

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOHNSON & JOHNSON and JOHNSON &
JOHNSON CONSUMER COMPANIES, INC.,

Plaintiffs,

v.

THE AMERICAN RED CROSS, LEARNING
CURVE INTERNATIONAL, INC., MAGLA
PRODUCTS, LLC, WATER-JEL
TECHNOLOGIES, INC., and FIRST AID
ONLY, INC.,

Defendants.

Case No. 07-CV-7061 (JSR/DCF)

**ECF CASE
ELECTRONICALLY FILED**

**DECLARATION OF JOSEPH C. BECKER IN
SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Joseph C. Becker, being of mature age and having the mental capacity to do so, hereby declare and state as follows:

1. I am employed at the American National Red Cross (the "American Red Cross" or "ARC") as Senior Vice President, Preparedness and Response. The American Red Cross is a federally chartered nonprofit corporation located at 2025 E Street NW, Washington, DC 20006.

2. I submit this Declaration in support of Defendants' Motion for Summary Judgment based on my personal knowledge from working at the American Red Cross and other factual matters known to me.

3. The Greek Red Cross was adopted by the American National Red Cross at its inception in 1881. Since then, the Red Cross has used the Red Cross Emblem in all of the work

it does throughout the United States to further its mission to help the Nation prepare for and respond to emergencies and disasters.

4. The Red Cross Emblem is well known to be a symbol of comfort and relief, something to which people turn in times of emergency and disaster. That has been so as the American Red Cross has responded to disasters and emergencies large and small throughout the more than 120 years since its founding, events ranging from the San Francisco earthquake in 1906 to the 2005 Katrina and Rita hurricanes, from national calamities like these to house fires and other smaller emergencies to which the American Red Cross responds every day.

5. The Red Cross Emblem is ubiquitous in the United States as a result of its use by the American Red Cross and others authorized by the American Red Cross to display it. Most obviously, the Emblem is critical and widely used in times of emergency or disaster. The Emblem is prominently displayed by American Red Cross employees and volunteers, as well as on the vests worn by 4800 health professionals in paid and volunteer service with the American Red Cross. It is used to identify workers, volunteers, shelters, and other forms of aid provided by the American Red Cross when people are displaced or require care or support as a result of floods, hurricanes, and other natural and man-made disasters. And it is used by our manufacturing partners when they make the items bearing the Emblem that are so important during times of crisis, items ranging from cots, blankets and first aid kits to support material like clean-up or personal hygiene kits or simple blankets. These uses of the Emblem are critical, because the Emblem marks people, places, and items that victims can trust in time of dire need.

6. The Red Cross Emblem also appears on fundraising items distributed or used by American Red Cross employees, chapters, and authorized volunteers and fundraising partners in the course of their daily efforts to support the organization's humanitarian mission. In certain

circumstances, the American Red Cross also permits use of the Emblem in a “cause marketing” context. A firm that makes a particular good or service that is compatible with the American Red Cross’s mission might agree to make a contribution to the American Red Cross, sometimes on a per-unit sold basis, and to include in its packaging Red Cross information on first aid or emergency preparedness or some other subject important to the American public and within our mission. Subject to our controls, the Emblem would then be displayed with our authorization on the firm’s packaging or marketing materials, often on retail store shelves, to communicate to consumers that a portion of the proceeds of purchases will be donated to the American Red Cross.

7. All of these activities of ARC and uses of the Red Cross Emblem further the important work of ARC.

8. Sales of the first aid kits and other products at issue in this lawsuit further ARC’s mission and purpose in two clear ways: (1) these products promote preparedness for medical and other emergencies, disasters, and needs, and (2) arranging for their manufacture, distribution, and sale provides funding needed to further our humanitarian efforts. The sales at issue in this lawsuit are no different in this respect than sales we have been engaged in for decades.

9. The American Red Cross has long looked for ways to increase the preparedness of the public by making proper first aid materials and proper first aid training available to as many people as practicable. For decades, we have sold first aid and related items, both directly to the public through the General Supply Department at the National Headquarters (and more recently on the web – please consult www.redcross.org) and also to our chapters for their use or resale to consumers. Our chapters sell first aid, preparedness, and other mission-related items on their own web sites. And our Kansas City chapter operates a retail facility in a shopping mall at

which important health, safety, and preparedness items are sold, bearing the Red Cross Emblem. In addition, a first aid kit was developed by our Seattle Chapter and manufactured by First Aid Only, and a first aid kit was developed by the Cincinnati Chapter. Both were available to the public and to all chapters to purchase for resale.

10. After September 11, 2001, the need for reaching as broad a spectrum of the American public became even more imperative because the need for preparedness became so urgent. We responded in numerous ways. To take one small example, those who fled during 9-11 often had to do so without needed personal items, so we developed an evacuation safety kit – dubbed a safety tube, after its shape – that could be stored in places of work or other areas where large numbers congregate and used on a “grab and go” basis in case of evacuation.

11. ARC is a federally chartered organization and thus has to report on its activities to Congress. The organization has provided details about its receipts from sales of products and materials to Congress in its annual reports as well as in testimony. It has also received guidance from the Department of Justice and the IRS on this important issue.

12. As noted above, third parties play critical roles in the work of the American Red Cross. In times of national emergency, the American Red Cross responds by deploying employees and volunteers bearing the Emblem, so that victims know they can trust the person offering them shelter or food or assistance.

13. ARC exercises great care in identifying and training and controlling employees and volunteers whom we authorize to use the Emblem. On average, Red Cross volunteers respond to about 200 disasters a day in communities all across the country. For larger disasters, a special cadre of over 60,000 highly trained volunteers are available to respond anywhere in the United States. Sometimes, when the emergency warrants, the American Red Cross takes on

spontaneous volunteers, people who have not been previously trained but who volunteer to help, and in some cases these spontaneous volunteers must also bear the Emblem. Throughout, we make every effort to screen and credential those authorized to wear the Emblem, subject to the necessities of the crisis.


14. ARC does not itself own any manufacturing or publishing facilities. This means that it must regularly permit third-party firms to use the Emblem in conjunction with manufacturing or publishing material for ARC's use and sale. Almost all of the supplies we provide during emergencies and in preparation for them are manufactured by third parties, who place the Emblem on boxes and items so that victims and consumers will know we are the source of the item they are being given.

15. ARC exercises strict controls when we authorize any third party to use the Red Cross's name and Emblem. That is true with respect to the firms that manufacture blood bags or field boxes or any of a myriad items we have to have every year to do our work. And it is true of the firms who manufacture and distribute first aid and other products for us. We control the nature of the product and the exact way in which the Emblem will be used, to assure the Emblem is not used in conjunction with products or services that are not authorized by us and part of our mission. We could not do our work if we were unable to authorize volunteers and other third parties to use our name and Emblem in appropriate circumstances.

16. ARC would be severely prejudiced if for some reason it were required to stop putting its Emblem on products or other items because the Emblem is so closely associated with the American Red Cross. For over 100 years, the American public has seen the American Red Cross Emblem on products and in contexts that has imparted to the Emblem, including the American Red Cross name, a message of safety and emergency response and care that we work

hard every day to maintain. The Emblem must of necessity be used widely by persons not directly employed by the American Red Cross, from volunteers to manufacturers to fundraising partners. The American Red Cross strives to assure that all those who are authorized to display properly the Emblem are screened or trained or subject to supervision or controls appropriate to the circumstance. That is straightforward in the case of cause marketing partners and in the case of manufacturers like the other defendants, since the terms of their use can be pre-defined in a carefully crafted agreement setting forth our right to tightly control the Emblem's use. But the Emblem is also used in situations like Katrina or 9-11 in which great need arises, disorder prevails, and response must be immediate. The American Red Cross could not function without the assistance of the volunteers who staff the shelters and feed or care for those in need or without the support of firms who work with us to provide the goods and services needed to fulfill our mission.

I declare the foregoing to be true and correct under penalty of perjury. This Declaration is executed by me in Washington, DC this 20th day of November, 2007.



Joseph C. Becker