

STAFF ALLEGATIONS

4. Between November 2005 and October 2006, Black & Decker imported and distributed approximately one hundred thirty-six thousand (136,000) newly designed electric, hand-held grass trimmer/edgers known as model GH1000 Grasshog XP ("Grasshog XP"). The Grasshog XP's were sold through retailers nationwide for approximately \$70.00.

5. The Grasshog XP's are "consumer products" and, at all times relevant hereto, Black & Decker was a "manufacturer" of these consumer products, which were "distributed in commerce," as those terms are defined or used in sections 3(a)(5), (8) and (11) of the CPSA, 15 U.S.C. § 2052(a)(5), (8) and (11).

6. The Grasshog XP's contained several defects that presented four failure modes: 1) the cutting string spool covers and spools can be projected off the Grasshog XP at high speed in unpredictable directions, allowing these components to strike the user or bystanders; 2) the dual cutting lines were fed and cut off at high speed and at irregular intervals during use, allowing the line to strike the user; 3) the spool line feed guard can fall off during use, exposing the user to injury from overly long high speed cutting line; and 4) the spool housing may overheat, exposing users to risks of burn injuries.

7. Black & Decker first learned of defects in its Grasshog XP spool cover in December 2005. It modified the defective spool cover manufacturing process and changed the spool cover to a different material ("the new spool cover") for future production. In January 2006, the firm recalled 9,000 Grasshogs. In February 2006, Black & Decker informed the CPSC staff of what it termed a "quality" problem involving the original spool cover but did not file a report under 15 U.S.C. § 2064(b) at that time.

A. Violation of 15 U.S.C. § 2068(a)(3)
Failure to Provide Information Requested by CPSC Staff

Paragraphs one through seven, above are hereby incorporated herein by reference.

8. Black & Decker received its first complaints involving Grasshog XP defects, including problems with the new replacement spool cover, in mid-March and April 2006. By the end of May 2006, the Firm had received 80 safety complaints, personal injury reports and hundreds of warranty claims involving the Grasshog XP. The subject of the complaints, reports and warranty claims were the defects set forth in Paragraph 6, *supra*.

9. In a letter dated May 9, 2006, CPSC staff asked Black & Decker for full report information with regard to the Grasshog XP, including, but not limited to, the defective spool covers the Firm discovered in December 2005 and replaced in January 2006.

10. Despite an awareness of the information set forth in Paragraphs six and eight, *supra*, and other information germane to written questions posed by the staff on May 9, 2006, Black & Decker did not comply with the staff written request to provide a full report concerning the Grasshog XP. In late May 2006, the firm provided limited, incomplete information regarding its January spool cover recall. Among other acts of omission, it failed to provide information about defects it discovered in the replacement spool cover system used in production from January 2006 forward. These new, defective spool covers had been intended as the remedy and were provided as replacement covers in the firm's January 2006 recall.

11. Based upon the incomplete information provided by Black & Decker, on June 30, 2006, the staff sent Black & Decker a letter closing the case file that had been opened on May 9, 2006. The staff letter of June 30, 2006 reminded Black & Decker of its duty to immediately report information that the risk or hazard posed by the Grasshog XP was greater than or different from that indicated by the information that had been supplied by the firm to date.

12. By June 2006, Black & Decker had received 216 Grasshog XP safety complaints and approximately 14 reports of injury. Despite the Commission staff letters of May 2 and June 30, 2006 requesting this information, Black & Decker silently acquiesced in the file closure without revealing this information.

13. Black & Decker waited until October 2006 to provide information requested by the staff on May 9, 2006. By its acts and omissions, the Firm knowingly violated Section 19(a)(3) of the CPSA, 15 U.S.C. § 2068(a)(3), as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

B. Violation of 15 U.S.C. § 2068(a)(4)
Failure to Furnish Information Required by Sections 15(b)(3) and (b)(4) of the CPSA

Paragraphs one through thirteen, above, are hereby incorporated herein by reference.

14. From July through September 2006, Black & Decker continued to receive large numbers of safety complaints, injury reports and warranty claims involving defects in the Grasshog XP new spool cover, the spool line feeder, the spool line feed guard and the spool feed housing (as set forth in Paragraph 6 above.) Although Black & Decker had obtained sufficient information to reasonably support the conclusion that the Grasshog XP contained defects which could create a substantial product hazard, or created an unreasonable risk of serious injury or death on or before May 1, 2006, Black & Decker failed to immediately inform the Commission of such defects or risks as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4). In failing to do so, Black & Decker knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4) as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

15. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Black & Decker is subject to civil penalties for its knowing failure to report as required under section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

RESPONSE OF BLACK & DECKER (U.S.) INC.

16. Black & Decker denies Staff's allegations that the Grasshog XP, contains defects which could create a substantial product hazard or create an unreasonable risk of serious injury or death, and denies that it knowingly violated Sections 19(a)(3) or 19(a)(4) of the CPSA. This payment is made in settlement of the staff allegations. Neither the payment nor the fact of entering into this Settlement Agreement, constitute evidence of or an admission of, any fault, liability or statutory or regulatory violation by Black & Decker or of the truth of any allegations made by the staff.

AGREEMENT OF THE PARTIES

17. Under the CPSA, the Commission has jurisdiction over this matter and over Black & Decker and the Grasshog XP.

18. In settlement of the Staff's allegations stemming from the Firm's importation and distribution of the Grasshog XP and in reporting to the Commission, Black & Decker shall pay a civil penalty in the amount of nine hundred sixty thousand dollars (\$960,000.00) within ten (10) calendar days of receiving service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the CPSC via www.pay.gov.

19. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by Black & Decker or a determination by the Commission that Black & Decker knowingly violated Sections 19(a)(3) or 19(a)(4) of the CPSA.

20. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register* in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

21. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Black & Decker knowingly, voluntarily and completely waives any rights it may have in this matter to the following: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission as to whether Black & Decker failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

22. The Commission may publicize the terms of the Agreement and the Order.

23. The Agreement and the Order shall apply to and be binding upon Black & Decker and each of its parent corporation(s), successors and/or assigns.

24. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject Black & Decker and each of its parent corporation(s), successors and/or assigns to appropriate legal action.

25. The Agreement may be used in interpreting the Order. Understandings, agreements, representations or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived,

amended, modified or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification or alteration is sought to be enforced.

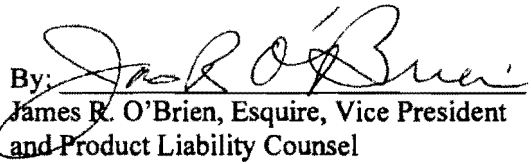
26. If any provision of the Agreement or the Order is held to be illegal, invalid or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall

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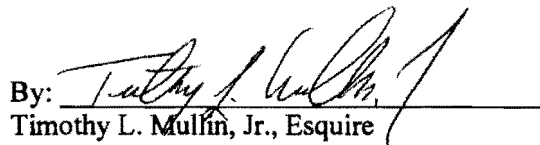
remain in full force and effect, unless the Commission and Black & Decker agree that severing the provision materially affects the purpose of the Agreement and Order.

BLACK & DECKER (U.S.) INC.

Dated: 6/27/2011

By: 
James R. O'Brien, Esquire, Vice President
and Product Liability Counsel
Black & Decker (U.S.) Inc.
701 East Joppa Road, Towson, MD 21286

Dated: 6/27/2011

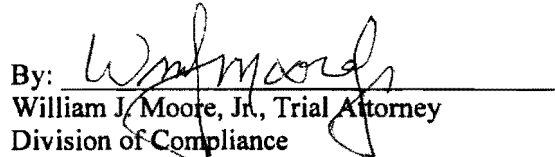
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U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Cheryl A. Falvey
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Dated: 8/2/2011

By: 
William J. Moore, Jr., Trial Attorney
Division of Compliance
Office of the General Counsel

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of:)
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BLACK & DECKER, (U.S.) INC.)
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CPSC Docket No.: 11-C0008

ORDER

Upon consideration of the Settlement Agreement entered into between Black & Decker (U.S.) Inc., its responsible officials, and their foreign and domestic corporate parents, affiliates, agents and employees (collectively "Black & Decker"), and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Black & Decker, and it appearing that the Settlement Agreement and the Order are in the public interest, it is


ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED, that Black & Decker shall pay a civil penalty in the amount of nine hundred sixty thousand dollars (\$960,000.00) within ten (10) days of service of the Commission's final Order accepting the Settlement Agreement upon counsel for Black & Decker identified in the Settlement Agreement. The payment shall be made electronically to the CPSC via www.pay.gov. Upon the failure of Black & Decker to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Black & Decker at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

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Provisionally accepted and provisional Order issued on the 3rd day of August, 2011.

BY ORDER OF THE COMMISSION:



Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission