

Consent Order are in the public interest, for the protection of consumers and consistent with the purposes of the CFA.

Based upon the above, the Director makes the following Investigative Findings and Statement of Law and Liability:

1. Kmart is a Michigan corporation established on or about April 6, 1916, as S.S. Kresge Company and has been a wholly-owned subsidiary of Sears Holdings Corporation since on or about March 24, 2005. Kmart maintains a principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois 61079.

2. Kmart is engaged in the business of operating thirty-six (36) Kmart Stores in New Jersey. The Kmart Stores engage in the retail sale of a wide assortment of merchandise, including non-prescription drugs and infant formula.

3. On March 16 and 17, 2010, investigators from the Division conducted inspections at thirty-two (32) of the thirty-four (34) Kmart Stores then located in New Jersey. During the inspections, the Division investigators found that nineteen (19) of those Kmart Stores were offering for sale and/or selling infant formula and non-prescription drugs beyond their expiration dates.

4. During the inspections, the Division investigators discovered 257 expired nonprescription drug and/or infant formula items being offered for sale, of which 68 items were purchased by Division investigators.

5. Those 257 expired non-prescription drug and/or infant formula items were being offered for sale at the following nineteen (19) Kmart Stores in the quantities listed:

<u>Store Number</u>	<u>Store Location</u>	<u>Number of Expired Items</u>
7177	371 Main Street, Belleville	1
3244	328 South White Horse Pike, Berlin	32
3050	1930 Route 88, Brick	10
4397	140 US Highway 10, Dover	71
3522	180 Broadway, Elmwood Park	28
3393	783 Delsea Drive North, Glassboro	8
4361	3010 Highway 35, Hazlet	1
3068	222 Bridgeton Pike, Mantua	5
3350	401 Route 38, Moorestown	2
3523	859 State Route 17, Paramus	10
3590	800 Black Horse Pike, Pleasantville	22
9133	US Highway 9 & State Highway 47, Rio Grande	10
9463	250 New Road, Somers Point	4
7235	970 Easton Avenue, Somerset	28
3071	213 Route 37 East, Toms River	7
4478	1061 White Horse Avenue, Trenton	1
7602	1825 Highway 35, Wall	8
3056	1020 Hamburg Turnpike, Wayne	2
9413	235 Prospect Avenue, West Orange	7

6. Of the 257 non-prescription drug and/or infant formula items that Kmart was discovered to have been offering for sale and/or selling beyond their expiration dates at the Kmart Stores listed above, many were several months - and some exceeded a year or more - beyond the expiration date. The expired non-prescription drugs and/or infant formula that Kmart was selling, and the approximate number of months beyond their expiration dates that they were being offered for sale and/or sold, include, but are not limited to, the following:

<u>Name of Product</u>	<u>Months Past Expiration Date</u>
American Fare Sore Throat Spray	29
American Fare Tussin CF	25
American Fare Ibuprofen	20
American Fare Acetaminophen	19
Tylenol Extra Strength, 500 mg, 8 ct	16
Tylenol Simply Sleep	14
American Fare Tussin CF	13

American Fare Sinus Congestion & Pain, 325 mg, 28 ct	12
Digestive Advantage Gas Prevention	12
American Fare Antacid/Antigas	12
Mucinex Cough	10
American Fare Pain Relief	9
Pedia-Sure	9
Non-Drowsy Sudafed PE Nasal Decongestant, 72 ct	9

7. The large number of expired non-prescription drugs and/or infant formula that remained on Kmart Store shelves well beyond their expirations dates, indicates that Kmart failed to adhere to company policies, procedures and/or protocols, leading to the increased possibility of purchase by consumers of expired non-prescription drugs and/or infant formula.

8. Under the CFA, specifically N.J.S.A. 56:8-2.27, it is an unlawful practice for any Person to sell or offer to sell to the public “any non-prescription drug, infant formula or baby food, which is subject to the expiration dating requirements issued by the federal Food and Drug Administration if the date of expiration has passed....”

9. Respondent’s sale or offer for sale of 257 expired non-prescription drug and/or infant formula items is a violation of N.J.S.A. 56:8-2.27.

THEREFORE based on the above agreed upon Investigative Findings and Statement of Law and Liability and for good cause shown

IT IS ORDERED as follows:

1. **EFFECTIVE DATE**

1.1. This Consent Order shall be effective on the date that it is filed with the Division (“Effective Date”).

2. DEFINITIONS

As used in this Consent Order, the following words and terms shall have the following meanings, which shall apply wherever the words and terms appear in this Consent Order:

2.1. "Attorney General" shall refer to the Attorney General of the State of New Jersey (or designated representative) and the Office of the Attorney General.

2.2. "Central Region" shall refer to Burlington, Hunterdon, Mercer, Middlesex, Monmouth, and Ocean Counties in New Jersey.

2.3. "Consumer" shall refer to any Person who is offered Merchandise for Sale.

2.4. "Investigation" shall refer to the task force investigation by the Division of Kmart Stores during the period of March 16, 2010 to March 17, 2010.

2.5. "Kmart Distribution Center" shall mean the Kmart facility that services Kmart Stores by shipping Merchandise to those Kmart Stores to be offered for Sale and sold to Consumers.

2.6. "Kmart Store[s]" shall refer to any or all of the retail locations operated by Respondent in the State.

2.7. "Merchandise" shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes non-prescription drugs and infant formula.

2.8. "New Jersey" shall refer to the State of New Jersey.

2.9. "Northern Region" shall refer to Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union, and Warren Counties in New Jersey.

2.10. "Parties" Shall mean Kmart Corporation and the Division.

2.11. "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.12. "District Managers" shall mean those Kmart employees who are responsible for the oversight and management of the Kmart Stores in the various regions in New Jersey.

2.13 "Represent" means to state or imply through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed.

2.14 "Sale" shall be defined in accordance with N.J.S.A. 56:8-1(e).

2.15 "State" shall refer to the State of New Jersey.

2.16 "Southern Region" shall refer to Atlantic, Camden, Cape May, Cumberland, Gloucester, and Salem Counties in New Jersey.

3. INJUNCTIVE RELIEF AND BUSINESS PRACTICES

3.1. Respondent shall not engage in any unfair and/or deceptive acts or practices in the conduct of its business in the State and shall comply with all laws, rules and regulations, as now constituted or as may hereinafter be amended, which are within the Division's jurisdiction applicable to the sale of non-prescription drugs and infant formula.

3.2. Respondent shall not sell or offer for Sale to any Consumer any non-prescription drug and/or infant formula beyond its expiration date in any Kmart Store, in accordance with N.J.S.A. 56:8-2.27.

3.3. Respondent shall check the expiration dates of all non-prescription drugs and/or infant formula before such Merchandise is displayed or otherwise offered for Sale in Kmart Stores.

3.4. Respondent shall check the expiration dates of all non-prescription drugs and/or infant formula as required by Kmart policies, while such Merchandise is displayed or otherwise offered for Sale in Kmart Stores.

3.5. Respondent shall arrange for the destruction or return to the manufacturer or supplier of any non-prescription drug and/or infant formula item that is removed from any Kmart

Stores in accordance with Section 3.2. Respondent shall not sell or otherwise distribute these expired nonprescription drugs and/or infant formula in the State.

3.6. Respondent shall provide a full refund to any Consumer who purchased an expired non-prescription drug and/or expired infant formula at any Kmart Store, upon the Consumer's return of the unused portion along with the appropriate sales receipt.

4. SETTLEMENT PAYMENT

4.1. Within thirty (30) days of the Effective Date, Respondent shall pay Three Hundred Two Thousand Five Hundred and 00/100 Dollars (\$302,500.00) ("Settlement Payment").

4.2. From the Settlement Payment, Two Hundred Fifty-Five Thousand and 00/100 Dollars (\$255,000.00) shall comprise civil penalties pursuant to N.J.S.A. 56:8-13.

4.3. From the Settlement Payment, Twenty Four Thousand Eight Hundred Forty-Three and 86/100 Dollars (\$24,843.86) shall comprise reimbursement of the Division's attorneys' fees pursuant to N.J.S.A. 56:8-19, Fifteen Thousand One Hundred Fifty-Six and 14/100 Dollars (\$15,156.14) shall comprise reimbursement of the Division's investigative costs, pursuant to N.J.S.A. 56:8-11, and Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) shall comprise the investigative costs incurred under Section 8 of this Consent Order, Future Kmart Store Inspections.

4.4. Respondent shall make the Settlement Payment by wire transfer or by cashier's check made payable to "New Jersey Division of Consumer Affairs" and forwarded to:

Patricia A. Schiripo, Deputy Attorney General/Assistant Section Chief
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
Consumer Fraud Prosecution Section
124 Halsey Street-5th Floor

P.O. Box 45029
Newark, New Jersey 07101

4.5. Upon making the Settlement Payment, Respondent shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

5. GENERAL PROVISIONS

5.1. This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Order.

5.2. This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

5.3. The Parties have negotiated, jointly drafted and fully reviewed the terms of the Consent Order, and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

5.4. This Consent Order contains the entire agreement between the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Division and Respondent.

5.5. Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

5.6. If any portion of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

5.7. This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power, or authority under this Consent Order be used to avoid compliance with this Consent Order.

5.8. This Consent Order shall be binding upon Respondent, as well as its officers, managers, agents, servants, employees, representatives, successors, and assigns.

5.9. Nothing in this Consent Order shall preclude the right of action by any Person not a party hereto.

5.10. This Consent Order is agreed to by the Parties and entered into for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order, nor any action taken hereunder, shall constitute or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission by Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA. This Consent Order is not intended, and shall not be deemed, to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms of this Consent Order; or (b) any action or proceeding involving a Released Claim (as defined in Section 10) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

5.11. Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

5.12. This Consent Order is a public document subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

6. REPRESENTATIONS AND WARRANTIES

6.1. The Parties Represent and warrant that their signatories to this Consent Order have authority to act for and bind the respective Parties.

6.2. Respondent Represents and warrants that it shall maintain uniform policies for the periodic inspection of non-prescription drugs and/or infant formula to ensure that such Merchandise is not displayed, offered for Sale and/or sold beyond its expiration date.

6.3. Respondent Represents and warrants that it shall maintain uniform policies for the removal from retail Sale of any non-prescription drugs and/or infant formula beyond its expiration date.

6.4. Respondent Represents and warrants that at present it employs a procedure in Kmart Stores whereby it monitors for expired Merchandise and proper stock rotation and that it remediates all exceptions found. Respondent further Represents and warrants that it monitors for sustained compliance in accordance with Kmart's policies. It shall not be a breach of this Consent Order for Kmart to revise this procedure in a manner that comports with New Jersey law.

6.5. Respondent Represents and warrants that it shall maintain uniform policies for the destruction or return to the manufacturer or supplier of any non-prescription drugs and/or infant formula that are removed from Kmart Stores in accordance with Sections 3.2 and 3.4.

6.6. Respondent Represents and warrants that all employees of each Kmart Store shall participate in initial training that will emphasize the importance of checking expiration dates on non-prescription medication and infant formula products. Respondent Represents and warrants

that it shall conduct periodic review of its policies concerning such training and implement additional training as necessary.

6.7. Respondent Represents and warrants that it shall provide managers and all other employees at Kmart Stores with the training and/or instruction necessary to ensure compliance with this Consent Order as well as all applicable State laws, regulations, and rules.

7. APPOINTMENT OF A COMPLIANCE LIAISON

7.1 For a period of eighteen months (18) from the Effective Date ("eighteen-month period"), Kmart shall appoint at least two senior level management employees ("Compliance Liaisons") to oversee the implementation of and compliance by Kmart of written policies concerning expiring and expired non-prescription drugs and infant formula.. The Compliance Liaisons shall not be affiliated with nor have supervisory or management responsibility for the Kmart Stores to which they have been given oversight responsibilities.

7.2 The Compliance Liaisons may delegate their duties under this Section of the Consent Order.

7.3 Kmart shall provide the name, title and contact information regarding the Compliance Liaisons to the Division upon execution of this Consent Order.

7.4 In the event that Kmart appoints a substitute or successor Compliance Liaison, Kmart shall provide written notice of the name, title and contact information of that Compliance Liaison within ten (10) days of appointment.

7.5 Every three (3) months, beginning January 7, 2013 and ending July 7, 2014 the Compliance Liaisons shall review the state of implementation and compliance undertaken by Kmart with respect to written policies concerning expiring and expired non-prescription drugs

and infant formula. In aid of the Compliance Liaisons' review of Kmart's compliance with its written policies concerning expiring and expired non-prescription drugs and infant formula, each Compliance Liaison shall visit ten (10) Kmart Stores each per quarter, for a total of twenty (20) inspections per quarter, without prior notification of the visit to those Kmart Stores

7.6 The Compliance Liaisons shall submit quarterly reports to the Division of the results of their review of information relating to the implementation of and compliance by Kmart of written policies concerning expiring and expired non-prescription drugs and infant formula, along with any findings or resolutions resulting from any visits to Kmart Stores, as set forth in Section 7.5. These reports shall be in the form of report attached hereto as Exhibit A and will include all instances where the Compliance Liaisons identified expired items on the shelves of a Kmart Store, as well as a full explanation of how the expired product remained on the shelf despite Kmart's written policies and procedures.

7.7 Upon request, but not more than once per quarter, and at a mutually agreeable time, the Compliance Liaisons and Kmart legal counsel shall participate in a conference call with representatives of the Division to respond to any questions or concerns the Division may have.

7.8 At the end of the eighteen-month period, the Compliance Liaisons shall submit a final certified report which summarizes all of the results of the reviews conducted during the eighteen-month period. The final report shall include, among other information, a compilation of all instances where expired items were identified by Compliance Liaisons, any changes to Kmart's policies and procedures concerning expiring and expired non-prescription drugs and infant formula, any recommended changes to these policies and procedures and an explanation of why such changes were or should be made.

7.9 For at least the duration of the eighteen-month period, Kmart shall maintain two date code specialists in each of Kmart's New Jersey Stores, who shall meet the job description requirements as set forth in the date code specialist job description attached hereto as Exhibit B. Such duties shall include, but not be limited to, an inspection of all date coded items in the Kmart Store, on a written rotational calendar in accordance with Kmart's written policies.

7.10 Kmart shall make commercially reasonable efforts to ensure that the position of date code specialist shall be filled at all times.

7.11 If upon review of the inspection performed by a date code specialist a breach is discovered, supervisory personnel within the affected Kmart Store shall perform an investigation as to the cause of the breach, which investigation shall be reviewed by the Compliance Liaison dedicated to the affected Kmart Store.

8. FUTURE KMART STORE INSPECTIONS

8.1. Kmart agrees to facilitate continuing inspections of its Kmart Stores as detailed below. The inspections shall be conducted semi-annually by the Division, beginning within 30 days of the Effective Date and continuing for one year thereafter.

8.2. The Division's inspections shall consist of a random, unannounced, review of expiration dates of non-prescription drugs and infant formula in selected Kmart Stores. During the inspections, the Division shall be provided with unrestricted access to the sales floor where nonprescription drugs and infant formula are being offered for sale, stockrooms and any other area in which Merchandise is received from Kmart's Distribution Center.

8.3. The Division shall conduct a semi-annual inspection in one Kmart Store in each of the following regions: Central Region, Northern Region, and Southern Region.

8.4. Notwithstanding the provisions of this Section, nothing herein shall preclude the Division from performing further inspections of Kmart Stores.

8.5. The Division shall provide Respondent with a written report that details the result of each semi-annual inspection.

8.6. In the event the Division's inspection discloses a failure to comply with N.J.S.A. 56:8-2.27, the Division shall issue a written notice of non-compliance to Kmart by e-mail and regular mail.

8.7. Kmart shall be required to address, in writing, the manner in which any violations of N.J.S.A. 56:8-2.27 were rectified within 10 days of receipt of the notice of non-compliance referenced in Section 8.6.

8.8. Kmart shall provide funding for the Division's inspections described in this Section, which cost shall not exceed \$7,500.00.

9. DONATION OF CLOSE DATED INFANT FORMULA

9.1. Kmart shall, through its Kmart Stores, donate a total of \$25,000 in infant formula that has not less than twenty-one (21) days to its expiration date ("Donated Merchandise"). The value of the Donated Merchandise shall be calculated based upon 100% of the original retail price of the Donated Merchandise.

9.2. Kmart shall make the Donated Merchandise available to one or more New Jersey-based charitable organizations ("Organization(s)") that are registered with the Attorney General or otherwise exempt from registration under the Charitable Registration and Investigation Act, N.J.S.A. 45:17A-18 et seq., and that provide direct assistance to infants and their parents or legal guardians.

9.3. Within thirty (30) days of the Effective Date, Kmart shall notify the Division, in writing, of the identity of the Organization(s) to which it intends to provide Donated

Merchandise. This identification shall include: the legal name of the Organization(s) and any alternate name used; the business address of the Organization(s) (street and mailing); and the telephone number, fax number, and email address of the responsible agent/contact at the Organization(s).

9.4. Kmart shall also obtain from the Organization(s) documents evidencing receipt of the Donated Merchandise, which shall include: (a) date of receipt; (b) identification of Donated Merchandise by product name, manufacturer, and lot number; (c) quantity of Donated Merchandise; (d) retail value of Donated Merchandise; and (e) signature of responsible agent/contact at the Organization(s).

9.5. Every three (3) months beginning on April 2013, Kmart shall compile an ongoing accounting of the value of Donated Merchandise to ensure compliance with the monetary obligations under this Consent Order. At the same time, Kmart's Chief Compliance Counsel shall review the status of Kmart's compliance with this Section.

9.6. Beginning April 7, 2013 and ending July 7, 2014, Kmart shall submit quarterly reports to the Division of the results of its review of information relating to the status of Kmart's compliance with this Section, along with any findings or resolutions resulting from the quarterly review with Kmart's Chief Compliance Counsel.

9.7. In the event Kmart is not able to provide \$25,000 in Donated Merchandise to Organization(s) by July 7, 2014 it shall donate non-close dated infant formula to the Organization(s) in an amount to reach the donated sum of \$25,000. Any such donations shall be subject to the requirements of Section 9.4.

10. RELEASE

10.1. In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order, and conditioned on Respondent making the

Settlement Payment in the manner specified in Section 4, the Division hereby agrees to release Respondent from any and all civil claims or Consumer related administrative claims, known and unknown, to the extent permitted by State law, which the Division brought or could have brought prior to the Effective Date against Respondent for violations of the CFA arising out of the Investigation as well as the matters specifically addressed in this Consent Order ("Released Claims").

10.2. Notwithstanding any provision of this Consent Order, the following do not comprise the Released Claims: (a) private rights of action; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other entity or subdivision of the State including, but not limited to, the State Office of Weights and Measures and County Offices of Weights and Measures.

11. MONITORING FOR COMPLIANCE

11.1. Within thirty (30) days of the Effective Date, Respondent shall submit a copy of this Consent Order to its District Managers for Kmart Stores. Within forty-five (45) days of the Effective Date, Respondent shall provide the Division with an acknowledgment that the above-referenced Persons have been supplied with a copy of the Consent Order. Respondent agrees to a continued obligation to keep all of its District Managers for Kmart Stores informed of the terms set forth herein. With respect to all Kmart Store managers in New Jersey, Respondent agrees to provide a letter-notice summarizing the material terms of this Consent Order.

12. PENALTIES FOR FAILURE TO COMPLY

12.1. The Attorney General (or designated representative) shall have the authority to enforce the provisions of this Consent Order or to seek sanctions for violations hereof or both.

12.2. The Parties agree that any future violations by Respondent of the injunctive provisions of this Consent Order or the CFA shall constitute a second or succeeding violation, pursuant to N.J.S.A. 56:8-13, and that Respondent may be liable for enhanced civil penalties.

13. COMPLIANCE WITH ALL LAWS

13.1. Except as provided in this Consent Order, no provision shall be construed as:

- (a) Relieving Respondent of its obligations to comply with all State and Federal laws, regulations or rules, as now constituted or as hereafter may be amended, or as granting permission to engage in any acts or practices prohibited by such laws, regulations or rules; or
- (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as hereafter may be amended, or limiting or expanding any right Respondent may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

14. NOTICES UNDER THIS CONSENT ORDER

14.1. Except as otherwise provided herein, any notices or other documents required to be sent to the Parties pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides tracking services and identification of Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Patricia A. Schiripo, Deputy Attorney General/Assistant Section Chief
State of New Jersey
Office of the Attorney General
Department of Law and Public Safety
Division of Law
Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

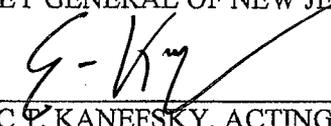
For Respondent:

Ian Marx, Esq.
Greenberg Traurig
200 Park Avenue
P.O. Box 677
Florham Park, New Jersey 07932

Kmart Corporation
Attention General Counsel
3333 Beverly Road
Hoffman Estates, IL 60179

IT IS ON THE 7th DAY OF January, 2013 SO ORDERED.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: 
ERIC P. KANEFSKY, ACTING DIRECTOR
DIVISION OF CONSUMER AFFAIRS

THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS
CONSENT ORDER ON THE DATES BESIDE THEIR RESPECTIVE SIGNATURES.

FOR THE DIVISION:

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: 
Patricia A. Schiripo
Deputy Attorney General
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

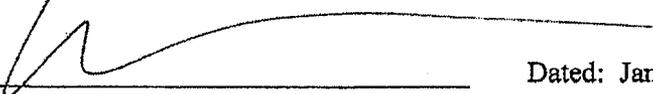
Dated: January 7, 2013

FOR THE RESPONDENT:

By: 
Ian Marx, Esq.
Greenberg Traurig
200 Park Avenue
P.O. Box 677
Florham Park, New Jersey 07932

Dated: January 7, 2013

KMART CORPORATION:

By: 

Dated: January 7, 2013

Cary W. Mergele
Vice President and Deputy General Counsel

EXHIBIT A

State of New Jersey Expired OTC/Baby Products Field Audit Worksheet

Unit #	SAMPLE	Auditor	SAMPLE
City	SAMPLE	Date	10/9/2012

	Item Description	KSN #	Qty (Shelf)	Qty (Markdown Quad)	Number Expired	Comments
Infant Formula Choose 3 of 6						
1	Enfagrow Premium Older Toddler Stage 3 1yr + Vanilla Flavor 24 OZ	ENF09201987	3	0	0	
2	Enfamil Gentlease for Fussiness & Gas 0-12 MO 22.2 OZ	ENF39281923	5	4	0	
3	Little Ones Advantage Infant Formula with Iron, DHA & ARA 0-12 MO 1 LB 7.2 OZ	LO48392019	2	0	0	
4	Nutramigen with Enfliora LGG 0-12MO 12.6 OZ	NU58272654	9	0	0	
5	Pedialyte Oral Electrolyte Maintenance Solution Orange 1 QT	PE398650291	12	1	0	
6	Similac Sensitive for Fussiness & Gas, On the Go 6x8 OZ	SI875643292	8	0	0	

	Item Description	KSN #	Qty (Shelf)	Qty (Markdown Quad)	Number Expired	Comments
Baby Consumables (Other than Formula) Choose 3 of 6						
1	Baby Mum-Mum Original 1.76oz	BM26832678	14	3	0	
2	Gerber Chicken Noodle Second Foods 2x3.5OZ	GC8276659	10	0	0	
3	Gerber Nature Select Variety Pack Juice 16 fl oz	GN5685568	10	0	0	
4	Gerber Macaroni and Cheese w/Veg 2x3.5OZ	GM13948272	20	0	0	
5	Gerber Second Foods Apple/Strawberry/Banana 2x3.5OZ	GS43526718	12	2	0	
6	Gerber Nature Select Peaches Carrots, 2 pack	GN013645728	7	0	0	

SAMPLE DATA

	Item Description	KSN #	Qty (Shelf)	Qty (Markdown Quad)	Number Expired	Comments
OTC (Adults, Children) Choose 6 of 12						
1	Little Cold by Little Remedies 12MO+ Honey Elixir 4OZ	LC28473621	4	0	0	
2	Baby Orajel Cooling Cucumber.33OZ	BO87629090	8	0	0	
3	Pediacare Multi Symptom Grape 4OZ	PC01384756	3	0	0	
4	Little Ones Petroleum Jelly	LO78493029	15	0	0	
5	Hyland's Ear Drops .33oz	HE28760098	5	0	0	
6	Claritin Liquigels 40 caps	CL72128218	6	0	0	
7	Clear Care Solution 12oz	CC39281073	8	0	0	
8	Nature Made Vitamin C 500mg with Rose Hips 130 caps	NM32857477	3	4	0	
9	Optifree Express Rewetting Drops .75oz	OP43547308	10	0	0	
10	Sundown Billberry 320mg 60 caps	SU11103847	6	0	0	
11	Vitasmart Flaxseed Oil 1000mg, 90 softgels	VI28916580	9	10	0	
12	Zicam Cold Remedy Plus Oral Mist Artic Mint	ZI58283744	3	0	0	

Instructions

- Randomly sample 3 of the 6 SKU's of infant formula products on sales floor, record written results in table above. For each SKU that you choose, check all items within that SKU.
- Randomly sample 3 of the 6 SKU's of baby consumables on sales floor, record written results in table above. For each SKU that you choose, check all items
- Randomly sample 6 of the 12 SKU's of OTC on sales floor, record written results in table above. For each SKU that you choose, check all items within that SKU.
- Confirm that MRP #1 is being properly followed, including expiration date calendar and proper rotation procedures
- Return Field Audit Worksheet via email to NJExpiredProducts@searshc.com.
- The comments column should be used to note any relevant issues (such as that the date code was illegible, or the Date Code Specialist was new to the position,

EXHIBIT B



INTERNAL JOB DESCRIPTION

Effective Date:	7/1/2012
Job Code & Internal Job Title:	40XXX Date Code Specialist
New Internal Job Title:	Specialist
Business Unit:	Support - KmartRetail
Reports To:	Data Integrity Lead
Exemption Status:	Non-Exempt
Scope of Responsibility:	
Supervision:	None
Direct:	
Indirect:	
Job Summary:	Promotes a positive shopping experience for customers by ensuring all product for sale is in the freshest condition. The position is responsible for all dated merchandise, on the sales floor and in the stockroom, ensuring it meets date code/compliance requirements to. Follows the Daily Expiration Category Check and addresses merchandise according to the shelf life date.
Job Duties/Responsibilities:	<ul style="list-style-type: none"> • Ensures customer care and selling are #1 priority through providing safe and fresh product. • Ensures all items on the sales floor and in the stockroom are not expired/outdated. • Executes the Daily Expiration Category Check calendar. • Understands and follows the markdown cadence for close dated merchandise. • Maintains and reviews "Short Date Quad" according to the calendar and procedures. • Communicates with the MC&C associate to return items based on expired dates. • Ensures that expired product is never sold. • • Displays strong skill sets in use of available digital equipment and applicable process that relate to specific job responsibilities. • Participates in morning huddles, performs as the store champion for finding short dated or out of date product by building awareness with the store organization on the importance of product rotation and markdown cadence due to close dated merchandise. • Actively engages customers using the Welcome, Assist and Thank approach to servicing customers.
Education Requirements:	Less Than HS Graduate
Years of Related Experience:	None
License/Certificate Required:	No
Driver's License Required:	No
Travel Requirements:	None
Age Requirement:	16+
Job Requirements:	<ul style="list-style-type: none"> • Reading, writing, verbal, and arithmetic skills. • Able to lift and move merchandise, typically a minimum of 20lbs., but could be as much as 100lbs. • Repetitive bending, lifting, stretching and reaching.
Preferred Skills:	<ul style="list-style-type: none"> •
Potential Feeder Positions:	<ul style="list-style-type: none"> • Associate
Potential Future Positions:	<ul style="list-style-type: none"> • Lead

The duties, responsibilities and requirements presented in this job description are intended to be representative in nature and should not be construed as an exhaustive list