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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE CITY AND COUNTY OF SAN FRANCISCO

10
11 SHARP CORPORATION,

12 Plaintiff,

13 vs.

14 HISENSE CO., LTD.; HISENSE USA
15 CORPORATION; HISENSE ELECTRIC
16 CO., LTD.; HISENSE USA MULTIMEDIA
17 R&D CENTER, INC.; HISENSE
18 INTERNATIONAL (HONG KONG)
AMERICA INVESTMENT CO. LTD.; and
DOES 1-100,

19 Defendants.

Case No. CGC-17-558743

FIRST AMENDED COMPLAINT

Trial Date: None Set
Action Filed: May 9, 2017

ELECTRONICALLY
FILED

*Superior Court of California,
County of San Francisco*

06/09/2017

Clerk of the Court

BY: JUDITH NUNEZ

Deputy Clerk

1 Plaintiff Sharp Corporation ("Plaintiff" or "Sharp"), by its attorneys, complains and alleges
2 against Defendants Hisense Co., Ltd. ("Hisense"), Hisense USA Corporation ("Hisense USA"),
3 Hisense Electric, Co. Ltd. ("Hisense Electric"), Hisense USA Multimedia R&D Center, Inc.
4 ("Hisense USA Multimedia"), and Hisense International (Hong Kong) America Investment Co.
5 Ltd. ("Hisense International") (collectively, "Defendants") as follows:

6 INTRODUCTION

7 1. Sharp has spent more than a century developing, producing and marketing high-
8 quality products that have made the Sharp brand a household name. In recent years Sharp has
9 developed a well-earned global reputation for quality liquid crystal display ("LCD") televisions.
10 In 2015, in conjunction with Defendants' purchase of a television factory in Rosarito, Mexico
11 from Sharp, Defendants sought to capitalize on the Sharp brand by acquiring the rights for five (5)
12 years to manufacture and sell LCD televisions in North, Central, and South America under the
13 Sharp brand, and committed to do so in accordance with Sharp's standards to ensure a high level
14 of quality. Based on Defendants' representations, Sharp entrusted its brand and trademarks to
15 Defendants for this limited license term, giving Defendants an exclusive license to use certain of
16 Sharp's trademarks in the Americas.

17 2. Prior to Sharp entrusting its brand to Defendants, customers sought out Sharp
18 televisions, intending to buy the high-quality brand to which they have long been accustomed.
19 Under Defendants' management, however, those televisions are shoddily manufactured,
20 deceptively advertised, raise safety concerns and are now, in many cases, perceived by consumers
21 as cheap.

22 3. In this action, Sharp seeks to permanently enjoin Defendants from engaging in such
23 unfair, unlawful, and fraudulent conduct, both to protect the consumers and to prevent Defendants
24 from further devaluing Sharp's trademarks and further eroding and destroying Sharp's brand.
25 Sharp has also terminated the parties' license agreement, and also seeks to rescind it *ab initio*, both
26 based on Defendants' unlawful acts, and on the misrepresentations that led to entry into the license
27 agreement in the first place. Defendants' unlawful actions have caused irreparable harm to Sharp
28

1 and its brand. Although the damage is irreparable, if required to put a value on it, Sharp estimates
2 its damages to be at least \$100 million.

3 **PARTIES**

4 4. Plaintiff Sharp is a corporation incorporated and existing under the laws of Japan
5 with a principal place of business at 1 Takumi-cho, Sakai-ku, Sakai City, Osaka 590-8522 Japan.

6 5. Defendant Hisense is a corporation incorporated and existing under the laws of the
7 People's Republic of China, with a principal place of business in Qingdao, Shandong province,
8 People's Republic of China.

9 6. Defendant Hisense USA is a corporation incorporated and existing under the laws
10 of the State of Georgia with a principal place of business at 7310 McGinnis Ferry Road, Suwanee,
11 GA, 30024, USA.

12 7. Upon information and belief, Hisense Electric is a corporation incorporated under
13 the laws of the People's Republic of China, with a principal place of business at No. 218
14 Qianwangang Road, QingDao Economic & Technological Zone, QingDao, China.

15 8. Defendant Hisense USA Multimedia is a corporation incorporated and existing
16 under the laws of the State of Georgia with a principal place of business at 7310 McGinnis Ferry
17 Road, Suwanee, GA, 30024, USA.

18 9. Defendant Hisense International, a subsidiary of Hisense, is a company
19 incorporated under the laws of the People's Republic of China with principal place of business at
20 Room 3101-05, Singa Commercial Centre, No. 148 Connaught Road West, Hong Kong, China.

21 10. The true names and capacities, whether individual, corporate, associate or
22 otherwise of Defendants named herein as Does 1 through 100 are unknown to Plaintiff, who
23 therefore sues said Defendants by such fictitious names, and Plaintiff will amend this Complaint to
24 show their true names, involvement and capacities when those names have been ascertained.
25 Plaintiff is informed and believes and on that basis alleges that each of the Defendants named
26 herein as a Doe was in some manner responsible for the injuries and losses suffered by Plaintiff.

27 11. At all times mentioned herein, each of the Defendants was the actual and apparent
28 agent, servant, and employee of each of the remaining Defendants and in doing the things

1 hereinafter alleged was acting within the course and scope of their actual and apparent agency and
2 employment and with the knowledge, notification, consent and subsequent ratification of each of
3 the other Defendants.

4 **JURISDICTION AND VENUE**

5 12. Jurisdiction is proper over Defendants in California because, upon information and
6 belief, Defendants have engaged in unlawful, unfair, and fraudulent conduct within the State of
7 California in connection with the distribution and sale of certain television products to California
8 residents.

9 13. Venue is proper under California Code of Civil Procedure section 395, subdivision
10 (a) because, on information and belief, none of the Defendants reside within the State, and the
11 Defendants may thus be tried in any Superior Court designated by Sharp.

12 **STATEMENT OF FACTS**

13 **A. Introduction to Sharp and Hisense**

14 14. In 1912, Sharp founder Tokuji Hayakawa invented the snap belt buckle – a product
15 which improved the lives of millions of people and quickly became indispensable to modern-day
16 life. Since then, Sharp has been on the cutting edge of technology, consistently innovating new
17 appliances, industrial equipment and office solutions, and positively impacting the lives of people
18 around the world.

19 15. Sharp – a Japanese corporation – has worked diligently since its incorporation in
20 1912 to establish itself as an industry leader and to strengthen and maintain its stellar reputation in
21 countries around the globe, including the United States.

22 16. For example, in 1962, Sharp expanded outside of Japan and established Sharp
23 Electronics Corporation in the United States – the company's first overseas sales base.

24 17. In 1979, it set up the Sharp Manufacturing Company of America to create a
25 manufacturing base in the United States.

26 18. In 1995, Sharp opened Sharp Laboratories of America, its United States-based
27 research and development laboratory designed to take advantage of American ingenuity and
28 research.

1 19. Over the course of the 100+ years since its incorporation, this dedication to
2 expansion and to inventing and manufacturing unique useful products that contribute to society
3 resulted in a company and a name known and trusted around the globe.

4 20. Sharp has not only developed a reputation for quality, but it has also worked hard
5 to protect its intellectual property. For example, Sharp registered its first trademark in the United
6 States on March 7, 1961, which it used in connection with an electric shaver, Registration No.
7 0712312. Sharp first registered its Class 9 trademark for "television receivers, etc." on June 13,
8 1978 (Registration No. 1093113).

9 21. Sharp is world renowned for its LCD flat screen televisions.

10 22. Sharp is also famous for its innovation in LCD televisions, having developed a four
11 color display (red, green, blue, yellow) trademarked QUATTRON, and a higher end series of
12 televisions with the brand name AQUOS, that have been sold around the world for many years.

13 23. Sharp has become particularly famous for manufacturing and selling larger high
14 quality LCD televisions, sized 60 inches and up.

15 24. Indeed, Sharp has become a global force in the manufacture of LCD panels. Sharp
16 established, and currently owns a major share in, the factory to manufacture LCD panels utilizing
17 the largest mother glasses in the world.

18 25. The SHARP brand name and trademark is instantly recognizable to consumers
19 everywhere, and connotes to them the dependability, innovation and other positive qualities
20 associated with the Sharp name.

21 26. Hisense is a Chinese Company set up in 1969 by Qingdao governmental
22 authorities.

23 27. The Hisense brand is relatively unknown in the United States, and only within the
24 last several years have its televisions even been sold here.

25 28. On its website, Hisense acknowledges it has only recently entered the United States
26 market, communicating to consumers: "don't feel bad if you haven't heard of us. We're new
27 here."
28

1 29. On its website, Hisense also sets forth its mission in America: “We are raring to
2 disrupt the consumer electronics industry, challenge the competition and make sure we give our
3 consumers their money’s worth.”

4 30. After licensing the SHARP trademark, HISENSE-branded televisions have been
5 offered for sale through United States retailers at higher prices than comparable Sharp televisions,
6 despite the fact that historically the price point for HISENSE-branded televisions was
7 considerably less than a comparably sized Sharp television – a reflection both of the relative
8 qualities of the two brands, as well as the lack of awareness of consumers about the Hisense brand.

9 31. In the manner more fully described below, Hisense has deceptively used its license
10 of the SHARP brand to gain access to the Sharp retail network in the United States (such as at
11 Best Buy), and then improperly used that access to provide lower quality SHARP-branded
12 televisions to retailers, while positioning HISENSE-branded televisions as a more attractive
13 alternative to consumers.

14 32. For example, a recent review of offerings on Best Buy’s website shows that, at
15 every screen size for which there are both SHARP- and HISENSE-branded televisions available,
16 the HISENSE-branded television is offered at a higher price and as a higher-quality product than
17 the comparable-sized SHARP-branded television.

18 **B. Hisense Looks to Increase Manufacturing**

19 33. In the several years leading up to 2015, the business of selling flat screen
20 televisions to consumers became far more competitive, especially in the United States, as
21 Samsung, Sharp, LG, Sony and Vizio competed for business and prices and profits dropped.

22 34. As a result, Sharp experienced a drop in sales in its consumer television business,
23 especially for large screen televisions for consumer use. Sharp therefore decided to restructure its
24 television operations.

25 35. Among the manufacturing plants owned by a Sharp affiliate at the time was one in
26 Rosarito, Mexico, which principally made larger screen Sharp televisions for sale in North
27 America, precisely the market most acutely affected by the change in market conditions (the
28 “Rosarito Factory”).

1 36. Sharp decided to sell the Rosarito Factory.

2 37. Defendants, virtually unknown in the United States, were looking to expand in the
3 United States market, and the Rosario Factory offered them an opportunity to do so.

4 38. In July 2015, Defendants agreed to purchase the Rosarito Factory for \$23.7 million.

5 39. At the time of the purchase of the Rosarito Factory, Defendants represented to
6 Sharp that its primary interest was to use the Rosarito Factory to introduce its HISENSE brand
7 into retailers in the North American market, and that the Rosarito Factory would enable it to
8 deliver televisions to those markets more efficiently and less expensively than it could from its
9 factories in China.

10 40. Defendants were also interested to gain a head start for the HISENSE brand in the
11 United States, and Sharp was interested to keep its brand alive in the United States as it
12 restructured its television business.

13 41. Since Defendants did not have an extensive distribution network in North America,
14 the parties agreed to include as part of the purchase for the Rosarito Factory, a license of the
15 SHARP, QUATTRON, AQUOS, and other trademarks (the "Trademarks") to Defendants on an
16 exclusive basis for the sale of televisions to consumers in the "Territory" (defined as North &
17 Central America, Caribbean and South America (specifically excluding Brazil)), but only for a
18 period of five (5) years (the "TM License").

19 42. Along with another agreement, at the time that Defendants purchased the Rosarito
20 Factory, Hisense International also entered into a Trademark License Agreement dated July 31,
21 2015 for a period of five (5) years (the "TLA") to effectuate the TM License. The TM License
22 and the TLA were components of the business relationship between Sharp and Defendants (the
23 "Business Relationship").

24 43. As a condition to their continued use of the SHARP trademarks, Defendants were
25 required by the TLA to maintain the image, quality and goodwill of the Trademarks during the
26 term. Among the requirements were the following:

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1 a. Investment of \$4,500,000 in 2016, and thereafter 1.5% of Net Sales of the
2 previous year on marketing, sales and research and development to maintain SHARP and
3 AQUOS brand positioning in the United States;

4 b. Ensure the safety and quality of televisions branded SHARP; and

5 c. Maintain the licensed brands in such a way as to not devalue them during
6 the term of the TLA.

7 44. A critical reason why Sharp was willing to enter into such an arrangement with
8 Defendants was because Defendants represented, and Sharp believed, that Defendants were well
9 qualified to manufacture televisions in accordance with United States laws and regulations.
10 Unfortunately, this turns out not to have been the case, and the result is that Sharp's brand has
11 been, and continues to be in danger of being damaged, and California consumers are, and continue
12 to be in danger of suffering harm as a result Defendants' unfair business practices discussed in
13 detail below.

14 **C. Defendants Devalue the Sharp Brand**

15 45. In order to induce Sharp to enter into the Business Relationship, Defendants
16 represented to Sharp that they only intended to use the Trademarks to gain access to retailers that
17 customarily sold SHARP-branded televisions in order to build their own Hisense distribution
18 network.

19 46. Defendants represented that SHARP televisions would be maintained as a separate
20 product line from HISENSE-branded televisions, and would remain a high-end brand consistent
21 with past practice when the brand was sold in the Territory by Sharp.

22 47. Defendants began selling SHARP-branded televisions in the United States in
23 January 2016. In the ensuing year, while the average retail price of televisions in the United States
24 decreased by less than 10 percent, the average retail price of SHARP-branded televisions fell by
25 nearly 40 percent. During the same period, however, the average retail price of HISENSE-
26 branded televisions in the United States was essentially unchanged.

27 48. Defendants also cut corners with the SHARP-branded line, and in doing so, failed
28 to maintain the standards and quality required by the Business Relationship.

1 49. Defendants had an incentive to destroy the quality of the SHARP brand for
2 televisions, as doing so would eliminate Sharp as a competitor in the United States and Canadian
3 markets at the expiration of the TLA.

4 50. Defendants have also done almost nothing to promote and protect the QUATTRON
5 and AQUOS brands.

6 **D. Defendants' Use of Sharp's Trademarks to Manufacture, Advertise, Sell**
7 **and/or Distribute Televisions Sold in the California Market in Violation of**
8 **Law and Regulations**

9 51. Under the TLA, Defendants market, manufacture, advertise, sell and/or otherwise
10 distribute the following SHARP-branded televisions in California:

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	Model Nos.
1	LC-32N4000U
2	LC-40N3000U
3	LC-40LB480U
4	LC-40N5000U
5	LC-43N4000U
6	LC-43N6100U
7	LC-43N610CU
8	LC-43N7000U
9	LC-50N3100U
10	LC-50N4000U
11	LC-50N5000U
12	LC-50N6000U
13	LC-50N7000U
14	LC-55LB481U
15	LC-55N4000U
16	LC-55N5300U
17	LC-55N6000U
18	LC-55N620CU
19	LC-55N7000U
20	LC-60N5100U
21	LC-60N6200U
22	LC-60N7000U
23	LC-65N5200U
24	LC-65N7000U
25	LC-65N9000U
26	LC-70N7100U
27	LC-75N620CU
28	LC-75N8000U

52. Defendants have manufactured, sold, advertised and/or distributed several of these models in California which violate federal law and regulations, as well as California consumer protection laws.

1 53. Shortly after the commencement of the TLA, Sharp purchased and evaluated
2 exemplar products and performed field tests to ensure that the various products manufactured,
3 advertised, sold, and/or distributed by Defendants complied with necessary regulations and
4 standards. Those tests revealed that Defendants were not as skilled and knowledgeable as
5 represented in manufacturing televisions to Sharp's standards. Defendants' failings, which are
6 damaging Sharp's brand and hurting California consumers, are described below.

7 1. **Radiated Emissions Violations – Noncompliance with FCC Rules /**
8 **Misrepresentations**

9 54. SHARP-branded televisions manufactured by Defendants emit excess radiation, in
10 violation of FCC standards.

11 55. The FCC standards as stated at Part 15 subpart B Class B, Section 15.109 specify
12 that permissible limits of the radiated emissions for consumer television sets (the "FCC Emission
13 Standards").

14 56. The FCC standards were implemented for the purpose of protecting the public from
15 a variety of harms, including but not limited to interfering with the operation of certain life-saving
16 devices used to summon emergency assistance.

17 57. Sharp's field tests, performed by third party vendor UL Japan, Inc. Yokowa EMC
18 Lab, showed that 11 out of 28 tested products violated these FCC Emission standards.

19 58. Testing is ongoing, although given the substantial and pervasive failures and
20 violations already identified, there is a strong likelihood that the vast majority of the models do not
21 comply with the FCC Emission Standards, contrary to the representations of conformity made by
22 Defendants to the public.

23 59. These violations have harmed and have the potential to create continuing harm to
24 the California public, as well as Sharp's goodwill and brand equity in its products, including but
25 not limited to televisions.

1 2. Viewable Picture Size Labeling – Violation of Picture Tube Rule

2 60. The screens of SHARP-branded televisions manufactured by Defendants are
3 deceptively mislabeled as to their size, in violation of Federal Trade Commission (FTC)
4 regulations and California law.

5 61. Under the FTC's Picture Tube Rule found in 16 CFR Part 410 (Exhibit A hereto),
6 the size of a television screen must be accurately stated by the manufacturer.

7 62. As set out in the Federal Register, the Picture Tube Rule was "promulgated in
8 1966, and sets forth the appropriate means for disclosing the method by which the dimensions of
9 television screens are measured, when this measurement is included in any advertisement or
10 promotional material for the television set."

11 63. A violation of the Picture Tube Rule is "an unfair method of competition and an
12 unfair or deceptive act or practice" (Exhibit A hereto.)

13 64. Further, as set forth in the Stipulated Final Judgment in the case, *The People of the*
14 *State of California v. LGT Electronics U.S.A., Inc., et al.* (the "California Decree", attached hereto
15 as Exhibit B), related to the Picture Tube Rule, the Court ordered:

16 For all products that are manufactured after March 1, 2011, and for all
17 communications with consumers first placed into the stream of commerce by
18 Defendants after March 1, 2011, Defendants are restrained and enjoined pursuant to
19 Business and Professions Code section 17535, in connection with any product,
20 package or label, advertisement, brochure, sign, sales presentation, or sales
21 literature of any kind directed to consumers in the State of California, as follows:
22 When the size of a television monitor display is stated, Defendants shall clearly and
23 conspicuously describe said size of the television monitor by reference to its
24 viewable picture size. For example, and without limitation, Defendants may describe
25 a television monitor that has a viewable picture size diagonal measure of 32 inches as
26 "32-inch diagonal," "32-inch picture measured diagonally" or "32-inch monitor."
27 Defendant cannot refer to the television monitor as 32 inches unless the viewable
28 picture size is 32 inches, accurately measured to the tenth of an inch. However,
 Defendants may advertise or refer to a television monitor that is no more than five-
 tenths of an inch less or more in viewable picture size than the nearest inch integer
 with a reference to the televisions monitor's size class reflecting that inch integer,
 provided that Defendants disclose the actual viewable picture size in the immediate
 proximity of an in close connection and conjunction with that reference and in a
 typeface, size, and readability comparable to that reference. For example,
 Defendants may describe a television monitor that has a viewable picture size of 31.5
 inches as "32-inch class TV monitor (31.5 inches measured diagonally)" or "32-inch
 class TV (31.5 inches diagonal picture)." Any referenced or footnoted disclosure of
 the viewable picture size by means of an asterisk or some similar symbol or device
 does not satisfy the "immediate proximity of an in connection and conjunction"
 requirement.

65. Defendants have failed to display the actual screen size on product packaging in violation of the Picture Tube Rule and the principles set out in the California Decree.

66. Specifically, on the cartons of seven (7) different models, Defendants advertise that the picture size is larger than the model's actual picture size.

67. These are clear violations of the California Decree, which mandates that televisions be accurately measured to the tenth of an inch.

68. On or around February 13, 2017, Sharp notified Defendants of these violations, and Defendants merely promised that they would revise packaging and that the representation set out on their website had been updated, but they have not taken any corrective measures.

69. These violations have harmed and have the potential to create continuing harm to the California public, as well as Sharp's goodwill and brand equity in its products, including but not limited to televisions.

3. Brightness Violation / Misrepresentation

70. Defendants have further falsely advertised the brightness level in at least one product. Specifically, the brightness specification of that model as found at www.sharptvusa.com (the "Hisense Website") was 35% higher than the actual specification of the product.

71. On information and belief, California consumers purchased the model on the basis of the brightness specification falsely advertised on the Hisense Website, and thus both Sharp and California consumers have suffered harm – Sharp as to its brand name and reputation, and California purchasers of that model in that they did not receive a product that performed as advertised.

4. Safety Violations – Nonconformance with UL Standards / Misrepresentations

72. SHARP-branded televisions manufactured by Defendants are certified as compliant with safety standards, but not all of them are actually in compliance.

73. All the models listed above are certified by Defendants to comply with UL Standards, used to ensure certain safety thresholds for products to protect consumers.

1 74. California consumers rely on distributors/manufacturers' representations that a
2 product complies with UL Standards to ensure that the product is safe to use.

3 75. However, Sharp testing has found that at least one product model does not comply
4 with the UL standards, in that the internal wiring harness of the product fails to comply with the
5 UL standards.

6 76. As of this date, Defendants have not rectified the misrepresentations as regards this
7 particular product model.

8 77. These misrepresentations have harmed and have the potential to create continuing
9 harm to the California public, as well as Sharp's goodwill and brand equity in its products,
10 including but not limited to televisions.

11 **5. False Advertising Re: 4K Resolution**

12 78. Defendants have further have further been falsely advertising certain products
13 marketed to Californians as having a "4K" resolution, when in fact the product's resolution
14 specifications are only Ultra HD, which is of lower specification than "4K."

15 79. These misrepresentations have harmed and have the potential to create continuing
16 harm to the California public, as well as Sharp's goodwill and brand equity in its products,
17 including but not limited to televisions.

18 **E. Sharp Terminates the TLA**

19 80. After notifying Defendants as early as November 2016 that Defendants failed to
20 properly and adequately maintain the quality of the SHARP brand – facts that constitute a material
21 breach of the TLA – by letter dated April 17, 2017, Sharp terminated the TLA.

22 81. Sharp will suffer irreparable injury if Defendants are permitted to ignore
23 termination of the TLA and continue to offer and sell inferior televisions branded with the SHARP
24 name, which injury is not compensable in money damages.

25 82. If Defendants are permitted to continue to manufacture and sell televisions with the
26 SHARP brand, the Trademarks, and all of the goodwill built up in them since as early as 1912, are
27 at risk of being destroyed by the time the five (5) year term of the TLA expires.

83. Defendants should not be entitled to continue to manufacture and sell products with the SHARP Trademarks during the pendency of this action in light of the termination of the TLA, and Sharp is entitled to an injunction preliminarily and permanently enjoining and preventing them from continuing to do so.

84. Although the TLA provides for arbitration of “[a]ny disputes arising out of or in connection” therewith, the dispute alleged herein is not one covered by the arbitration agreement in the TLA. This dispute arises from the broader Business Relationship between the parties, which predated the TLA and included the TM License as well as the TLA. Sharp seeks remedies for fraud in the inducement of the entire Business Relationship, and remedies for other wrongs arising out of that relationship, including a provisional remedy (as provided in Code of Civil Procedure section 1281.8) during the pendency of any arbitration (should the Court order this dispute to arbitration) because the award to which Sharp may be entitled in the arbitration may be rendered ineffectual without provisional relief.

FIRST CAUSE OF ACTION

FRAUDULENT CONCEALMENT

(By Plaintiff against all Defendants)

85. Plaintiff repeats and realleges all the allegations of the previous paragraphs, and incorporates the same as if set forth herein.

86. Defendants disclosed to Sharp that Defendants sought to license the Trademarks and manufacture and sell products using the Trademarks consistent with Sharp's standard of quality and consumer expectations.

87. It is evident from Defendants' conduct starting immediately after entering into the Business Relationship that Defendants' true intentions were to (1) downgrade the price, quality, or stature of SHARP televisions; (2) offer the brand in smaller screen sizes than those Sharp was known for; (3) offer SHARP televisions at price points lower than HISENSE televisions; or (4) violate consumer protection standards and regulations such as those detailed above relating to radiated emissions, viewable picture size labeling, brightness, UL Standards, or 4K resolution, all calculated to destroy the Sharp brand as a competitor to Defendants' brand in the Territory.

1 88. Defendants did not disclose their true intentions to Sharp.
2 89. Sharp did not know of Defendants' true intentions.
3 90. Defendants intended to deceive Sharp by concealing their true intentions.
4 91. Had Sharp known what Defendants' true intentions were, Sharp would not have
5 licensed the Trademarks to Defendants or entered into the Business Relationship with Defendants.
6 92. Sharp has been harmed by Defendants' deception, in that the value of the Sharp
7 brand has been damaged and is in danger of being further damaged by Defendants' use of the
8 Sharp brand. Sharp's damage, including damage to the goodwill built up in the SHARP brand and
9 the Trademarks, is irreparable, but if reduced to monetary terms would be valued at no less than
10 \$100 million.
11 93. Defendants' concealment was a substantial factor in causing Sharp's harm.
12 94. As a result of Defendants' conduct, Sharp has suffered and will continue to suffer
13 damages, the exact amount of which has not been fully ascertained.
14 95. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of
15 them, acted fraudulently, maliciously and oppressively with a conscious, reckless and willful
16 disregard, and/or with callous disregard of the probable detrimental and economic consequences to
17 Sharp, and to the direct benefit to Defendants, knowing that Defendants' conduct was substantially
18 certain to vex, annoy and injure Sharp and entitle Sharp to punitive damages under Civil Code
19 section 3294, in an amount sufficient to punish or make an example of Defendants.

20 **SECOND CAUSE OF ACTION**

21 **RESCISSION**

22 **(By Plaintiff against all Defendants)**

23 96. Plaintiff repeats and realleges all the allegations of the previous paragraphs, and
24 incorporates the same as if set forth herein.

25 97. Had Sharp known that Defendants intended before entering into the Business
26 Relationship to (1) downgrade the price, quality, or stature of SHARP televisions; (2) offer the
27 brand in smaller screen sizes than those Sharp was known for; (3) offer SHARP televisions at
28 price points lower than HISENSE televisions; or (4) violate consumer protection standards and

1 regulations such as those detailed above relating to radiated emissions, viewable picture size
2 labeling, brightness, UL Standards, or 4K resolution, Sharp would not have entered into the
3 Business Relationship.

4 98. Sharp's consent to the Business Relationship was therefore obtained through fraud,
5 and thus Sharp did not freely consent to entering into the TLA.

6 99. Sharp's position is that the TLA was properly and rightfully terminated on April
7 17, 2017. In the alternative, because Sharp did not freely consent to entering into the TLA, Sharp
8 is (and was on April 17, 2017 when Sharp gave notice of termination) entitled to rescission of the
9 TLA.

10 100. Sharp intends service of this First Amended Complaint to serve as notice of its
11 alternative claim of rescission of the TLA (in addition to Sharp's April 17, 2017 notice of
12 termination of the TLA). Sharp hereby offers to restore to Defendants all consideration it received
13 under the TLA from Defendants, if any.

14 **THIRD CAUSE OF ACTION**

15 **VIOLATION OF CALIFORNIA BUS. AND PROF. CODE SECTION 17200**

16 **(By Plaintiff against all Defendants)**

17 101. Plaintiff repeats and realleges all the allegations of the previous paragraphs, and
18 incorporates the same as if set forth herein.

19 102. Defendants' conduct described above constitutes unlawful, unfair, and fraudulent
20 business practices within the meaning of California Business and Professions Code section 17200,
21 as well as false advertising in violation of California Business and Professions Code section
22 17500.

23 103. Defendants' conduct has caused Sharp to suffer economic injury within the
24 meaning of California Business and Professions Code section 17204, as described herein.

25 104. Pursuant to California Business and Professions Code sections 17203 and 17535,
26 Plaintiff seek an order of this Court enjoining Defendants from continuing to engage in the
27 violations and make the misleading statements as described above.
28

1 105. These violations have caused irreparable harm to Sharp's reputation, quality and
2 goodwill throughout its product line, and also to California consumers of Sharp-branded
3 televisions. As a result, Sharp also seeks an injunction both (1) during the pendency of any
4 arbitration (should one be ordered), and (2) permanently, preventing Defendants from using the
5 Trademarks and selling products bearing any of the Trademarks.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment and relief against Defendants as follows:

8 A. for an injunction preventing Defendants from using Sharp's Trademarks and from
9 manufacturing and selling products using the Trademarks;

10 B. for general, special and consequential damages according to proof;

11 C. for exemplary and punitive damages in an amount necessary to punish Defendants
12 and to deter such conduct in the future, according to proof;

13 D. that the Court declare that Defendants' conduct violates the statutes referenced
14 herein, and constitutes acts of unlawful, unfair, fraudulent competition, and false advertising;

15 E. that the Court preliminarily and permanently enjoin Defendants from conducting
16 any business through the unlawful, unfair, or fraudulent business acts or practices, untrue, and
17 misleading advertising and marketing and other violations of law described in this Complaint;

18 F. for restitution of money and property lost as a result of Defendants' unfair
19 competition;

20 ///

21 ///

1 G. that the Court award Sharp its attorneys' fees under any appropriate legal theory;
2 and
3 H. that the Court grant such other and further relief as may be just and proper.
4

5 DATED: June 9, 2017

BROWNE GEORGE ROSS LLP

Eric M. George

Ira Bibbero

Katherine E. Hertel

8
9 By: Eric George ib
10 Eric M. George
11 Attorneys for Plaintiff Sharp Corporation
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EXHIBIT A

SUBCHAPTER D—TRADE REGULATION RULES

PART 408—UNFAIR OR DECEPTIVE ADVERTISING AND LABELING OF CIGARETTES IN RELATION TO THE HEALTH HAZARDS OF SMOKING

CROSS REFERENCE: For a statement of basis and purpose of Trade Regulation Rule, see 29 FR 8325 of July 2, 1964.

[30 FR 9485, July 29, 1965]

PART 410—DECEPTIVE ADVERTISING AS TO SIZES OF VIEWABLE PICTURES SHOWN BY TELEVISION RECEIVING SETS

§410.1 The Rule.

In connection with the sale of television receiving sets, in commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair and deceptive act or practice to use any figure or size designation to refer to the size of the picture shown by a television receiving set or the picture tube contained therein unless such indicated size is the actual size of the viewable picture area measured on a single plane basis. If the indicated size is other than the horizontal dimension of the actual viewable picture area such size designation shall be accompanied by a statement, in close connection and conjunction therewith, clearly and conspicuously showing the manner of measurement.

NOTE 1: For the purposes of this part, measurement of the picture area on a single plane basis refers to a measurement of the distance between the outer extremities (sides) of the picture area which does not take into account the curvature of the tube.

NOTE 2: Any referenced or footnote disclosure of the manner of measurement by means of the asterisk or some similar symbol does not satisfy the "close connection and conjunction" requirement of this part.

Examples of proper size descriptions when a television receiving set shows a 20-inch picture measured diagonally, a 19-inch picture measured horizontally, a 15-inch picture measured vertically, and a picture area of 262 square inches include:

"20 inch (50.80 cm) picture measured diagonally" or
"20 inch (50.80 cm) diagonal"
"19 inch × 15 inch (48.26 cm × 38.10 cm) picture" or
"19 inch (48.26 cm) picture" or
"19 inch (48.26 cm)" or
"262 square inch (1,690.32 cm. sq.) picture."

Examples of improper size descriptions of a television set showing a picture of the size described above include:

"21 inch (53.34 cm) set" or
"21 inch (53.34 cm) diagonal set" or
"21 inch (53.34 cm) over-all diagonal" or
"Brand Name 21."

NOTE 3: The numbers in parentheses reflect the metric equivalent of the English measurements. They are provided for information purposes only, and are not required to be included in the disclosures.

(38 Stat. 717, as amended, 15 U.S.C. 41-58)

[36 FR 21518, Nov. 10, 1971; 36 FR 22286, Nov. 24, 1971; as amended at 59 FR 54812, Nov. 2, 1994]

PART 423—CARE LABELING OF TEXTILE WEARING APPAREL AND CERTAIN PIECE GOODS AS AMENDED

- Sec.
- 423.1 Definitions.
 - 423.2 Terminology.
 - 423.3 What this regulation does.
 - 423.4 Who is covered.
 - 423.5 Unfair or deceptive acts or practices.
 - 423.6 Textile wearing apparel.
 - 423.7 Certain piece goods.
 - 423.8 Exemptions.
 - 423.9 Conflict with flammability standards.
 - 423.10 Stayed or invalid parts.

APPENDIX A TO PART 423—GLOSSARY OF STANDARD TERMS

AUTHORITY: 38 Stat. 717, as amended; (15 U.S.C. 41, et seq.)

SOURCE: 48 FR 22743, May 20, 1983; 48 FR 24869, June 3, 1983, unless otherwise noted.

§423.1 Definitions.

(a) *Care label* means a permanent label or tag, containing regular care information and instructions, that is attached or affixed in such a manner that it will not become separated from the product and will remain legible during the useful life of the product.

EXHIBIT B



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FILED *entered*
ALAMEDA COUNTY

DEC 30 2010

CLERK OF SUPERIOR COURT
By *[Signature]* Deputy

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[Additional Attorneys for Plaintiff Listed on Following Page]

Attorneys for Plaintiff, The People of the State of California

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

LG ELECTRONICS U.S.A., INC.,
PANASONIC CORP. of NORTH AMERICA,
SAMSUNG ELECTRONICS AMERICA, INC.,
SHARP ELECTRONICS CORP.,

Defendants.

Case No.: HG 10553636

STIPULATED FINAL JUDGMENT

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1 ADDITIONAL COUNSEL FOR PLAINTIFF

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1
2 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, through its attorneys, BIRGIT
3 FLADAGER, the District Attorney of Stanislaus County, by Deputy District Attorney John B.
4 Goulart; STEVE COOLEY, the District Attorney of Los Angeles County, by Deputy-in-Charge
5 Kathleen J. Tuttle; NANCY E. O'MALLEY, the District Attorney of Alameda County, by Deputy
6 District Attorney Anthony Douglas; LARRY D. MORSE II, the District Attorney of the County of
7 Merced, by Special Prosecutor Richard S. Michaels; DEAN D. FLIPPO, the District Attorney of the
8 County of Monterey, by Deputy District Attorney John F. Hubanks; JAMES P. WILLETT, the
9 District Attorney of the County of San Joaquin, by Deputy District Attorney David J. Irey; and
10 BONNIE M. DUMANIS, the District Attorney of San Diego County, by Special Prosecutor
11 Thomas A. Papageorge (collectively, "the People" or the Counties"); and Defendants LG
12 ELECTRONICS, U.S.A., INC., through its attorneys Pierre-Richard Prosper, Esq., and Arent Fox
13 LLP; PANASONIC CORPORATION OF NORTH AMERICA, through its attorneys Michele B.
14 Corash, Esq., and Morrison & Foerster LLP; SAMSUNG ELECTRONICS AMERICA, INC.,
15 through its attorneys Reginald D. Steer, Esq., and Akin Gump Strauss Hauer & Feld, LLP; SHARP
16 ELECTRONICS CORPORATION, through its attorneys Jeremy M. Creelan, Esq. and Jenner &
17 Block LLP; have stipulated to the entry of this Stipulated Final Judgment without the Court taking
18 evidence, without the Defendants admitting any wrongdoing, and without this Stipulated Final
19 Judgment constituting an admission by Defendants regarding any issue of law or fact, and the Court
20 having considered the pleadings and good cause appearing:
21

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 23 1. This Court has jurisdiction of the subject matter hereof and the parties herein.
- 24 2. For the purpose of this Stipulated Final Judgment, the following definitions shall apply:
- 25 a. *Television monitor* means a television receiving set or device which receives and displays video
26 and audio television signals from broadcast or cable television sources, or other forms of video and
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1 audio signal, within the meaning of "television receiving set" as referenced in the Federal Trade
2 Commission Picture Tube Rule (16 CFR § 410.1).

3 b. *Viewable picture size* means the largest area, measured diagonally on a single plane basis, on
4 which a consumer can view information shown on a *television monitor*.

5 c. *Single plane basis* means measurement of the distance between the outer extremities of the
6 viewable picture area that does not take into account any curvature of the tube or screen of the
7 *television monitor*.

8 3. The injunctive provision of Paragraph 4 of this Stipulated Final Judgment shall apply to
9 Defendants, their successors, officers, employees, agents and representatives, and all persons acting
10 in concert or in participation with any of them (hereinafter collectively referred to as "Defendants").
11 It shall not apply to the acts of any dealers, distributors, retailers or resellers who are not acting in
12 concert or in participation with any of the Defendants; the Defendants will not be deemed to be in
13 violation of Paragraph 4 or any other provision in this Stipulated Final Judgment due to any
14 representations disseminated by dealers, distributors, retailers or resellers which representations
15 have not been written by or otherwise expressly authorized by the Defendants.
16

17 4. For all products that are manufactured after March 1, 2011, and for all communications with
18 consumers first placed into the stream of commerce by Defendants after March 1, 2011, Defendants
19 are restrained and enjoined pursuant to Business and Professions Code section 17535, in connection
20 with any product, package or label, advertisement, brochure, sign, sales presentation, or sales
21 literature of any kind directed to consumers in the State of California, as follows: When the size of a
22 *television monitor* display is stated, Defendants shall clearly and conspicuously describe said size of
23 the *television monitor* by reference to its *viewable picture size*. For example, and without
24 limitation, Defendants may describe a *television monitor* that has a *viewable picture size* diagonal
25 measure of 32 inches as "32-inch diagonal," "32-inch picture measured diagonally" or "32-inch
26 monitor." Defendants cannot refer to the *television monitor* as 32 inches unless the *viewable*
27 *picture size* is 32 inches, accurately measured to the tenth of an inch. However, Defendants may
28

1 advertise or refer to a *television monitor* that is no more than five-tenths of an inch less or more in
2 *viewable picture size* than the nearest inch integer with a reference to the *television monitor's* size
3 class reflecting that inch integer, provided that Defendants disclose the actual *viewable picture size*
4 in the immediate proximity of and in close connection and conjunction with that reference and in a
5 typeface, size, and readability comparable to that reference. For example, Defendants may describe
6 a *television monitor* that has a *viewable picture size* of 31.5 inches as "32-inch class TV monitor
7 (31.5 inches measured diagonally)" or "32-inch class TV (31.5 inches diagonal picture)." Any
8 referenced or footnoted disclosure of the *viewable picture size* by means of an asterisk or some
9 similar symbol or device does not satisfy the "immediate proximity of and in connection and
10 conjunction" requirement.

11
12 5. The requirements set forth in Paragraph 4 shall automatically terminate to the extent they are
13 or become inconsistent with any federal statute, regulation, or Federal Trade Commission rule or
14 guideline pertaining to the advertising or measurement of *television monitors*.

15 6. At any time after this Stipulated Final Judgment has been in effect for four (4) years and a
16 Defendant has paid any and all amounts due under the Stipulated Final Judgment, that Defendant
17 may file a motion requesting that the Court vacate its Stipulated Judgment, other than the provisions
18 of paragraphs 7 and 8, based on that Defendant's demonstrated history of adherence to the
19 provisions of Paragraph 4 of this Stipulated Final Judgment. If the People agree that the Defendant
20 has substantially complied with the provisions set forth in Paragraph 4 of this Stipulated Final
21 Judgment, the People will file a statement of non-opposition to that Defendant's motion. If the
22 People disagree, the People will file an opposition setting forth the People's reasoning and will
23 recommend that the injunctive provision of Paragraph 4 remain in effect. Within thirty (30) days of
24 the filing of the Defendant's motion, the People will file either a statement of non-opposition or an
25 opposition. Within forty-five (45) days of the filing of the Defendant's motion, that Defendant may
26 file a reply. The People and Defendants agree that the Court may grant the Defendant's motion
27 upon determining that Defendant has substantially complied with Paragraph 4.
28

1 7. The People and Defendants have agreed that it is impractical to attempt to identify
2 individuals who have been misled or injured by the descriptions alleged to have been potentially
3 misleading in this action. Given the impracticability of identifying or providing direct and
4 measurably appropriate payments to individuals who might assert that their purchasing practices
5 were altered or that they were otherwise harmed as a result of the conduct that is the subject of this
6 action, under the doctrine of *cy pres* and in the public interest, each Defendant shall instead
7 contribute to the public, in the form of transfers to non-profit organizations or public schools as
8 designated by the People's counsel, *television monitors* or other audio/video equipment having an
9 aggregate retail market price of no less than Two Hundred and Twenty-Five Thousand Dollars
10 (\$225,000), and shall provide a written report of such transfers to the attorneys for the District
11 Attorneys no later than July 1, 2011.

12
13 8. Pursuant to Business and Professions Code section 17536 and the court's inherent equitable
14 authority, each Defendant is further ordered to pay to THE PEOPLE OF THE STATE OF
15 CALIFORNIA a total settlement amount of Two Hundred and Fifty Thousand Dollars (\$250,000),
16 payable within fifteen days of the date of entry of this Stipulated Judgment, said sum to be allocated
17 by and among the various offices of the District Attorneys as they shall deem appropriate, except
18 that in any event \$216,666 of the total shall be paid as the costs of investigation and prosecution in
19 this matter.

20 9. This Stipulated Final Judgment is in full and final settlement of all civil claims and remedies
21 by or on behalf of the People of the State of California, including but not limited to claims and
22 remedies under Business and Professions Code section 17500 *et seq.* pertaining to the Defendants'
23 labeling, advertising, and marketing of *television monitors* by the reference to measurement of the
24 *television monitors' viewable picture size*, for all such *television monitors* that were manufactured,
25 sold, or offered for sale by the Defendants before March 1, 2011. It having been stipulated by the
26 People and the Defendants that the People engaged in extensive investigation and review with the
27 cooperation of the Defendants, and the Stipulation and Stipulated Final Judgment having been
28

1 reviewed by the Court, this Court finds that the Stipulated Final Judgment in all respects is just,
2 reasonable, equitable, entered in good faith, and adequate to protect the public from the occurrence
3 in the future of the conduct alleged in the Complaint and to provide complete satisfaction of the
4 public interest in the conduct that is the subject of this Stipulated Final Judgment, and constitutes
5 full and adequate consideration to the public.

6 10. This Stipulated Final Judgment has been entered without any admissions by any of the
7 parties as to the merits of the allegations in the Complaint and shall not constitute a finding of either
8 fact or law as to the merits of any of those claims or as to the obligations of any Defendants to take
9 any actions agreed to be done or avoided herein in order to bring them, or any of them, into
10 compliance with the law.

11 11. Jurisdiction is retained for the purpose of enabling any party to this Stipulated Final
12 Judgment to apply to the Court at any time for dissolution, modification or enforcement of any of
13 the provisions herein.
14

15 Dated: Dec 30th, 2010



Judge of the Superior Court