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11 Attorneys for Defendant  
BEE INTERNATIONAL, INC.

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF SAN FRANCISCO  
15 UNLIMITED CIVIL JURISDICTION  
16

17  
18 WHITNEY R. LEEMAN, Ph.D.,

19 Plaintiff,

20 v.

21 BEE INTERNATIONAL, INC.; and DOES 1  
through 150, inclusive,

22 Defendants.  
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Case No. CGC-05-446009

**STIPULATION AND [PROPOSED] ORDER  
RE: CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Whitney R. Leeman, Ph.D. and Bee International, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.  
4 (hereinafter "Dr. Leeman" or "Plaintiff") and defendant Bee International, Inc. (hereinafter "Bee" or  
5 "Defendant"), with Dr. Leeman and Bee collectively referred to as the "Parties."

6 **1.2 Plaintiff**

7 Dr. Leeman is an individual residing in California who seeks to promote awareness of exposures  
8 to toxic chemicals and improve human health by reducing or eliminating hazardous substances  
9 contained in consumer products.

10 **1.3 Defendant**

11 Bee employs ten or more persons and is a person in the course of doing business for purposes of  
12 Proposition 65.

13 **1.4 General Allegations**

14 Dr. Leeman alleges that Bee has manufactured, distributed and/or sold in the State of California  
15 certain mugs and other ceramic containers used in the consumption of food and beverages with colored  
16 artwork or designs on the exterior containing lead and cadmium. Lead and cadmium are listed pursuant  
17 to the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.6 *et seq.*  
18 ("Proposition 65"), as chemicals known to the State of California to cause cancer, birth defects and other  
19 reproductive harm. Lead and cadmium shall be referred to herein as the "Listed Chemicals."

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: mugs and other  
22 ceramic containers used in the consumption of food and beverages with colored artwork or designs  
23 containing lead on the exterior including, but not limited to, the ceramic products identified in Exhibit A  
24 to this Consent Judgment. All such mugs and other ceramic containers used in the consumption of food  
25 and beverages shall be referred to herein as the "Products."

26 **1.6 Notices of Violation**

27 On or about August 18, 2005, Dr. Leeman served Bee and various public enforcement agencies  
28 with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Bee and such public

1 enforcers with notice that alleged that Bee was in violation of California Health & Safety Code  
2 §25249.6 for failing to warn consumers and customers that the Products that Bee sold exposed users in  
3 California to the lead.

4 **1.7 Complaint**

5 On October 25, 2005, Dr. Leeman, who is acting in the interest of the general public in  
6 California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the Superior  
7 Court in and for the City and County of San Francisco against Bee International, Inc. and Does 1  
8 through 150, (*Leeman v. Bee International, Inc.*, Case No. CGC-05-446009) alleging violations of  
9 California Health & Safety Code §25249.6 based on the alleged exposures to the lead contained in the  
10 Products sold by Bee.

11 **1.8 No Admission**

12 Bee denies the material factual and legal allegations contained in Dr. Leeman's Notice and  
13 Complaint and maintains that all products that it has sold and distributed in California, including the  
14 Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be  
15 construed as an admission by Bee of any fact, finding, issue of law, or violation of law, nor shall  
16 compliance with this Consent Judgment constitute or be construed as an admission by Bee of any fact,  
17 finding, conclusion, issue of law or violation of law, such being specifically denied by Bee. However,  
18 this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of Bee  
19 under this Consent Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction  
22 over Bee as to the allegations contained in the Complaint, that venue is proper in the County of San  
23 Francisco and that this Court has jurisdiction to enter and enforce the provisions of this Consent  
24 Judgment.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" shall mean November 27,  
27 2006.

1 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

2 **2.1** After the Effective Date, Bee shall not sell, ship or offer to be shipped for sale in  
3 California Products containing the Listed Chemicals unless such Products are sold or shipped with the  
4 clear and reasonable warnings set out in Section 2.2 or comply with the Reformulation Standards set  
5 forth in Section 2.3.

6 Any warning issued for Products pursuant to this Section 2.2 below shall be prominently placed  
7 with such conspicuousness as compared with other words, statements, designs, or devices as to render it  
8 likely to be read and understood by an ordinary individual under customary conditions before purchase  
9 or, for Products shipped directly to an individual in California, before use. Any warning issued pursuant  
10 to Section 2.2 shall be provided in a manner such that the consumer or user understands to which  
11 *specific* product the warning applies, so as to minimize if not eliminate the chance of an overwarning  
12 situation.

13 **2.2 Product Warnings**

14 **2.2.1** Clear and Reasonable Warnings. This Section describes Bee’s options for  
15 satisfying the warning obligations required by Section 2.1, depending, in part, on the manner of sale:

16 **(a) Retail Store Sales**

17 **(i) Product Labeling.** From the Effective Date, a warning will be  
18 affixed to the packaging, labeling or directly on the Product by Bee or its agent, that states:

19 **WARNING:** The exterior decoration used on this product  
20 contains lead and/or cadmium, chemicals known to  
21 the State of California to cause birth defects and  
22 other reproductive harm.

23 **(ii) Point-of-Sale Warnings.** Bee may perform its warning  
24 obligations by insuring to the greatest extent possible that signs are posted at retail outlets in the State of  
25 California where the Products are sold. Bee must receive a written commitment from each retailer to  
26 whom Bee sells Products directly that it will post the warning signs. Point-of-sale warnings shall be  
27 provided through one or more signs posted in close proximity to the point of display of the Products that  
28 state:

1                   **WARNING:** The exterior decoration used on this product  
2                                   contains lead and/or cadmium, chemicals known to  
3                                   the State of California to cause birth defects and  
4                                   other reproductive harm.

5                   **(b) Mail Order Catalog and Internet Sales.** Defendant shall satisfy its  
6                   warning obligations for Products that are sold by mail order catalog or from the internet to California  
7                   residents, by providing a warning: (a) in the mail order catalog and/or on the website; or (b) with the  
8                   Product when it is shipped to an address in California. Warnings given in the mail order catalog or on  
9                   the website shall identify the specific Product to which the warning applies as further specified in  
10                   Sections 2.2.1(b)(i), (ii) and/or (iii) as applicable:

11                                   **(i) Mail Order Catalog.** Any warning provided in a mail order  
12                   catalog must be in the same type size or larger as the product description text within the catalog. The  
13                   following warning shall be provided on the same page and in the same location as the display and/or  
14                   description of the Product:

15                                   **WARNING:** The exterior decoration used on this product  
16                                   contains lead and/or cadmium, chemicals known to  
17                                   the State of California to cause birth defects and  
18                                   other reproductive harm.

19                   Where it is impracticable to provide the warning on the same page and in the same location as  
20                   the display and/or description of the Product, Bee may utilize a designated symbol to cross reference the  
21                   applicable warning ("Designated Symbol") and shall provide the following language on the inside of the  
22                   front cover of the catalog or on the same page as any order form for the Product(s):

23                                   **WARNING:** The exterior decorations used on certain products  
24                                   identified with this symbol ▼ and offered for sale in  
25                                   this catalog contain lead and/or cadmium, chemicals  
26                                   known to the State of California to cause birth  
27                                   defects and other reproductive harm.

28                   The Designated Symbol (shown on Exhibit B attached hereto) must appear on the same page and  
in close proximity to the display and/or description of the Product. On each page where the Designated  
Symbol appears, Bee must provide a header or footer directing the consumer to the warning language  
and definition of the Designated Symbol.

If Defendant elects to provide warnings in the mail order catalog, then the warnings must be  
included in all catalogs offering to sell one or more Products printed after January 1, 2007.

1 (ii) **Internet Web Sites and Pages.** A warning may be given in  
2 conjunction with the sale of the Product via the internet, provided it appears either: (a) on the same web  
3 page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c)  
4 on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser  
5 during the checkout process. The following warning statement shall be used and shall appear in any of  
6 the above instances adjacent to or immediately following the display, description, or price of the Product  
7 for which it is given in the same type size or larger as the product description text:

8 **WARNING:** The exterior decoration used on this product  
9 contains lead and/or cadmium, chemicals known to  
10 the State of California to cause birth defects and  
11 other reproductive harm.

12 Alternatively, the Designated Symbol may appear adjacent to or immediately following the  
13 display, description or price of the Product for which a warning is being given, provided that the  
14 following warning statement also appears elsewhere on the same web page:

15 **WARNING:** Products identified on this page with the following  
16 symbol use exterior decorations that contain lead  
17 and/or cadmium, chemicals known to the State of  
18 California to cause birth defects and other  
19 reproductive harm: ▼

20 (iii) **Package Insert or Label.** For all Products sold by catalog or via  
21 the internet, a warning may be provided with the Product when it is shipped directly to an individual in  
22 California, by either: (a) affixing the following warning language to the packaging, labeling or directly  
23 to a specific Product; (b) inserting a warning card measuring at least 4" x 6" in the shipping carton  
24 which contains the following warning language; or (c) by placing the following warning statement on  
25 the packing slip or customer invoice on the line directly below the description of the Product on the  
26 packing slip or customer invoice:

27 **WARNING:** The exterior decoration used on this product  
28 contains lead and/or cadmium, chemicals known to  
the State of California to cause birth defects and  
other reproductive harm.

Alternatively, Bee may place the following language on the packing slip or invoice and specifically identifying the Product in lettering of the same size or larger as the description of the Product:

1                   **WARNING:** The exterior decorations used in the following  
2                   product(s) contain(s) lead and/or cadmium,  
3                   chemicals known to the State of California to cause  
4                   birth defects or other reproductive harm:

5                   *[list products for which warning is given].*

6                   The Defendant shall, in any of these instances, in conjunction with providing the warning, also  
7                   inform the consumer, in a conspicuous manner, that he or she may return the Product for a full refund  
8                   (including shipping costs for both the receipt and the return of the Product) within thirty (30) days of his  
9                   or her receipt of the Product.

### 10                   **2.2.2 Exceptions**

11                   The warning requirements set forth in Section 2.2.1 shall not apply to:

- 12                   (i) Any Products shipped to a third party before the Effective Date; or
- 13                   (ii) Reformulated Products (as defined in Section 2.3 below).

### 14                   **2.3 Reformulation Standards**

15                   The following Reformulated Products shall be deemed to comply with Proposition 65 and be  
16                   exempt from any Proposition 65 warning requirements under Section 2.2: any Product containing six  
17                   one-hundredths of one percent (0.06%) of lead by weight or less and forty-eight one-hundredths of one  
18                   percent (0.48%) of cadmium by weight or less, in each material used in the Products.

### 19                   **2.4 Reformulation Commitment**

20                   Bee hereby commits to make reasonable efforts to ensure that all Products that it offers for sale  
21                   in California shall qualify as Reformulated Products, and that all such Products shall qualify as  
22                   Reformulated Products on or before December 31, 2007.

## 23                   **3. MONETARY PAYMENTS**

### 24                   **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

25                   The total penalty amount shall be \$20,000, which shall be paid by Bee as set forth herein.  
26                   Pursuant to Health & Safety Code §25249.7(b), Bee shall make a payment of \$15,000 on or before  
27                   December 4, 2006, and a payment of \$5,000 on or before June 1, 2007. Said payments shall be made  
28                   payable to the "HIRST & CHANLER LLP in Trust For Whitney R. Leeman, Ph.D." and shall be  
delivered to plaintiff's counsel at the following address:

1 HIRST & CHANLER LLP  
2 Attn: Proposition 65 Controller  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710-2565

6 **3.2 APPORTIONMENT OF PENALTIES RECEIVED**

7 All penalty monies received shall be apportioned by Dr. Leeman in accordance with Health &  
8 Safety Code §25192, with 75% of these funds remitted by Dr. Leeman to the State of California's Office  
9 of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained  
10 by Dr. Leeman as provided by Health & Safety Code §25249.12(d). Dr. Leeman shall bear all  
11 responsibility for apportioning and paying to the State of California the appropriate civil penalties paid  
12 in accordance with this Section.

13 **4. REIMBURSEMENT OF FEES AND COSTS**

14 The Parties acknowledge that Dr. Leeman and her counsel offered to resolve this dispute without  
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue  
16 to be resolved after the material terms of the agreement had been settled. Bee then expressed a desire to  
17 resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties  
18 then attempted to (and did) reach an accord on the compensation due to Dr. Leeman and her counsel  
19 under the private attorney general doctrine codified at California Code of Civil Procedure §1021.5 for  
20 all work performed through the Court's approval of this agreement. Under the private attorney general  
21 doctrine, Bee shall reimburse Dr. Leeman and her counsel for fees and costs incurred as a result of  
22 investigating, bringing this matter to Bee's attention, litigating and negotiating a settlement in the public  
23 interest and seeking the Court's approval of the settlement agreement. Bee shall pay Dr. Leeman and  
24 her counsel \$188,000 for all attorneys' fees, expert and investigation fees, litigation and related costs.  
25 Bee shall make a payment of \$43,000 on or before December 4, 2006, a payment of \$100,000 on or  
26 before December 15, 2006, and a payment of \$45,000 on or before June 1, 2007. The payments shall be  
27 made payable to HIRST & CHANLER LLP and shall be delivered at the following address:

28 HIRST & CHANLER LLP  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565



1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Release of Bee and Downstream Customers**

3 In further consideration of the promises and agreements herein contained, and for the payments  
4 to be made pursuant to Sections 3 and 4, Dr. Leeman, on behalf of herself, her past and current agents,  
5 representatives, attorneys, successors and/or assignees, and in the interest of the general public, hereby  
6 waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases  
7 all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,  
8 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not  
9 limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known  
10 or unknown, fixed or contingent (collectively "Claims"), against Bee and each of its downstream  
11 distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers,  
12 owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective  
13 officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent  
14 entities (collectively "Releasees"). This release is limited to those claims that arise under Proposition  
15 65, as such claims relate to Bee's alleged failure to warn about exposures to or identification of the lead  
16 contained in the Products.

17 The Parties further understand and agree that this release shall not extend upstream to any  
18 entities that manufactured the Products or any component parts thereof, or any distributors or suppliers  
19 who sold the Products or any component parts thereof to Bee.

20 **5.2 BEE'S RELEASE OF DR. LEEMAN**

21 Bee waives any and all claims against Dr. Leeman, her attorneys and other representatives, for  
22 any and all actions taken or statements made (or those that could have been taken or made) by Dr.  
23 Leeman and her attorneys and other representatives, whether in the course of investigating claims or  
24 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the  
25 Products.

26 **6. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved and entered by the Court and shall be  
28 null and void if, for any reason, it is not approved and entered by the Court within one

1 year after it has been fully executed by all Parties, in which event any monies that have been provided to  
2 Plaintiff, or her counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen  
3 (15) days after receiving written notice from Bee that the one-year period has expired.

4 **7. SEVERABILITY**

5 If, subsequent to court approval of this Consent Judgment, any of the provisions of this Consent  
6 Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining  
7 shall not be adversely affected.

8 **8. ATTORNEYS' FEES**

9 In the event that, after Court approval: (1) Bee or any third party seeks modification of this  
10 Consent Judgment pursuant to Section 14 below; or (2) Dr. Leeman takes reasonable and necessary  
11 steps to enforce the terms of this Consent Judgment, Dr. Leeman shall be entitled to her reasonable  
12 attorneys' fees and costs pursuant to CCP §1021.5.

13 **9. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of California and  
15 apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered  
16 inapplicable by reason of law generally, or as to the Products, then Bee shall provide written notice to  
17 Dr. Leeman of any asserted change in the law, and shall have no further obligations pursuant to this  
18 Consent Judgment with respect to, and to the extent that, the Products are so affected.

19 **10. NOTICES**

20 Unless specified herein, all correspondence and notices required to be provided pursuant to this  
21 Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or  
22 certified mail) return receipt requested; or (ii) overnight courier on any Party by the other party at the  
23 following addresses:

24 To Bee:

25 Louis Block, President  
26 BEE INTERNATIONAL, INC.  
27 2311 Boswell Road, Suite 5  
28 Chula Vista, CA 91914

1 To Dr. Leeman:

2 Proposition 65 Coordinator  
3 HIRST & CHANLER LLP  
4 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

5 Any Party, from time to time, may specify in writing to the other Party a change of address to  
6 which all notices and other communications shall be sent.

7 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

8 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be  
9 deemed an original, and all of which, when taken together, shall constitute one and the same document.

10 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

11 Dr. Leeman agrees to comply with the reporting form requirements referenced in Health &  
12 Safety Code §25249.7(f).

13 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

14 Dr. Leeman and Bee agree to mutually employ their best efforts to support the entry of this  
15 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
16 timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a  
17 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, Plaintiff  
18 agrees to file a Motion to Approve the Agreement within a reasonable period of time after the Execution  
19 Date.

20 **14. MODIFICATION**

21 This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon  
22 entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any  
23 Party and entry of a modified Consent Judgment by the Court. The Attorney General shall be served  
24 with notice of any proposed modification to this Consent Judgment at least fifteen (15) days in advance  
25 of its consideration by the Court.

26 **15. AUTHORIZATION**

27 The undersigned are authorized to execute this Consent Judgment on behalf of their respective  
28 Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

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<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>11/27/06</u></p> <p>By: <u>Whitney Leeman</u> Plaintiff WHITNEY R. LEEMAN, Ph.D.</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Defendant BEE INTERNATIONAL, INC.</p>
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>HIRST &amp; CHANLER LLP</p> <p>By: _____ D. Joshua Voorhees, Esq. Attorneys for Plaintiff WHITNEY R. LEEMAN, Ph.D.</p>	<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>LAW OFFICES OF PETER D. LEPISCOPO</p> <p>By: _____ Peter D. Lepiscopo, Esq. Attorneys for Defendant BEE INTERNATIONAL, INC.</p>

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: _____	Date: _____
By: _____ Plaintiff WHITNEY R. LEEMAN, Ph.D.	By: _____ Defendant BEE INTERNATIONAL, INC.
<b>APPROVED AS TO FORM:</b>	<b>APPROVED AS TO FORM:</b>
Date: <u>11/28/06</u>	Date: _____
HIRST & CHANLER LLP	LAW OFFICES OF PETER D. LEPISCOPO
By:  _____ D. Joshua Voorhees, Esq. Attorneys for Plaintiff WHITNEY R. LEEMAN, Ph.D.	By: _____ Peter D. Lepiscopo, Esq. Attorneys for Defendant BEE INTERNATIONAL, INC.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT

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<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Plaintiff WHITNEY R. LEEMAN, Ph.D.</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>11/27/06</u></p> <p>By: <u>Louis Block, Pres.</u> Defendant BEE INTERNATIONAL, INC.</p>
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>HIRST &amp; CHANLER LLP</p> <p>By: _____ D. Joshua Voorhees, Esq. Attorneys for Plaintiff WHITNEY R. LEEMAN, Ph.D.</p>	<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>11/28/06</u></p> <p>LAW OFFICES OF PETER D. LEPISCOPO</p> <p>By:  Peter D. Lepiscopo, Esq. Attorneys for Defendant BEE INTERNATIONAL, INC.</p>

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

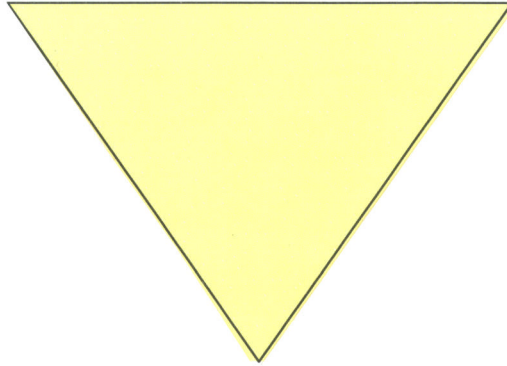
**Exhibit A**

1. Easter Mug W/ Candy-2oz. (Bee Part #7402)
2. Christmas Mug (Bee Part #7202)
3. Valentine Mug (Bee Part #25302)
4. Titanic Mug (Bee Part #32101)
5. Nips Mug (Bee Part #600N)

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**Exhibit B**

The Designated Symbol that Bee will use to identify Products containing the Listed Chemicals which are sold through its catalogs or on its website is:



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