

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.  
THOMAS J. MILLER,  
ATTORNEY GENERAL OF IOWA  
99AG25112

Plaintiff,

v.

MATTEL, INC. and FISHER PRICE, INC.,

Defendants.

EQUITY NO. CE 60801

PETITION

FILED  
POLK COUNTY IA  
09 DEC 15 AM 8:16  
CLERK DISTRICT COURT

**I. INTRODUCTION**

**INTRODUCTION**

1. The State of Iowa ex rel. Attorney General Thomas J. Miller, through Special Assistant Attorney General William L. Brauch, pursuant to the provisions of Iowa Code § 714.16 (2007), states as follows for its cause of action against Defendants for manufacturing and/or selling in or into the State of Iowa children's toys containing excessive amounts of lead. The State seeks an injunction prohibiting Defendants and persons acting in concert with them from committing unfair or deceptive acts or practices in the course of manufacturing children's products, and in the course of selling and/or offering to sell children's products in or into the State of Iowa.

**II. JURISDICTION AND VENUE**

2. This action is brought by the State of Iowa ex. rel. Attorney General Thomas J. Miller, which has jurisdiction to bring this action pursuant to Iowa Code § 714.16.

3. Defendants offered toys for sale in Polk County, Iowa. The State of Iowa invokes the jurisdiction of this Court pursuant to the provisions of Iowa Code § 714.16. The violations of law described herein have occurred in Polk County and elsewhere in the State of Iowa. Venue is proper in Polk County pursuant to the provisions of Iowa Code § 714.16(10).

### **III. PARTIES**

4. Plaintiff is the State of Iowa, ex rel. Attorney General Thomas J. Miller. The Attorney General is empowered to file actions pursuant to Iowa Code § 714.16 to seek injunctive relief to stop practices declared to be unlawful by the section, to seek monetary reimbursement for consumers, and to seek civil penalties, costs, court costs, and attorney fees for the State.

5. Defendant Mattel, Inc. ("Mattel") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 333 Continental Boulevard, El Segundo, California 90245-5012.

6. Defendant Fisher-Price, Inc. ("Fisher-Price") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 636 Girard Avenue, East Aurora, NY 14052-1824. Fisher-Price, Inc. is a subsidiary of Mattel, Inc.

### **IV. BACKGROUND**

7. Lead is highly toxic, particularly to young children.
8. There is no safe level of lead in the body.
9. Even very small amounts of lead can cause serious neurological damage, including drops in IQ and, in the long term, behavioral problems.

10. Higher exposures to lead cause acute effects, including seizures, coma or death.
11. Lead exposure is cumulative such that multiple sources of exposure compound the negative health effects in children.
12. One of the sources of exposure to lead is products, or pieces of products, containing lead, which young children can mouth or swallow.
13. The amount of lead in a product is measured in parts per million (ppm) of total lead content, which can also be expressed as a percentage.
14. At the time the recalled products at issue in this Petition were manufactured, distributed, and otherwise introduced into commerce in Iowa, a federal standard for lead content in surface coatings of children's products set the maximum allowable lead level at 600 ppm..
15. Even the 600 ppm standard is high, given the fact that it was originally premised on outmoded assumptions about how much lead can be present in children's blood without significant health effects, and did not take into account the existence of multiple sources of exposure to lead, such as housing, soil, and children's products.

## **V. FACTS**

16. On August 2, 2007, Defendant Fisher-Price voluntarily recalled in the United States approximately 967,000 units of Fisher-Price children's toys manufactured in China between April 19, 2007, and July 6, 2007, for excessive levels of lead in surface paints.
17. On August 14, 2007, Defendant Mattel voluntarily recalled in the United States approximately 253,000 units of children's toys manufactured in China for excessive levels of lead on the product surface.

18. On September 4, 2007, Defendant Mattel voluntarily recalled in the United States approximately 675,000 units of children's toys manufactured in China between September 30, 2006, and August 20, 2007, for excessive levels of lead in surface paints.

19. Also on September 4, 2007, Defendant Fisher-Price voluntarily recalled in the United States almost 100,000 units of children's toys manufactured in China for excessive levels of lead in surface paints.

20. On October 25, 2007, the defendant Fisher-Price, voluntarily recalled in the United States approximately 38,000 units of children's toys manufactured in China, for excessive levels of lead in surface paint on children's toys.

21. Defendants manufactured and caused to be introduced into commerce in Iowa children's toys with surface coatings of lead-based/lead-containing paint that posed an unreasonable risk of injury to children. Levels detected in samples of concern for this case exceeded 600 ppm. Many samples were over 1000 ppm, several samples tested at over 10,000 ppm, and some over 50,000 ppm.

22. Defendants caused or allowed "Certificate[s] of Compliance" to be issued by testing laboratories for the recalled toys by that were marked as valid for periods of time up to 12 months. In general, each certificate of compliance, indicating compliance with standards for lead and other heavy metals as well as other safety requirements, appears to be based on a single product testing event. The Certificates of Compliance were deceptive and/or misleading in that they purported to be valid for a future period of time for which Defendants did not have adequate auditing and process control of manufacturing facilities and/or testing of surface coatings and/or finished products to assure compliance for that period.

## VI. CAUSE OF ACTION: UNFAIR AND DECEPTIVE PRACTICES

23. The State hereby realleges and incorporates herein paragraphs 1 through 22, above.

24. Iowa Code § 714.16 makes it unlawful to engage in deceptive or unfair practices in connection with the lease, sale or advertisement of merchandise in the State of Iowa.

25. Defendants' manufacture, distribution, and/or introduction into commerce of children's products containing excessive amounts of lead in or into the State of Iowa was an unfair and deceptive practice in violation of Iowa Code § 714.16.

26. Defendants have further engaged in unfair and deceptive practices in violation of by Iowa Code § 714.16:

- a. Introducing products it manufactured into commerce in the State of Iowa without adequate safeguards and testing to ensure product safety;
- b. Failing to adequately investigate circumstances indicating a lack of process control in the manufacturing and testing of children's products;  
and
- c. Causing or allowing compliance certificates to be issued concerning lead levels in surface coatings of children's products without sufficient basis to ensure compliance.

### REQUEST FOR RELIEF

Plaintiff respectfully requests that the Court order the following relief against Defendants:

- A. That the court issue an injunction pursuant to Iowa Code § 714.16 prohibiting Defendants from selling in or into the State of Iowa children's

products containing excessive lead.

B. That the Court order Defendants to make appropriate consumer relief pursuant to Iowa Code § 714.16.

C. That Defendants pay civil penalties, and reimbursement of the State's reasonable costs of investigating and litigating this matter, including attorney's fees and court costs, pursuant to Iowa Code § 714.16.

D. That the Court order such other relief as the Court deems appropriate.

Respectfully submitted,

THOMAS J. Miller  
Attorney General of Iowa



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