacramento, and Los Angeles County District Attorney's offices in negotiating this settlement.

Sacramento County should be sure to report these penalties in the County Monthly Report and all participating counties are reminded to report their cost recovery amounts on the appropriate line of the monthly report.

Sincerely,

Edmund E. Williams

Cc QC Special Investigators
Kevin Masuhara, Director, County/State Liaison
Los Angeles County District Attorney
Shasta County District Attorney
Sacramento County District Attorney

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14 Attorneys for Plaintiffs

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF SACRAMENTO

18 THE PEOPLE OF THE STATE OF CALIFORNIA,
19
20 Plaintiff,

21 v.

22 RECKITT BENCKISER, INC., a Delaware corporation,
23
24 Defendants.

CASE NO. *34-2008-00029643*

**FINAL JUDGMENT AND
PERMANENT INJUNCTION
PURSUANT TO
STIPULATION**

26 THE PEOPLE OF THE STATE OF CALIFORNIA (hereafter "People") having filed its
27 complaint and appearing through its attorneys JAN SCULLY, District Attorney for the County of
28

1 Sacramento, by Deputy District Attorney Ruth Young; GERALD C. BENITO, District Attorney
2 for the County of Shasta, by Deputy District Attorney Erin M. Dervin; and STEVE COOLEY,
3 District Attorney for the County of Los Angeles, by Head Deputy District Attorney Thomas A.
4 Papageorge and Deputy District Attorney Stuart C. Lytton; and defendant Reckitt Benckiser Inc., a
5 Delaware corporation, (hereafter sometimes "Reckitt") appearing through its attorneys Morrison &
6 Forrester LLP, by William L. Stern, Esq., having stipulated and consented to this Final Judgment
7 and Permanent Injunction Pursuant to Stipulation (hereafter "Judgment") prior to the taking of
8 proof, without trial or adjudication of any issues of law or fact herein, and without this Judgment
9 constituting evidence or an admission of liability or wrongdoing by Reckitt; and

10 This court having considered the pleadings and the Stipulation for Entry of Final Judgment,
11 and good cause appearing therefore;

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

13 **JURISDICTION**

14 1. This court has jurisdiction over the subject matter hereof and the parties hereto.

15 **FAIR, JUST, AND EQUITABLE SETTLEMENT**

16 2. Based upon the representation of the parties, the Court finds that this judgment
17 was entered into in good faith and is, in all respects, fair, just, and equitable to adequately protect
18 the public as it relates to Reckitt's conduct alleged in the Complaint herein.

19 **DISCLAIMER OF ADMISSIONS**

20 3. Nothing in this Judgment or any act performed by Reckitt, nor any document
21 executed pursuant to this Judgment, shall be construed as an admission of Reckitt of any fact,
22 liability, issue of law, conclusion of law or violation of any statutory or regulatory laws, nor shall
23 compliance with this Judgment constitute or be construed as an admission by Reckitt of any fact,
24 liability, issue of law, conclusion of law or violation of any statutory or regulatory laws.

25 **INJUNCTION**

26 4. Pursuant to Business and Professions Code sections 17203 and 17535, Reckitt
27 and their officers, directors, agents, employees, successors and assigns, and all persons who are
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1 acting in concert and participating with Reckitt with actual knowledge of the Judgment, are
2 hereby permanently enjoined and restrained from engaging in any of the following acts or
3 practices:

4 a. Manufacturing any over-the-counter cough and cold medications
5 currently manufactured and distributed by Reckitt under the "Mucinex" brand (hereafter,
6 "Medication"), as well as to any other future over-the-counter cough and cold medication brands
7 manufactured and distributed by Reckitt into California after the filing date of this Final
8 Judgment and Permanent Injunction (hereafter, "Future Medication") in any package or
9 container that violates Business and Professions Code section 12606(a).

10 b. Manufacturing any Medication or Future Medication in any package or
11 container that violates Business and Professions Code section 12606(b).

12 c. Manufacturing any Medication or Future Medication in any package or
13 container with sidewalls, false lids and/or false bottoms in violation of Business and Professions
14 Code section 17500.

15 d. Manufacturing any Medication or Future Medication in any package or
16 container with sidewalls, false lids and/or false bottoms in violation of Business and Professions
17 Code section 17200.

18 e. Representing directly or by implication that any Medication or Future
19 Medication offered for sale to the public is of greater quantity or volume than that which is
20 actually being sold.

21 f. Packaging, or causing to be packaged any Medication or Future
22 Medication for ultimate retail sale in a container that will accompany the product at retail sale
23 where the container has a false bottom, false sidewall, false lid, or covering such as to facilitate
24 the perpetration of deception or fraud.

25 The injunctive provisions of this Final Judgment and Permanent Injunction shall not
26 apply to any Future Medications acquired by Reckitt until two years from the date such Future
27

1 Medication is distributed in California, in order to afford Reckitt sufficient time to bring such
2 packaging into compliance with these terms.

3 **COMPLIANCE**

4 5. Reckitt shall advise the following persons of the specific injunctive provisions
5 of this Judgment: its current officers and directors, any new officers or directors who are
6 appointed or elected within one year of date of entry of Judgment, and for the three years
7 following the date of entry of Judgment the Director of Package Engineering for Reckitt as well
8 as that Director's direct subordinate(s) responsible for the packaging of Medication.

9 6. Reckitt shall deliver to plaintiff's counsel listed herein, within ninety (90) days
10 of the date of the entry of Judgment, a list of those people, corporations, businesses, companies,
11 and any other entity as reflected in paragraph 5.

12 7. Pursuant to the Stipulation for Entry of Final Judgment, Reckitt shall deliver to
13 the Court and plaintiff's counsel listed herein, a complete report detailing the expected date that
14 Reckitt will be in full compliance with this Judgment. Said report shall be delivered to the Court
15 and to the People within one hundred and eight days (180) from the date of entry of Judgment.
16 Full compliance with Final Judgment by Reckitt not to exceed two (2) years from the date of
17 entry of Final Judgment.

18 **MONETARY RELIEF**

19 8. Pursuant to Business and Professions Code sections 17207, 17536, 17503 and
20 17535, Reckitt shall pay forthwith to the People the amount of Two Hundred Twenty-Eight
21 Thousand Four Hundred Sixty-One Dollars and seventeen cents, (\$228,461.17) as civil penalties
22 and Sixty-Six Thousand Dollars (\$66,000.00) in costs of prosecution. Pursuant to Government
23 Code section 26506, the penalties and costs in this paragraph shall be divided equally and paid
24 by three certified checks payable to the District Attorney of Sacramento County, the District
25 Attorney of Shasta County, and the District Attorney of Los Angeles County, respectively.

26 9. Pursuant to Business and Professions Code section 12015.3, Reckitt shall also
27 pay forthwith Five thousand Five Hundred Thirty Eight Dollars and eighty-three cents
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1 (\$5538.83) as reimbursement of costs of investigation in three (3) separate checks made payable
2 as follows:

- 3 a. Sacramento Department of Weights & Measures: \$4,000.00
- 4 b. Shasta County Department of Weights & Measures: \$1,190.83
- 5 c. Los Angeles County Department of Weights & Measures: \$348.00

6 These checks shall be delivered to Deputy District Attorney Ruth Young, County of Sacramento,
7 at 906 G Street, Suite 700, Sacramento, CA 95814.

8 10. Except as otherwise expressly provided herein, each party shall bear its own
9 attorney's fees and costs.

10 **RETENTION OF JURISDICTION**

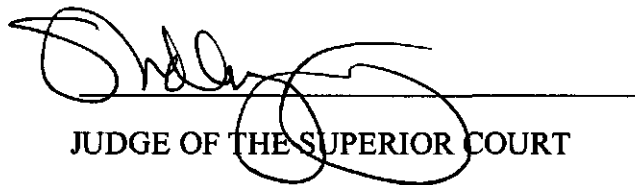
11 11. Jurisdiction is retained for the purpose of enabling any party to the Stipulated
12 Final Judgment to apply to the Court for such further orders and directions as may be necessary
13 and appropriate for the construction and carrying out of the Stipulated Final Judgment, for the
14 modification or dissolution of any injunctive provisions hereof, for enforcement of compliance
15 herewith, or for the punishment of violations hereof.

16 12. This Judgment has been reviewed by the Court, and based upon the
17 representations of the parties, the Court finds that it has been entered in good faith and is, in all
18 respects, fair, just, and equitable to protect the public and the individuals who may have been
19 affected by the issues related as more fully described in the Complaint.

20 13. The parties waive the right to appeal this Judgment both as to form and
21 content and the serving and filing of a notice of Entry of Judgment.

22 14. The clerk is directed to enter this Stipulated Final Judgment forthwith.

23
24
25 DATED: DEC 19 2008


JUDGE OF THE SUPERIOR COURT

SHELLEYANNE W.L. CHANG