

## U.S. CONSUMER PRODUCT SAFETY COMMISSION 4330 EAST WEST HIGHWAY BETHESDA, MARYLAND 20814

## **COMMISSIONER NANCY A. NORD**

## Statement on the Commission's decision to provisionally accept a civil penalty settlement with Ross Stores, Inc.

July 3, 2013

The U.S. Consumer Product Safety Commission has provisionally settled with Ross Stores, Inc., (and subsidiaries) over the company's alleged failure to promptly report hazardous merchandise, namely children's upper outerwear with drawstrings. This is the company's second settlement for a recent reporting violation for selling children's apparel with drawstrings. I supported the settlement agreement negotiated by the staff and, in this case, unchanged by my commission colleagues.

Of note, this settlement requires not only a substantial payment but also that the company implement a compliance program to ensure that it obeys both reporting statutes and our regulations on children's upper outerwear.<sup>2</sup> In other words, the agreed-upon compliance program directly addresses the alleged violations that prompted the agreement—a discrete remedy tailored to a discrete problem.

Compliance program requirements in two other recent agreements have stirred controversy, both also settling alleged reporting failures, although those companies, unlike Ross, were first-time violators.<sup>3</sup> In each case, our requirements went beyond

<sup>&</sup>lt;sup>1</sup> Ross Stores, Inc., Provisional Acceptance of a Settlement Agreement and Order, 78 Fed. Reg. 38,298 (June 26, 2013). *See* CPSA § 15(b), 15 U.S.C. § 2064(b); 16 C.F.R. § 1120.3(b)(1).

<sup>&</sup>lt;sup>2</sup> See id. at 38,301.

<sup>&</sup>lt;sup>3</sup> See Kolcraft Enterprises, Inc., Provisional Acceptance of a Settlement Agreement and Order, 78 Fed. Reg. 14,080 (Mar. 4, 2013) (Kolcraft); Williams-Sonoma, Inc., Provisional Acceptance of a Settlement Agreement and Order, 78 Fed. Reg. 27,190 (May 9, 2013) (Williams-Sonoma). See also Nancy A. Nord, Statement on the Commission's provisional acceptance of a settlement agreement with Kolcraft Enterprises, Inc. (Mar. 11, 2013), <a href="http://www.cpsc.gov//Global/About-CPSC/Nord/nord03112013.pdf">http://www.cpsc.gov//Global/About-CPSC/Nord/nord03112013.pdf</a>; Nancy A. Nord, Statement on the Commission's decision to provisionally accept of a civil penalty settlement with Williams-Sonoma, Inc. (May 6, 2013), <a href="http://www.cpsc.gov//Global/About-CPSC/Commissioners/Nord/NordWilliams-SonomaSettlement.pdf">http://www.cpsc.gov//Global/About-CPSC/Commissioners/Nord/NordWilliams-SonomaSettlement.pdf</a>; Nancy A. Nord, Supplemental statement on the Commission's decision to provisionally accept of a civil penalty settlement with Williams-Sonoma, Inc. (May 13, 2013), <a href="http://www.cpsc.gov//Global/About-CPSC/Commissioners/Nord/NordWilliamsSonomaSupplemental.pdf">http://www.cpsc.gov//Global/About-CPSC/Commissioners/Nord/NordWilliamsSonomaSupplemental.pdf</a>; Nancy A. Nord, Further supplemental statement on the Commission's decision to provisionally accept of a civil penalty settlement

setting up procedures to ensure prompt reporting, the subject of the alleged violation, to require the companies to establish more intrusive programs to ensure compliance with *all* provisions of *all* our statutes and regulations.<sup>4</sup>

At first glance, one might ask how anyone could object to requiring that companies comply—as they already must—with all CPSC laws and regulations. (Further, I believe compliance programs are important and companies *should* have them.<sup>5</sup>) But three reasons counsel against broad mandates in this context. First, as a matter of principle, enforcement actions should respond to the violations alleged. Second, mandating a broad program—especially for first time violators—that could then sustain allegations of violating the settlement agreement if a subsequent problem arises, even if it involved a totally different product or a totally different type of violation, is inappropriate. Finally, we should not create policy and impose new policy *sub silentio*. Normal notice-and-comment rulemaking is called for.

The Ross settlement differs from the other settlements (both, as already noted, dealing with first-time violators) in that it focuses on the alleged violations that gave rise to the penalty. Here, the mandated compliance program addresses exclusively reporting requirements and our drawstring rule. Given the company's previous settlement for similar violations, concern about ongoing compliance may well be warranted, hence this compliance program mandate.

In general, mandating such programs—narrowly tailored to the alleged violations that trigger—through settlement negotiations, may be appropriate. I applaud the hard work of our staff in negotiating this tough, responsive solution. Whether this is the start of a more prudent approach on our part or an aberration, however, remains to be seen.

with Williams-Sonoma, Inc. (May 17, 2013), <a href="http://www.cpsc.gov//Global/About-CPSC/">http://www.cpsc.gov//Global/About-CPSC/</a> Commissioners/Nord/NordWilliamsSonoma3.pdf; Nancy A. Nord, Third supplemental statement on the Commission's decision to provisionally accept of a civil penalty settlement with Williams-Sonoma, Inc. (May 23, 2013), <a href="http://www.cpsc.gov//Global/About-CPSC/Nord/NordWilliams">http://www.cpsc.gov//Global/About-CPSC/Nord/NordWilliams</a> Sonoma4.pdf.

<sup>&</sup>lt;sup>4</sup> See Kolcraft, 78 Fed. Reg. at 14,082, ¶ 23; Williams-Sonoma, 78 Fed. Reg. at 27,191, ¶ 21.

<sup>&</sup>lt;sup>5</sup> See Nancy A. Nord, Statement on the issuance of the interim final rule interpreting factors to be considered when seeking civil penalties (Aug. 18, 2009), <a href="http://www.cpsc.gov//PageFiles/">http://www.cpsc.gov//PageFiles/</a>
<a href="https://www.cpsc.gov//PageFiles/">127616/nord08182009civilpenaltyfactors.pdf</a> (explaining that deficiencies of the compliance-program factor contributed to my vote against the interim final civil penalty factors interpretive rule); CPSC Civil Penalty Factors Interpretive Rule, 75 Fed. Reg. 15,993 (Mar. 31, 2010) (codified at 16 C.F.R. pt. 1119 (improved analysis of compliance programs was one reason for my vote in favor of the final rule).

We ought to be transparent, and seeking public comment on any new policy is the best way to achieve such transparency.