

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

In the Matter of:)	
)	
)	
phil&teds USA, Inc.)	CPSC Docket No.: <u>15-C0007</u>
)	
)	

SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act (“CPSA”), 15 U.S.C. §§ 2051-2089 and 16 C.F.R. § 1118.20, phil&teds USA, Inc. (“phil&teds USA” or “Firm”), and the U.S. Consumer Product Safety Commission (“Commission”), through its staff (“Staff”), hereby enter into this Settlement Agreement. The Settlement Agreement and Affidavit of Corporate Officer, attached at Exhibit A (collectively the “Agreement”) and the incorporated attached Order (“Order”) resolve Staff’s charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the CPSA. By executing this Agreement, Staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. phil&teds USA is a corporation, organized and existing under the laws of the state of Colorado, with its principal corporate office located in Fort Collins, CO.

phil&teds USA is an importer, distributor and retailer of children's strollers, child carriers and other baby products and accessories.

STAFF'S CHARGES

4. From May 2009 through January 2011, phil&teds USA imported and sold in the United States, approximately 13,500 clip-on high chairs under the brand name, MeToo Chairs ("Chairs"). The Firm sold the Chairs online and through independent retailers nationwide.

5. The Chairs are "consumer products," and, at all relevant times, phil&teds USA was either the importer, "distributor" or "retailer" of these consumer products, which were "distributed in commerce," as those terms are defined or used in sections 3(a)(5), (7), (8), and (13) of the CPSA, 15 U.S.C. §2052(a)(5), (7), (8), and (13).

6. The Chairs are defective and create an unreasonable risk of serious injury because the clamps on the Chairs can detach from the table, posing a fall hazard. If only one side of the Chair detaches, the lack of space between the metal cross bar and the clamps creates a finger pinching, laceration, and amputation hazard.

7. Between September 2009 and October 2010, the Firm obtained sufficient information that reasonably supported the conclusion that the Chairs contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury. Specifically, the Firm was aware of reports of incidents and injuries, including reports of fingertip amputations to children. The Firm was also aware that two design changes had been implemented to address the defects in the Chair.

8. Despite having information regarding the Chair's defect or risk, the Firm failed to inform the Commission immediately, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. §§ 2064(b)(3) and (4).

9. Because the information in the Firm's possession constituted actual and presumed knowledge, the Firm 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).

10. When the Firm filed its Full Report, the Firm:

- a. underreported the total number of incidents and injuries involving the Chairs, stating that it was aware of 10 "instances" involving the product, but provided no details on the instances and failed to indicate that the Firm was aware of two amputation injuries;
- b. failed to notify staff that the Chairs posed an amputation hazard; and
- c. withheld information that the Chair had been redesigned to address the hazard and that the sample product supplied with the Full Report was manufactured differently than the Chairs involved in the incident and injury reports.

11. The Firm's failure to report this information resulted in delayed implementation of the corrective action and recall of the product, which was not publicly announced until August 17, 2011.

12. By making these inaccurate and incomplete statements in the Full Report, the Firm knowingly committed a material misrepresentation to an officer or employee in the course of an investigation under the CPSA, which violates section 19(a)(13) of the

CPSA, 15 U.S.C. § 2068(a)(13), as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

13. Under section 20 of the CPSA, 15 U.S.C. § 2069, the Firm is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4) and for the Firm’s knowing material misrepresentations in violation of section 19(a)(13) of the CPSA, 15 U.S.C. § 2068(a)(13).

FIRM’S RESPONSE

14. This Agreement does not constitute an admission by the Firm to the charges set forth in paragraphs 4 through 13, including charges that phil&teds USA violated any statute or regulation, failed to timely report, or committed a material misrepresentation in violation of the CPSA. In fact, phil&teds USA took the initiative in reporting incidents surrounding the Chair to the CPSC, disclosed the number of those incidents, and further explained that unreasonable misuse of the product was the cause of serious injuries.

AGREEMENT OF THE PARTIES

15. Under the CPSA, the Commission has jurisdiction over the matter involving the Chairs and over phil&teds USA, Inc.

16. In settlement of Staff’s charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, the Firm shall pay a civil penalty in the amount of three million, five hundred thousand dollars (\$3,500,000) (“Total Civil Penalty Amount”). In reliance on the accuracy and completeness of the Firm’s representations and warranties in this Agreement, the Commission agrees to suspend all but two hundred thousand dollars (\$200,000) of the

Total Civil Penalty Amount (“\$200,000 Payment”), on the terms and conditions set forth in this Agreement. The \$200,000 Payment shall be paid within thirty (30) calendar days after the Firm receives service of the Commission’s final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via: <http://www.pay.gov> for allocation to and credit against the payment obligations of the Firm under this Agreement.

17. phil&teds USA represents and warrants that the financial statements of phil&teds USA provided to the Commission in connection with the matters addressed in this Agreement (“Financial Statements”) are complete, accurate and current and have been prepared on a consistent basis throughout the periods indicated except as otherwise noted therein, and that the Financial Statements fairly present the financial condition and results of operations and cash flow of the Firm as of the dates, and for the periods, indicated therein, all consistently applied during the periods involved except as noted therein, and subject, in the case of the unaudited interim financial statements, to the absence of notes and normal year-end adjustments.

18. The Firm represents and warrants that the information supplied by the Firm to the Commission in connection with the matters addressed in the Agreement (including information about the Firm’s financial resources and ability to pay the Total Civil Penalty Amount) did not, at the time provided to the Commission, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

19. The parties agree that an amount equal to Total Civil Penalty Amount minus any amounts paid by phil&teds USA pursuant to this Agreement shall become due and payable immediately upon the occurrence of an "Event of Default," without notice or further action by any party. An "Event of Default" means:

- a. a failure of phil&teds USA to pay the \$200,000 Payment (or any portion thereof) when due and payable;
- b. the breach or inaccuracy of any representation or warranty of phil&teds USA in this Agreement;
- c. the breach or failure by phil&teds USA to observe or perform any of its obligations, covenants or agreements set forth in the Agreement; or
- d. a failure of phil&teds USA to comply with all CPSC statutes or regulations for three (3) years after the effective date of this Agreement.

20. All unpaid amounts, if any, due and owing under the Agreement shall constitute a debt due and immediately owing by phil&teds USA to the United States, and interest shall accrue and be paid by phil&teds USA at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Event of Default until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). phil&teds USA shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance or exercise any other rights granted by law or in equity, including but not limited to referring such matters for private collection, and phil&teds USA agrees not to contest,

and hereby waives and discharges any defenses to, any collection action undertaken by the United States or its agents or contractors pursuant to this paragraph. phil&teds USA shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

21. phil&teds USA shall notify CPSC in writing if any financial information supplied or to be supplied in writing by phil&teds USA to the Commission in connection with the Agreement is, in any material respect, discovered not to be true, accurate or complete; is no longer true, accurate or complete as a result of subsequent events; is discovered to contain an untrue statement of a material fact or to omit a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; or contains as a result of subsequent events an untrue statement of a material fact or an omission of a material fact required to be stated, not misleading.

22. After Staff receives this Agreement executed on behalf of phil&teds USA, Staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following the Commission's provisional acceptance of the Agreement, 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 within fifteen (15) calendar days the Commission does not receive any written request not to accept the Agreement, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

23. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) the Commission's final acceptance of this Agreement and service of the accepted Agreement upon phil&teds USA, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

24. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon phil&teds USA, and (ii) the date of issuance of the final Order, for good and valuable consideration, phil&teds USA hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in the Agreement: (a) an administrative or judicial hearing; (b) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (c) a determination by the Commission of whether phil&teds USA failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

25. phil&teds USA shall implement and maintain a compliance program designed to ensure compliance with the statutes and regulations enforced by the Commission that, at a minimum, contains the following elements:

- a. written standards and policies concerning products sold by phil&teds USA in the United States that may relate to, or impact, CPSA compliance;
- b. procedures for verifying the accuracy and completeness of information conveyed to the Commission;

- c. procedures for implementing corrective and preventive actions when compliance deficiencies or violations are identified;
- d. procedures for collecting information from phil&teds USA's affiliates on incidents and injuries occurring outside the United States;
- e. a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- f. effective communication of company compliance-related policies and procedures to all employees through training programs or otherwise;
- g. senior manager responsibility for compliance and accountability for violations of the statutes and regulations enforced by the Commission;
- h. board oversight of compliance; and
- i. retention of all compliance-related records for at least five (5) years and availability of such records to Staff, upon request.

26. phil&teds USA shall implement, maintain and enforce a system of internal controls and procedures designed to ensure that:

- a. information required to be disclosed by phil&teds USA to the Commission is recorded, processed and reported in accordance with applicable law;
- b. all reporting made to the Commission is timely, truthful, complete and accurate; and
- c. prompt disclosure is made to phil&teds USA's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to adversely affect in

any material respect phil&teds USA's ability to record, process, and report to the Commission in accordance with applicable law.

27. Upon Staff's request, phil&teds USA shall provide written documentation of its compliance program and system of internal controls and procedures, including, but not limited to, the effective dates of the program, controls and procedures and improvements thereto. phil&teds USA shall cooperate fully and truthfully with Staff and shall make available all information, materials, and personnel deemed necessary by Staff to evaluate phil&teds USA's compliance with the terms of the Agreement.

28. phil&teds USA agrees that any settlement agreements with consumers involving products over which the Commission has jurisdiction, and which include a confidentiality clause, must include an exception to the confidentiality clause that allows consumers to discuss any issues related to their settlement agreement with officers and employees of the Commission and other local, state and federal government representatives.

29. The parties acknowledge and agree that the Commission may make public disclosure of the terms of the Agreement and Order.

30. phil&teds USA represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of phil&teds USA, and each of its successors, transferees, and/or assigns.

31. The signatories represent that they are authorized to execute this Agreement.

32. The Agreement is governed by the laws of the United States.

33. The Agreement and the Order shall apply to, and be binding upon, phil&teds USA and each of its successors, transferees, and/or assigns, and a violation of the Agreement or Order may subject phil&teds USA and each of its successors, transferees, and/or assigns to appropriate legal action.

34. The Agreement and the Order constitute the complete agreement between the parties on the subject matter.

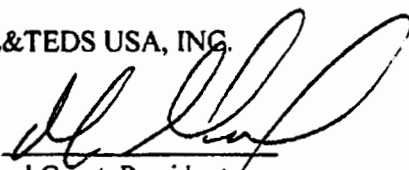
35. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties, and therefore, shall not be construed against any party for that reason in any subsequent dispute.

36. The Agreement shall not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

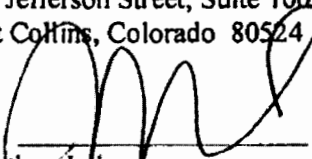
37. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and phil&teds USA agree that severing the provision materially affects the purpose of the Agreement and Order.

PHIL&TEDS USA, INC.

Dated: 8/12/15

By: 
Michael Grant, President
phil&teds USA, Inc.
221 Jefferson Street, Suite 100
Fort Collins, Colorado 80524

Dated: 8/13/2015

By: 
Jonathan Judge
Schiff Hardin LLP
233 Wacker Drive, Suite 6600
Chicago, Illinois 60606
Counsel for phil&teds USA, Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Dated: 8/13/15

By: 
Stephanie Tsacoumis
General Counsel

Mary T. Boyle
Deputy General Counsel

Mary B. Murphy
Assistant General Counsel

Leah Wade
Trial Attorney

AFFIDAVIT OF CORPORATE OFFICER MICHAEL GRANT

I, the undersigned, swear and affirm that I am employed by phil&teds USA, Inc., that I hold the position indicated below, and, by reason of my position, I am authorized and qualified to make the following statements. All capitalized terms not defined in this affidavit shall have the meanings given to them in the Agreement between phil&teds USA, Inc. and the U.S. Consumer Product Safety Commission, of which this Affidavit is a part.

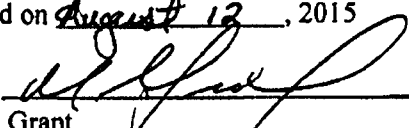
1. The financial statements of phil&teds USA provided to the Commission in connection with the matters addressed in this Agreement (“Financial Statements”) are complete, accurate and current and have been prepared on a consistent basis throughout the periods indicated except as otherwise noted therein, and that the Financial Statements fairly present the financial condition and results of operations and cash flow of phil&teds USA as of the dates, and for the periods, indicated therein, all consistently applied during the periods involved except as noted therein, and subject, in the case of the unaudited interim financial statements, to the absence of notes and normal year-end adjustments.
2. phil&teds USA has supplied all documents and information responsive to CPSC's requests.
3. The information supplied by phil&teds USA to the Commission in connection with the matters addressed in the Agreement (including information about the Firm's financial resources and ability to pay the Total Civil Penalty Amount) did not, at the time provided to the Commission, contain any untrue statement of a

material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

4. For each of the fiscal years ended March 31, 2015, 2014 and 2013, the net income, the net worth/stockholder's equity and working capital of phil&teds USA, Inc., was negative and to satisfy liabilities, phil&teds USA, Inc. relied on payments from its parent entity, Most Excellent World Holdings, Limited ("MEW"), pursuant to an intercompany agreement.
5. phil&teds USA, Inc. has insufficient cash or other liquid assets to satisfy a civil penalty payment in excess of \$200,000, has no sources of funding that could be used to provide the liquidity to make such a payment, and is unable to secure funds from MEW to fulfill a civil penalty payment obligation.
6. phil&teds USA, Inc. will not directly or indirectly receive reimbursement, indemnification, insurance-related payment or other payment in connection with the matters addressed in the Agreement.
7. Any civil penalty payment by phil&teds USA, Inc. in excess of \$200,000 will require phil&teds USA, Inc. to cease operations as an ongoing business.

I declare under penalty of perjury that the foregoing is true and correct. I understand that any intentional false statement in this declaration may be a criminal offense under 18 U.S.C.

§ 1001.

Executed on August 13, 2015
Signed: 
Michael Grant
President, phil&teds USA, Inc.

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

In the Matter of:)	
)	
)	
phil&teds USA, Inc.)	CPSC Docket No.: <u>15-C0007</u>
)	
)	

ORDER

Upon consideration of the Settlement Agreement entered into between phil&teds USA, Inc. (“phil&teds USA”), and the U.S. Consumer Product Safety Commission (“Commission”), and the Commission having jurisdiction over the subject matter and over phil&teds USA, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

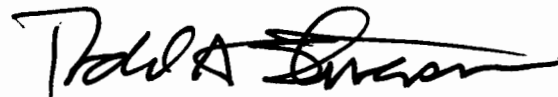
ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED, that phil&teds USA shall comply with the terms of the Settlement Agreement and shall pay a civil penalty of \$3,500,000, with \$3,300,000 of the total suspended, subject to the terms and conditions of the Settlement Agreement.

phil&teds USA shall pay the non-suspended portion of the penalty, \$200,000, in accordance with the terms set forth in the Settlement Agreement. Upon the occurrence of an Event of Default, as set forth in the Settlement Agreement, an amount equal to \$3,500,000 (representing the entire civil penalty, including the suspended portion), plus any accrued and unpaid interest, minus any penalty amounts paid by phil&teds USA, shall immediately become due and payable.

Provisionally accepted and provisional Order issued on the 8th day of September, 2015.

BY ORDER OF THE COMMISSION:



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

Finally accepted and final Order issued on the _____ day of _____
2015.

BY ORDER OF THE COMMISSION:

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