

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:11-cv-20765-AJ

UNITED STATES OF AMERICA,

Plaintiff,

v.

LM IMPORT-EXPORT, INC.
A Florida corporation, and

HUNG LAM,
Individually and as
an officer of the corporation,

Defendants.

clm
~~PROPOSED~~ CONSENT DECREE FOR PERMANENT INJUNCTION

WHEREAS the United States of America has filed a Complaint against LM Import-Export, Inc., and Hung Lam ("defendants") to secure civil penalties and a permanent injunction for defendants' alleged violations of statutes and regulations enforced by the U.S. Consumer Product Safety Commission ("CPSC" or "Commission"), including Section 19 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2068(a), and Section 4 of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. § 1263;

WHEREAS the parties consent to entry of this Consent Decree for Permanent Injunction (the "Decree"), without contest, and before any testimony has been taken;

WHEREAS, defendants have waived service of the Summons and Complaint; the parties are represented by the attorneys whose names appear hereafter; and the parties want to settle this

action for injunctive relief upon the following terms and conditions, without adjudication of any issue of fact or law.

THEREFORE, on the agreement of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355(a).

2. This Court has jurisdiction, under 15 U.S.C. §§ 2071(a) and 1267(a), to restrain any violation of the CPSA and FHSA; and jurisdiction, under 15 U.S.C. §§ 2069 and 1264(c), to assess civil penalties for knowing violations of the CPSA and FHSA. All references to the CPSA and FHSA refer to those statutes as amended by the Consumer Product Safety Improvement Act of 2008, Public Law 110-314 ("CPSIA"), and all terms used herein shall have the same meaning as defined and used in the CPSA, CPSIA, and FHSA.

3. Venue in the Southern District of Florida is proper under 28 U.S.C. §§ 1391(b), (c) and 1395(a).

4. At all times relevant hereto, LM Import-Export, Inc. is a "manufacturer" (the definition includes any person who imports a consumer product) and "retailer" of consumer products, as defined in Section 3 of the CPSA, 15 U.S.C. § 2052(a).

5. At all times relevant hereto, Hung Lam is the president and owner of LM Import-Export, Inc., and as such, is the individual responsible for ensuring compliance with the requirements of the CPSA, the FHSA, and the regulations issued thereunder. At all times

relevant to this Complaint, he formulated, directed, controlled, or participated in the acts and practices of the corporate defendant, including the acts and practices set forth in this Complaint. At all times relevant hereto, Lam knew of, and had the authority to control, the acts and practices of LM Import-Export, Inc., regarding the importation, distribution, or sale of consumer products.

6. The Complaint states claims upon which relief may be granted against defendants under Section 19 of the CPSA, 15 U.S.C. § 2068(a), and Section 4 of the FHSA, 15 U.S.C. § 1263.

7. The Complaint alleges that defendants violated the CPSA, 15 U.S.C. § 2068(a)(1), by selling, offering for sale, manufacturing for sale, distributing in commerce, or importing into the United States, consumer products, or other products or substances that are regulated under the CPSA or any other Acts enforced by the Commission that are not in conformity with an applicable consumer product safety rule under the CPSA, or any similar rule, regulation, standard, or ban under any other Act enforced by the Commission. The Complaint alleges that defendants have violated the CPSA by importing, offering for sale, selling, and distributing toys and other articles intended for use by children that bear lead-containing paint, prohibited under 16 C.F.R. § 1303.4(b), and further violated the CPSA by importing, offering for sale, selling, and distributing in commerce, children's toys or child care articles, as defined by 15 U.S.C. § 2057c(e)(1)(B) and (C), that contain phthalate concentrations exceeding the allowable amount pursuant to 15 U.S.C. § 2057c(a).

8. The Complaint alleges that defendants violated the CPSA, 15 U.S.C. § 2068(a)(2)(B), by selling, offering for sale, manufacturing for sale, distributing in commerce, or importing into the United States, consumer products, or other products or substances that are

subject to a voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public, or if the seller, distributor, or manufacturer knew, or should have known, of such voluntary corrective action.

9. The Complaint alleges that defendants violated the CPSA, 15 U.S.C. § 2068(a)(2)(D), and the FHSA, 15 U.S.C. § 1263(a) and (c), by introducing or causing the introduction or delivery for introduction into interstate commerce of banned hazardous substances, or the receipt in interstate commerce of banned hazardous substances and the delivery or proffered delivery thereof for pay or otherwise. These banned hazardous substances consist of toys and other articles intended for use by children under three years of age, which present a choking, aspiration, or ingestion hazard because of small parts, which are banned under 16 C.F.R. § 1500.18(a)(9); children's products containing lead, which are banned under 15 U.S.C. § 1278a; and rattles that failed to meet the requirements of testing under 16 C.F.R. Part 1510, and are banned under 16 C.F.R. § 1500.18(a)(15).

10. The Complaint alleges that defendants violated the CPSA, 15 U.S.C. § 2068(a)(4), by failing to furnish to the CPSC the information required by 15 U.S.C. § 2064(b).

11. The Complaint alleges that defendants violated the CPSA, 15 U.S.C. § 2068(a)(6), by failing to furnish certificates required by this Act or any other Act enforced by the Commission, and further, by failing to comply with a requirement of Section 14 (including the requirement for tracking labels) or any rule or regulation under such section.

12. The Complaint alleges that defendants violated the FHSA, 15 U.S.C. § 1263(a) and (c), by introducing or causing the introduction or delivery for introduction into interstate commerce of misbranded hazardous substances, or the receipt in interstate commerce of

misbranded hazardous substances, and the delivery or proffered delivery thereof for pay or otherwise. These misbranded hazardous substances consist of toys or games intended for children at least three years old, but not older than six years old, which include small parts that do not bear the cautionary statement specified under 15 U.S.C. § 1278(a)(2) and art materials or art material products, which may have the potential to produce chronic, adverse health effects, as defined under 16 C.F.R. § 1500.14(b)(8)(i)(B)(3), and which do not meet the labeling requirements under 16 C.F.R. § 1500.14(b)(8)(i)(E).

13. Defendants have entered into this Decree freely and without coercion in compromise of disputed claims, believing that settlement of this case is appropriate in order to avoid the time and expense of litigation.

14. Defendants hereby waive all rights to appeal or otherwise challenge or contest the validity of this Decree.

15. Entry of this Decree is in the public interest.

IT IS THEREFORE ORDERED AS FOLLOWS:

ORDER

1. Defendants, and each and all of their directors, officers, agents, servants, brokers, employees, successors, assigns, and attorneys, and all persons or entities in active concert or participation with any of them, who receive actual notice of this Decree by personal service or otherwise, are permanently enjoined from selling, offering for sale, distributing, or importing into the United States, directly or indirectly, introducing or causing the introduction into

interstate commerce any toy or other consumer product intended primarily for children 12 years of age or younger, unless and until:

A. Defendants retain, at defendants' expense, an independent person (the "Product Safety Coordinator"), who is without any personal or financial ties (other than the retention agreement) to defendants and their families, and who, by reason of background, training, education, or experience is qualified to help defendants fulfill the following requirements:

- i. Create a comprehensive product safety program.
- ii. Conduct a product audit to determine which of defendants' merchandise and inventory is intended for use primarily for children 12 years of age or younger as defined pursuant to 15 U.S.C. § 2052(a)(2) requires testing and certification of compliance with the FHSA, the CPSA, and any other Act enforced by the CPSC, and quarantine all subject merchandise until the product audit is completed.
- iii. Establish and implement an effective and reasonable product safety testing program in compliance with the FHSA, the CPSA, and any other Act enforced by the CPSC to ensure testing prior to importation.
- iv. Retain, for art materials, a toxicologist listed on the CPSC website or an accredited testing laboratory provided on the CPSC website.
- v. Retain for children's products a third-party conformity assessment body or bodies listed on the CPSC's website to perform third-party testing on children's products as required.

vi. Create guidance manuals for managers and employees on how to comply with product safety and testing requirements.

vii. Advise defendants on product labeling requirements.

viii. Establish procedures to conduct product recalls and track products by model.

ix. Develop procedures for adhering to CPSC reporting requirements in 15 U.S.C. § 2064(b).

x. Monitor defendants' compliance with all applicable federal statutes, rules, and regulations enforced by the CPSC, during a monitoring period after defendants resume importing, selling, or distributing children's products.

B. Defendants submit the name and credentials of its Product Safety Coordinator to the CPSC's Office of Compliance and Field Operations ("Office of Compliance") via overnight delivery and facsimile, prior to using the Product Safety Coordinator. If CPSC staff objects to the Product Safety Coordinator selected by defendants, the staff must so notify defendants within thirty (30) calendar days of defendants' submitting the Product Safety Coordinator's name and credentials, at which point defendants shall select a replacement, the name and credentials of whom shall be submitted to the CPSC's Office of Compliance. If CPSC staff does not respond to defendants' submission of a Product Safety Coordinator's credentials within 30 days, defendants may use that Product Safety Coordinator.

C. The Product Safety Coordinator reviews defendants' product inventory for safety violations and assesses defendants' current regulatory compliance practices.

D. The defendants establish, with the assistance of the Product Safety Coordinator, a comprehensive product safety program with written standard operating procedures (“SOPs”) designed to ensure continuous compliance with applicable federal laws, standards, and regulations enforced by the CPSC. The product safety program shall:

i. Include the development of a reasonable testing program, pursuant to 15 U.S.C. § 2063 and applicable regulations, of all products that are subject to a children’s product safety rule, or any other consumer product safety rule or similar ban, standard, or regulation under the CPSA, the FHSA, any other Act enforced by the CPSC, or any regulations passed thereunder, except for products for which defendants’ supplier has provided to them passing test results from an accredited third party conformity assessment body that is listed on the CPSC’s website.

ii. To the extent required by law, ensure that defendants issue, after satisfactory testing, certificates of conformity for every consumer product that is subject to a consumer product safety rule, children’s product safety rule, or similar ban, standard, or regulation under the CPSA, the FHSA, any other Act enforced by the CPSC, or any regulations passed thereunder.

iii. To the extent required by law, ensure that defendants if they are not a manufacturer, but are the distributor or retailer of children’s products, as all those terms are defined under the CPSA, that defendants receive the certificate from the manufacturer.

iii. Establish procedures to ensure defendants apply all cautionary labeling required by the CPSA, the FHSA, any other Act enforced by the CPSA, and any applicable regulations.

iv. Establish systems to ensure that the product safety program's SOPs are followed consistently.

v. Include procedures to ensure that the defendants adequately correct any product violation cited by a CPSC inspection and respond to CPSC letters of advice within the time specified in each letter of advice.

vi. Establish systems to investigate all reports of consumer incidents, property damage, injuries, warranty claims, insurance claims, and court complaints regarding products under the jurisdiction of the CPSC that defendants sold, distributed, or imported into the United States.

E. The defendants issue general conformity certificates for each consumer product that passes the applicable test, verifying that each of defendants' consumer products complies with the applicable laws, standards, and regulations to the extent required by 15 U.S.C. § 2063(a)(1), 16 C.F.R. Part 1110, and other applicable rules.

F. The defendants hire, with the assistance of the Product Safety Coordinator, a qualified assessor to test children's products for compliance with children's product safety rules. A "qualified assessor" means any person or entity qualified to test the relevant product; and for children's products, it must be an accredited third-party conformity assessment body that is listed on the CPSC's website for third-party testing, to the extent required by law. The defendants shall hire or supervise the hiring of a qualified assessor to test representative samples of each children's product, subject to any children's product safety rule including, but not limited to, the following:

i. Small Parts: For each children's product that is intended for children under three years of age, as determined by age-grading analysis that includes the factors listed at 16 C.F.R. § 1501.2(b), and the CPSC's "Age Determination Guidelines: Relating Children's Ages to Toy Characteristics and Play Behavior," dated September 2002, and any updates, located on the CPSC's website, a qualified assessor shall review a model of each product to determine whether small parts exist and test each model of toy in accordance with the requirements of 16 C.F.R. §§ 1500.51, 1500.52, and 16 C.F.R. Part 1501. The children's product tested to the small parts requirement must meet the certification requirements at 73 Fed. Reg. 67,838 (2008).

ii. Rattle Requirements: For each children's product that is intended for children under three years of age, as determined by age-grading analysis that includes the factors listed at 16 C.F.R. § 1501.2(b), and the CPSC's "Age Determination Guidelines: Relating Children's Ages to Toy Characteristics and Play Behavior," dated September 2002, and any updates, located on the CPSC's website, a qualified assessor shall review a model of each product to determine whether small parts exist and test each model of toy in accordance with the requirements of 16 C.F.R. §§ 1500.51, 1500.52, 1510.4, 16 C.F.R. Parts 1501 and 1510. The children's product tested to the small parts requirement must meet the certification requirements at 73 Fed. Reg. 67,838 (2008).

iii. Lead Paint and Lead Content: To the extent required by law, a qualified assessor shall test each model of children's product that bears a surface coating for compliance with the lead paint requirements of 16 C.F.R. Part 1303, and test accessible substrates, when applicable, for the lead content requirements of 15 U.S.C. § 1278a(a)(2). In addition, each model of toy designed or intended primarily for children 12 years of age or

younger shall be tested in accordance with the applicable requirements of the effective version of American Society for Testing and Materials standard F963-08. The qualified assessor must be accredited to certify to the requirements for lead paint testing, 16 C.F.R. Part 1303, which appear at 73 Fed. Reg. 54,564 (2008), or to such later-adopted requirements as are then applicable, and the certification requirements for testing children's products for lead content, 15 U.S.C. § 1278a, which appear at 73 Fed. Reg. 78,331 (2008), or to such later-adopted requirements as are then applicable. As to the defendants, the provision "to the extent required by law," does not include the Commission's stay of enforcement of testing and certification requirements for lead content in children's products. *See* 76 Fed. Reg. 6765 (Feb. 8, 2011). Defendants are required to test and certify for lead content in children's products prior to importation into the United States of any children's product.

iv. Phthalates: A qualified assessor shall test each model of children's toy or child care article for compliance with the phthalate content requirements of 15 U.S.C. § 2057c. The qualified assessor shall test the toys/articles in accordance with the "Standard Operating Procedure for Determination of Phthalates," dated March 3, 2009, CPSC-CH-C1001-09.1, located on the CPSC website, or in accordance with one of the alternative methods described therein, or to such later-adopted requirements as are then applicable.

G. The defendants issue certificates of compliance for each children's product that is subject to any children's product safety rule, verifying that each of defendants' children's products comply with such children's product safety rule, to the extent required by 15 U.S.C. § 2063(a)(2), 16 C.F.R. Part 1110, and other applicable rules or stays of enforcement, based on testing by a third-party accredited laboratory. The defendants shall comply with the tracking label requirement under 15 U.S.C. § 2063(a)(5).

H. The Product Safety Coordinator inspects a random selection of a representative sample of all consumer products in defendants' inventory for compliance with all labeling requirements imposed by the CPSA, the FHSA, any other Act enforced by the CPSC, and all applicable regulations, including, but not limited to, the following:

i. Small Parts: For each children's toy that is intended for children over three years of age and under six years of age, defendants shall apply cautionary labeling to each such item, consistent with the requirements of 15 U.S.C. § 1278(a) and (b).

ii. Art Materials: In determining whether an art material or art material product has the potential for producing chronic adverse health effects, defendants shall have a qualified assessor analyze the formulation of the art materials, taking into account opinions of the relevant regulatory agencies and scientific institutions, as required under 15 U.S.C. § 1277(b)(8), and also the factors listed in 16 C.F.R. § 1500.14(b)(8)(i)(D)(2). The qualified assessor for this subsection shall be a toxicologist listed on the CPSC website. For each art material or art material product, defendants shall apply labeling to each such item, consistent with the requirements in 16 C.F.R. § 1500.14(b)(8)(i)(C).

I. The Product Safety Coordinator certifies in writing, to the Office of Compliance, that:

i. Defendants have established a comprehensive product safety program, including a reasonable testing program, and internal policies for implementing that program.

ii. Defendants have corrected the safety violations brought to defendants' attention by the CPSC, the Product Safety Coordinator, and any other source.

iii. Defendants have recalled, at least to the retail level, all defective, potentially hazardous, and noncomplying consumer products they have sold, distributed or received in commerce, as instructed by the Office of Compliance.

iv. The Product Safety Coordinator has identified each product in defendants' product inventory that is subject to a consumer product safety rule or similar rule, ban, standard, or regulation under the CPSA, the FHSA, or any other Act enforced by the CPSC.

v. All identified products have been tested for compliance with all applicable rules, bans, standards, or regulations, as required by 15 U.S.C. § 2063(a)(1) and (a)(2).

vi. All art material formulations shall be submitted to a toxicologist listed on the CPSC website for review, and the toxicologist's criteria shall be sent to the Office of Compliance staff, as required by 16 C.F.R. § 1500.14(b)(8)(i)(C).

vii. To the extent required by law, and subject to any applicable stay of enforcement now existing or adopted in the future, for each such product that passes the required testing, defendants have issued a certificate that certifies that such consumer product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA, the FHSA, and any other Act enforced by the Commission.

viii. The Product Safety Coordinator has identified and provided a list of each product in defendants' inventory or that defendants intend to import for consumption, warehousing, or distribution in the United States that is a children's product subject to a children's product safety rule.

ix. Defendants have submitted samples of each such children's product to a qualified assessor for compliance testing.

x. For each such product that meets the requirements of applicable standards, regulations, or bans through the third-party testing, defendants have issued a certificate for each applicable children's product safety rule, certifying that such children's product complies with each children's product safety rule based on testing by a third-party conformity assessment body accredited to conduct such testing.

xi. Defendants have reconditioned or destroyed with CPSC staff guidance and supervision all consumer products, including children's products, in its inventory, that failed to meet any applicable consumer product safety rule, ban, standard, or regulation. Defendants give thirty-day notice to the CPSC of any products covered by this Decree that defendants intend to destroy or export for purpose of sale, consistent with 15 U.S.C. §§ 2067, 2068(a), and 16 C.F.R. Part 1019.

xii. Defendants have applied cautionary labeling to all products for which such labeling is required under the CPSA, the FHSA, any other Act enforced by the CPSC, and all applicable regulations.

J. CPSC representatives inspect defendants' facilities to determine whether the requirements of this Decree have been met. This inspection shall occur as soon as is practicable after the CPSC's receipt of the Product Safety Coordinator's report under subparagraph (I).

K. The CPSC notifies defendants in writing that defendants appear to be in compliance with the requirements set forth in subparagraphs (A)-(I) of this Decree. The CPSC's

silence shall not be construed as a substitute for written notification, unless the CPSC fails to respond to a written request from defendants for a notice under this paragraph within forty-five (45) days of the request.

2. For a period of at least two years from the date the CPSC notifies defendants in writing pursuant to subparagraph (1)(K) (the "monitoring period"), defendants shall retain the Product Safety Coordinator to monitor defendants' implementation of the comprehensive product safety program and compliance with the requirements of this Decree and all relevant statutes and regulations. At the end of the first year and at the end of the second year of the monitoring period, and at the end of any 180-day extension of the monitoring period under this paragraph, the Product Safety Coordinator shall provide a written report to the CPSC's Office of Compliance. If the Product Safety Coordinator certifies that defendants are in compliance as described in this paragraph, the monitoring period will end. If the Product Safety Coordinator cannot certify that defendants meet each of the compliance requirements listed below, the monitoring period shall continue for an additional 180 days, at the end of which the Product Safety Coordinator shall provide an updated written report to the Office of Compliance. To meet the requirements of this paragraph and terminate the monitoring period, the Product Safety Coordinator must certify, in writing, to the Office of Compliance, the following:

A. Defendants are in compliance with the comprehensive product safety program established under paragraph (1)(A), including the reasonable testing program required by 15 U.S.C. § 2063.

B. Subsequent to the Product Safety Coordinator's most recent written report under this paragraph or paragraph (1)(I), defendants have:

- i. Issued conformity certificates, after appropriate testing, for each consumer product or model that is subject to a consumer product safety rule and is imported for consumption, warehousing, or distribution in commerce, or distributed or sold, to the extent required by then-applicable law;
- ii. Before importing for consumption, warehousing, or distributing in commerce, any children's product or model of any children's product that is subject to any children's product safety rule, submitted samples of that product to a qualified assessor to be tested for compliance with any applicable children's product safety rule.
- iii. Based on such third-party testing, issued conformity certificates for each such children's product, to the extent required by then-applicable law.

C. Defendants have complied with all labeling requirements imposed by the CPSA, the FHSA, any other Act enforced by the CPSC, and all regulations imposed thereunder.

D. Defendants have complied with all reporting requirements imposed by the CPSA, the FHSA, any other Act enforced by the CPSC, and all regulations imposed thereunder.

E. Defendants have not violated any provision of this Decree, the CPSA, the FHSA, any other Act enforced by the CPSC, and all regulations imposed thereunder.

3. To facilitate the monitoring required by paragraph 2:

A. Defendants shall provide to the Product Safety Coordinator, copies of the following items, within fourteen (14) days of defendants' obtaining or issuing any of the following:

i. Results of any test conducted as part of the defendants' reasonable testing program to determine compliance with any consumer product safety rule, regulation, ban, or standard under any Act enforced by the CPSC;

ii. Results of any third-party testing conducted before importation, distribution, or sale, of any children's product that is subject to a children's product safety rule; and

iii. Any certificates of conformity issued by defendants for any consumer product or children's product.

B. Defendants shall provide to the Product Safety Coordinator:

i. A list of all children's products identified and known to defendants, including descriptions, model numbers, and UPC codes, which defendants sell, distribute, or import into the United States, within five (5) days of such importation; and

ii. Any report of an incident that involved injury or the potential for injury caused by any product imported, distributed, or sold by defendants, within five (5) days of defendants' receipt of such report. This requirement shall be separate from, and in addition to, any reporting requirement imposed on defendants by the CPSA, the FHSA, any other Act enforced by the CPSC, and all regulations issued thereunder.

4. Defendants, and each and all of their directors, officers, agents, brokers, employees, successors, assigns, and attorneys, and all persons or entities in active concert or participation with any of them who receive actual notice of this Decree by personal service or

otherwise, are hereby permanently restrained and enjoined from directly or indirectly doing or causing to be done any of the following acts:

Violating the CPSA

A. Violating Section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1), by selling, offering for sale, manufacturing for sale, distributing in commerce, or importing into the United States any consumer product, or other product or substance that is regulated under the CPSA or any other Act enforced by the Commission, that is not in conformity with an applicable consumer product safety rule under the CPSA, or any similar rule, regulation, standard, or ban under any Act enforced by the Commission, including, but not limited to:

- i. Any children's toys or child care articles that contain excessive concentrations of phthalates in violation of 15 U.S.C. § 2057c.
- ii. Any product which is subject to any consumer product safety rule or any children's product safety rule and lacks a conformity certificate to the extent required under 15 U.S.C. § 2063 and applicable rules, regulations, and enforcement policies of the CPSC.
- iii. Children's products that have not been tested by a third-party conformity assessment body to the extent required under 15 U.S.C. § 2063(a)(2) and applicable rules, regulations, and enforcement policies of the CPSC.

B. Violating Section 19(a)(2)(B) of the CPSA, 15 U.S.C. § 2068(a)(2)(B), by selling, offering for sale, manufacturing for sale, distributing in commerce, or importing into the United States any consumer product, or other product or substance that is subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which

action the Commission has notified the public, or if the seller, distributor, or manufacturer knew or should have known of such voluntary corrective action.

C. Violating Section 19(a)(2)(D) of the CPSA, 15 U.S.C. § 2068(a)(2)(D), by selling, offering for sale, manufacturing for sale, distributing in commerce, or importing into the United States any consumer product, or other product or substance that is a banned hazardous substance within the meaning of Section 2(q)(1) of the FHSA, 15 U.S.C. § 1261(q)(1), including, but not limited to, the violations discussed in subparagraphs (E) - (F) below.

D. Violating Section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), by failing to furnish to the CPSC information required by Section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

E. Violating Section 19(a)(6) of the CPSA, 15 U.S.C. § 2068(a)(6), by failing to furnish a certificate required by this Act or any other Act enforced by the Commission, or to issue a false certificate, if such person, in the exercise of due care, has reason to know that the certificate is false or misleading in any material respect; or to fail to comply with any requirement of Section 14 (including the requirement for tracking labels), or any rule or regulation under such section.

F. Engaging in any other act or practice that would violate the CPSA, 15 U.S.C. § 2051-2089.

Violating the FHSA

G. Introducing, or causing the introduction or delivery for introduction into interstate commerce, any banned hazardous substance or receiving in interstate commerce any

banned hazardous substances, or delivering or proffering to deliver thereof for pay or otherwise, in violation of Section 4 of the FHSA, 15 U.S.C. § 1263(a) and (c), including, but not limited to:

- i. Any children's product containing lead exceeding the limits established in 15 U.S.C. § 1278a.
- ii. Any toy or other article intended for use by children that bears lead-containing paint, as defined by 16 C.F.R. § 1303.2(b).
- iii. Any toy or other article, intended for use by children under three years of age that presents a choking, aspiration, or ingestion hazard because of small parts, as defined by 16 C.F.R. Part 1501.
- iv. Any rattle, as defined in 16 C.F.R. § 1510.2, that does not comply with the requirements 16 C.F.R. Part 1510.

H. Introducing, or causing the introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance, or receiving or in interstate commerce any misbranded hazardous substance, or delivering or proffering to deliver thereof for pay or otherwise, in violation of Section 4 of the FHSA, 15 U.S.C. § 1263(a) and (c), including, but not limited to:

- i. Any toy or game intended for children at least three but not older than six years old that includes a small part, as defined under 16 C.F.R. Part 1501, which does not bear the cautionary statement required under 15 U.S.C. § 1278(a)(2).

ii. Any small ball or any toy or game containing a small ball intended for children three years of age or older, which does not bear the appropriate cautionary statement, as required under 15 U.S.C. § 1278(b).

iii. Any art material or art material product, which does not meet the requirements, defined under 16 C.F.R. § 1500.14(b)(8)(i)(C), and which does not bear, at the least, the statement required by 16 C.F.R. § 1500.14(b)(8)(i)(C)(7).

I. Engaging in any other act or practice that would violate the FHSA, 15 U.S.C. § 1261-1278.

5. Defendants shall submit to the CPSC's Office of Compliance, within 24 hours of a request by the CPSC, all certificates and test records for children's products that require testing by an accredited third-party conformity assessment body that is listed on the CPSC's website for third-party testing.

6. Defendants shall maintain, in their United States offices, records of all analyses, testing, and certificates for any consumer product required by this Decree and all applicable laws for five years. Such records shall include, but not be limited to, the date of the analysis and testing, the procedures used, and the results of the analysis and testing. Defendants shall also maintain, in their United States offices, records of all consumer incidents, property damage, injuries, warranty claims, returns, insurance claims, or court complaints regarding consumer products that defendants sold, distributed, or imported into the United States, regardless of where the incident occurred, to the extent reasonably available and permitted by law.

7. Representatives of the CPSC shall be permitted, without prior notice, and as and when the CPSC deems necessary during reasonable times, to make inspections of defendants'

place(s) of business and take any other measures necessary to monitor and ensure continuing compliance with the terms of this Decree. During such inspections, CPSC representatives shall be permitted immediate access to defendants' place(s) of business, including, but not limited to, all buildings, equipment, computer or electronic files, containers, labeling, and other promotional materials therein; to take photographs and make video recordings; to take samples of defendants' products, containers, labeling, and other promotional materials; and to examine and copy all records, including electronic records relating to the packing, labeling, holding, and distribution of any and all toys and other articles intended for use by children, to ensure continuing compliance with the terms of this Decree. The inspections shall be permitted upon presentation of a copy of this Decree and appropriate credentials. The inspection authority granted by this Decree is separate from, and in addition to, the authority to make inspections under the CPSA, 15 U.S.C. § 2065(a), FHSA, 15 U.S.C. § 1270, and any other Act administered by the CPSC. In addition, in order to ensure defendants' compliance with this Decree, plaintiff and the CPSC are authorized to monitor defendants' compliance with this Decree by all lawful means, including, but not limited to, using representatives posing as consumers to contact defendants' websites, employees, and representatives, or any other person or entity managed or controlled, in whole or in part, by defendants, without the necessity of identification or prior notice.

8. Defendants shall reimburse the CPSC for the costs of the inspection required under subparagraph (1)(J), at the standard rates (based on U.S. Food and Drug Administration rates) prevailing at the time the activities are accomplished. As of the date of entry of this Decree, these rates are: \$85.49 per hour or fraction thereof, per representative, for inspection and investigative work; \$102.49 per hour or fraction thereof, per representative, for laboratory and analytical work; \$0.55 per mile for travel expenses by automobile, government rate or the

equivalent, for travel by air; and the published government per diem rate for subsistence expenses, where necessary. In the event that the standard rates applicable to CPSC supervision of court-ordered compliance are modified, these rates shall be increased or decreased without further order of the Court. Nothing in this Decree shall limit the ability of plaintiff or the CPSC to obtain costs from defendants for necessary and reasonable additional supervision, as provided by law. In addition, should plaintiff bring and prevail in a contempt action against any defendant(s) to enforce the terms of this Decree, such defendant(s) shall pay all attorneys' fees and costs, travel expenses incurred by attorneys and witnesses, expert witness fees, investigational and analytical expenses, and court costs incurred by plaintiff in bringing such an action.

9. Within ten (10) calendar days of the entry of this Decree, defendants shall post a copy of this Decree on a bulletin board in a common area at its Miami, FL corporate, warehouse and retail facility, and at any other location at which defendants conduct business within the CPSC's jurisdiction, and shall ensure that the Decree remains posted at each location for as long as the Decree remains in effect.

10. Within ten (10) calendar days of the date of entry of this Decree, defendants shall provide a copy of the Decree, by personal service or certified mail (restricted delivery, return receipt requested), to each and all of their directors, officers, brokers, attorneys, and the general managers of each retail location in the United States (collectively referred to as "Associated Persons") to which they have sold or distributed products subject to this Decree. Within thirty (30) calendar days of the date of entry of this Decree, defendants shall provide to the CPSC's Office of the General Counsel an affidavit stating the fact and manner of their compliance with

this paragraph, identifying the names, addresses, and positions of all persons who received a copy of this Decree pursuant to this paragraph.

11. In the event that any of the defendants become associated with any additional Associated Person(s) at any time after entry of this Decree, such defendant(s) immediately shall provide a copy of this Decree, by personal service or certified mail (restricted delivery, return receipt requested), to such Associated Person(s). Within ten (10) calendar days of each time any of the defendants become associated with any such additional Associated Person, such defendant(s) shall provide, to the CPSC's Office of the General Counsel, an affidavit stating the fact and manner of their compliance with this paragraph, identifying the names, addresses, and positions of any Associated Person(s) who received a copy of this Decree pursuant to this paragraph, and attaching a copy of the executed certified mail return receipts.

12. Within ten (10) calendar days of receiving a request from the CPSC for any information or documentation that the CPSC deems necessary to evaluate defendants' compliance with this paragraph, defendants shall provide such information or documentation to the CPSC.

13. Defendants shall notify the CPSC's Office of the General Counsel in writing at least ten (10) calendar days prior to any reorganization, dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiaries, or any other changes in its corporate structure, including the addition of importer of record numbers that may affect compliance obligations arising out of this Decree.

14. All notifications, correspondence, and communications to the CPSC required by the terms of this Decree shall be addressed to the CPSC, Director, Division of Regulatory

Enforcement, Office of Compliance and Field Operations, 4330 East West Highway, Bethesda, MD 20814, or the CPSC, Office of the General Counsel, 4330 East West Highway, Bethesda, MD 20814, as directed.

15. If any defendant fails to comply with the material provisions of this Decree, said defendant shall pay to the United States of America liquidated damages in the sum of one thousand dollars (\$1,000.00) for each day that said defendant fails to comply with this Decree. Defendants understand and agree that the liquidated damages specified in this paragraph are not punitive in nature and do not in any way limit the ability of the United States of America to seek, and the Court to impose, additional criminal or civil contempt penalties based on conduct that may also be the basis for the payment of liquidated damages.

16. If defendants violate this Decree and are found in civil or criminal contempt thereof, defendants shall, in addition to other remedies, reimburse plaintiff for its attorneys' fees, including overhead, investigational expenses, and court costs relating to such contempt proceeding.

17. This Decree, and any act, statement or document executed pursuant to or in furtherance of it, shall not be deemed or used in any way: (i) as an admission of, or evidence of, the validity of any claim asserted in the Complaint, or of any wrongdoing or liability of any defendant, or of any unlawful, unfair or fraudulent business practices of any defendant, all of which defendants deny; (ii) as an admission of, or evidence of, any fault or omission of any defendant in any civil, criminal or administrative proceeding of any kind in any court, administrative agency or other tribunal; or (iii) as an admission of, waiver of, or evidence relating to, any claim or defense asserted by any party.

18. Each party shall bear its own costs and attorneys' fees.

19. The provisions of this Decree are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

20. This Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Decree, as well as resolution of the civil penalty.

21. The parties, by their respective counsel, hereby consent to entry of the foregoing Decree, which shall constitute a final judgment and order in this matter as to injunctive relief. The parties further stipulate and agree that the entry of the foregoing Decree shall constitute full, complete, and final settlement of this action as to injunctive relief.

22. The parties agree that the full, complete, and final settlement of this action as to injunctive relief does not affect the pending civil penalty allegations in the Complaint.

SO ORDERED this 10th day of March, 2011.

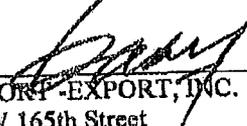


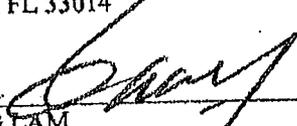
United States District Judge

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