

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
FEDERATED DEPARTMENT STORES, INC ,)	CPSC DOCKET NO 01- C0007
)	
a corporation)	
)	

SETTLEMENT AGREEMENT

1 Federated Department Stores, Inc ("Federated"), a corporation, enters into this Settlement Agreement ("Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order incorporated herein. This Agreement and Order are for the sole purpose of settling the staff's allegations, as enumerated in the Staff Allegations section below, that Federated knowingly violated Section 3(a) of the Flammable Fabrics Act (FFA), as amended, 15 U S C § 1192(a), and the Federal Trade Commission Act (FTCA), 15 U S C § 41 et seq

THE PARTIES

2 The 'staff' is the staff of the Consumer Product Safety Commission ("Commission"), an independent regulatory agency of the United States government established pursuant to Section 4 of the Consumer Product Safety Act (CPSA), 15 U S C § 2053

3 Federated is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 7 West Seventh Street, Cincinnati, OH 45202 Federated is principally engaged in the operation of department stores (including Bloomingdale s. The

Bon Marche, Burdines, Goldsmith's, Lazarus, Macy's, Rich's, and Stern's) and catalog businesses (including Fingerhut) that sell men's, women's, and children's apparel and accessories, cosmetics, home furnishings, and other consumer goods.

STAFF ALLEGATIONS

4 Federated is now and has been engaged in the sale and the offering for sale, in commerce, as the term "commerce" is defined in Section 2(b) of the FFA, 15 U.S.C. § 1191(b), and the importation into the United States, of wearing apparel which is subject to the requirements of the Standards for the Flammability of Children's Sleepwear (FF 3-71 and FF 5-74), 16 C.F.R. Parts 1615 and 1616 (the "Children's Sleepwear Standards"), and Sections 3, 4, and 5 of the FFA, 15 U.S.C. §§ 1192, 1193, and 1194.

5 On numerous occasions from January 1999 through January 2000, Federated knowingly violated Section 3 of the FFA, 15 U.S.C. § 1192, and the Children's Sleepwear Standards. During that time period, Federated sold, and offered for sale, in commerce, and/or imported into the United States, 100% untreated cotton garments in sizes 0-14 that were marketed and promoted by its retail stores as children's sleepwear, as the term "children's sleepwear" is defined at 16 C.F.R. §§ 1615.1(a) and 1616.2(a). During that time period, Federated also sold, and offered for sale, in commerce, and/or imported into the United States, 100% untreated cotton garments in sizes 0-14 that were designed and intended to be used as sleepwear. None of these garments complied with the flammability requirements of the Children's Sleepwear Standards. Because these sleepwear garments (a) were marketed, promoted, and/or designed as sleepwear, (b) were made of untreated 100% cotton, which does not pass the flammability requirements of the Children's Sleepwear Standards, (c) were sized

above 19 months and up to size 14, and (d) were not otherwise exempt from the requirements of the Children's Sleepwear Standards the sale of these garments was a prohibited act under Section 3(a) of the FFA, 15 U S C § 1192(a) The staff informed Federated in writing, orally, and/or in person of each violation The following is a description of the garments sold, and offered for sale, in commerce, and/or imported into the United States, by Federated from January 1999 through January 2000, that did not comply with the flammability requirements of the Children's Sleepwear Standards

a. First Impressions Toddlers Garments. CPSC-Samples 99-800-1919 (Federated Style # 4954120411), 99-800-1922 (Federated Style # 4956S01411), 99-800-1924 (Federated Style # 470B110411), 99-830-2732 (Federated Style # 04941S2411), 99-860-4964 (Federated Style # 0495409411), 99-860-4965 (Federated Style # 4953110411), and other similarly-styled First Impressions Toddlers Garments The style, fabric, weight, print pattern, silhouette, and design of these garments are consistent with sleepwear These garments were sold on retail racks in the children's sleepwear department or the sleepwear section of the children's department with or next to garments that were specifically labeled as children's sleepwear Federated's retail sales clerks told our investigators that these garments were sleepwear

b. Charter Club Girls Sleepwear and First Impressions Toddlers Sleepwear CPSC Samples 00-792-0106 (Federated Style # 4402GO2411), 00-792-0107 (Federated Style # 4962SO4411), 99-800-2409 (Federated Style # 68990BF486), 99-800-2410 (Federated Style # 68990VA486), 99-800-2411 (Federated Style # 68990BS486), 00-792-0221 (Federated Style # 3100210411), 00-792-0222 (Federated Style # 68990LS486), 00-792-0223 (Federated Style # 68990VA486), 00-860-6097 (Federated Style # 68990DS486), 00-860-6098 (Federated Style #

68990TF486), 00-792-0197 (Federated Style # 68990MS486), 00-792-0198 (Federated Style # 68990PK486), 00-792-0199 (Federated Style # 68990VA486) 00-792-0200 (Federated Style # 68990LF486), 00-792-0201 (Federated Style # 68990BS486), 00-792-0202 (Federated Style # 68990LS486), 00-792-0203 (Federated Style # 68990TF486), 00-792-0204 (Federated Style # 68990FS486), 00-792-0205 (Federated Style # 6899XMS486), 00-792-0206 (Federated Style # 68990FL486), 00-792-0207 (Federated Style # 68990DS486), 00-792-0208 (Federated Style # 68990RB486), 00-792-0209 (Federated Style # 3100310411), 00-792-0210 (Federated Style # 3100110411), 00-792-0211 (Federated Style # 3100210411), 00-792-0216 (Federated Style # P2890-GI21), 00-792-0195 (Federated Style # 68990AS486), 00-792-0196 (Federated Style # 6899PA486), 00-792-0227 (Federated Style # 68990PK486), 00-792-0228 (Federated Style # 68990AS486), 00-792-0229 (Style # 68990DS486), 00-792-0230 (Style # 68990TF486), 99-800-1923 (Federated Style # 6899DZY486), all other Federated Style-Numbers beginning with 2890, 2891 or 6899, and all other similarly-styled Charter Club Girls Sleepwear and First Impressions Toddlers Sleepwear The style, fabric, weight, print pattern, silhouette, and design of these garments are consistent with sleepwear These garments were sold on retail racks in the children s/girl's sleepwear department or the sleepwear section of the children's/girl's department with or next to garments that were 100% polyester flame resistant sleepwear For some of these garments, Federated's retail sales clerks told our investigators that the garments were sleepwear

c 100% Cotton Bathrobes CPSC Samples 00-792-0290 (Federated Style # 101-BLU), 00-792-0291 (Federated Style # 011-W02), 00-792-0292 (Federated Style # 011-WBB), Federated Style 101-WHT Federated Style # 101-PNK, Federated Style # P2890-GI221, Monarch Terry Cloth Robes (Federated Style Numbers beginning with 011 or 101).

Agean Terry Cloth Robes (Federated Style Numbers beginning with 1233 C1248, 1233C 6028C, 6046, 6060C 6062, 6360C). Charter Club Terry Cloth Robes (Federated Style Numbers 2890, 2891, 2892, 2893 and 2894). Club Room Terry Cloth Robes (Federated Style Number CR46), Fingerhut NFL Terry Cloth Robes (Fingerhut Catalogue Item Number 1A9H1) The style, fabric, weight, silhouette, and design of these garments are consistent with sleepwear. These garments were sold on retail racks in the girl's sleepwear or layette department with or next to garments that were 100% polyester flame resistant sleepwear, creating a high likelihood that consumers would purchase the garments for use as sleepwear.

d First Impressions One-Piece, Long-Sleeved, Long-Legged Garments CPSC Samples 00-792-0263 (Federated Style # 31005) and 00-792-0267 (Federated Style # 31004) These garments contained some of the characteristics of sleepwear. They were sold on retail racks in the children's sleepwear or the sleepwear section of the children's department with or next to garments that were 100% polyester flame resistant sleepwear or cotton tight-fitting sleepwear, creating a high likelihood that consumers would purchase the garments for use as sleepwear.

e Charter Club Two-Piece 100% Cotton Pajamas CPSC Sample 00-792-0262 (Federated Style # 68990CA486), Charter Club 100% Cotton Bathrobe CPSC Sample 00-792-0261 (Federated Style # 2890WHT486), Charter Club Two-Piece 100% Cotton Pajamas CPSC Samples 00-792-0265 (Federated Style # 68990CA486) and 00-792-0266 (Federated Style # 6899BK486), Charter Club 100% Cotton Bathrobes CPSC Sample 00-792-0264 (Federated Style Numbers 2891BGP486 and 2890WHT486), and Charter Club Two-Piece 100% Cotton Pajamas CPSC Sample 00-830-3599 (Federated Style # 68990MS486) The style, fabric, weight, print pattern, silhouette, and design of these garments are consistent with sleepwear.

These garments were sold on retail racks in the girl's sleepwear department or the sleepwear section of the girl's department with or next to garments that were 100% polyester flame resistant sleepwear or cotton tight-fitting sleepwear, creating a high likelihood that consumers would purchase the garments for use as sleepwear

6 The acts by Federated set forth in Paragraph 5 above are in violation of Section 3(a) of the FFA, 15 U S C § 1192(a), for which a civil penalty may be imposed pursuant to Section 5(e)(1) of the FFA, 15 U S C § 1194(e)(1)

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FEDERATED'S RESPONSE

7 Federated denies the allegations set forth in Paragraphs 4-6 above. Federated specifically denies that the subject garments were marketed and promoted by its retail stores as children's sleepwear, designed and intended to be used as sleepwear, or subject to the flammability requirements of the Children's Sleepwear Standards. Federated denies that it violated Section 3 of the FFA, the FTCA, or the Children's Sleepwear Standards, knowingly or otherwise. Federated enters into this Agreement for purposes of compromise and settlement only, to avoid incurring additional legal costs and expenses.

8 Federated is not aware of any consumer injury related in any way to the specific garments listed in Paragraph 5 above, and the staff has not alleged that there has been any injury.

FEDERATED AND THE STAFF AGREE

9 The Commission has jurisdiction over the subject matter and Federated under the FFA, the FTCA, and the CPSA.

10 This Agreement and Order is entered into for the purposes of compromise and settlement only and does not constitute a determination by the Commission that Federated

violated the FFA, the FTCA, or the Children's Sleepwear Standards. It does not constitute an admission by Federated of any liability or wrongdoing by Federated, or that Federated violated any law or regulation.

11. Within five (5) days of receiving service of the Final Order, Federated agrees to pay a civil penalty of \$850,000, as set forth in the attached incorporated Order. This civil penalty is in settlement of the staff's allegations that Federated knowingly violated Section 3(a) of the FFA, 15 U.S.C. § 1192(a), through the conduct described in Paragraph 5 above.

12. Upon final acceptance of this Agreement and issuance of the Final Order, the staff agrees that it will not initiate or pursue, in its own name, through the Commission, or by referral to any other government agency, a civil penalty action against Federated, its successors and assigns, subsidiaries, affiliates, officers, directors, agents, representatives, or employees, based, in whole or in part, upon Federated's conduct as described in Paragraph 5 above.

13. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Final Order upon Federated.

14. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Federated and the staff knowingly, voluntarily, and completely waive and relinquish any past, present, and/or future right or rights they may have in this matter: (a) to an administrative or judicial hearing; (b) to judicial review or other challenge or contest of the validity of this Agreement and the Order as issued and entered; (c) to a determination by the Commission as to whether Federated failed to comply with the Children's Sleepwear Standards, FFA, and/or FTCA; (d) to a statement of findings of fact and conclusions of law by the Commission; (e) to any claims under the Equal Access to Justice Act.

15 Violation of the provisions of the Order may subject Federated to a civil and/or criminal penalty for each such violation, as prescribed by law

16 The Commission and Federated may disclose the terms of this Agreement and Order to the public

17 This Agreement may be used in interpreting the Provisional and Final Orders Agreements, understandings, representations, or interpretations apart from those contained in this Agreement may not be used to vary or to contradict its terms

18 This Agreement and Order is binding upon, and shall inure to the benefit of Federated, and its successors and assigns, acting directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device, or instrumentality, or through its employees, agents, or representatives -----

19 Upon provisional acceptance of this Agreement and Order by the Commission, this Agreement and Order shall be placed on the public record and shall be published in the Federal Register in accordance with the procedures set forth in 16 C F R. § 1605 13(d) If the Commission does not receive any written request not to accept this Agreement and Order within 15 days, this Agreement and Order shall be deemed finally accepted on the 20th day after the date it is published in the Federal Register, in accordance with 16 C F R. § 1605 13(e)

20 Upon final acceptance of this Agreement and Order the Commission shall issue the following Order which is incorporated by reference herein

Dated March 29, 2001


Howard N. Tarnoff, Trial Attorney
Legal Division

Eric L. Stone, Director
Legal Division

Alan H. Schoem, Director
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Dated March 26, 2001


Dennis Broderick, Sr. VP, GC and Secretary

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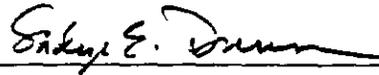
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Federated Department Stores
Inc., a corporation

CPSC DOCKET NO 01-C9007

By direction of the Commission, this Settlement Agreement and Order is provisionally accepted pursuant to 16 C F R. § 1605.13 and shall be placed on the public record, and the Commission shall announce the provisional acceptance of the Settlement Agreement and Order in the Commission's Public Calendar and in the Federal Register

SO ORDERED by the Commission, this 11th day of April, 2001



Sadye E. Dunn, Secretary
Consumer Product Safety Commission