

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
)
CVS Pharmacy, Inc.)
_____) CPSC Docket No. 11-C0007

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, CVS Pharmacy, Inc. (“CVS”) and the U.S. Consumer Product Safety Commission (“Commission”) staff (“Staff”) enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order (“Order”) settle Staff’s allegations set forth below.

PARTIES

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. §§ 2051-2089 (“CPSA”).

3. CVS is a corporation organized and existing under the laws of Rhode Island, with its principal offices located in Woonsocket, Rhode Island. At all relevant times, CVS sold apparel and other products.

STAFF ALLEGATIONS

4. From August 2008 to January 2009, CVS sold and/or held for sale Golden Grove and Young USA children’s hooded fleece jackets with drawstrings at the neck (“Jackets”).

5. CVS sold the Jackets, and/or held the Jackets for sale, to consumers.

6. The Jackets are “consumer product[s],” and, at all relevant times, CVS was a “retailer” of those consumer products, which were “distributed in commerce,” as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. § 2052(a)(5), (8), and (13).

7. In February 1996, Staff issued the Guidelines for Drawstrings on Children’s Upper Outerwear (“Guidelines”) to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, Staff recommends that no children’s upper outerwear in sizes 2T to 12 be manufactured or sold to consumers with hood and neck drawstrings.

8. In June 1997, ASTM adopted a voluntary standard (ASTM F1816-97) incorporating the Guidelines. The Guidelines state that firms should be aware of the hazards associated with drawstrings and should ensure that garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its website a letter from the Commission’s Director of the Office of Compliance to manufacturers, importers, and retailers of children’s upper outerwear. The letter urges them to make certain that all children’s upper outerwear sold in the United States complies with ASTM F1816-97. The letter states that Staff considers children’s upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (“FHSA”) section 15(c), 15 U.S.C. § 1274(c). The letter also references the CPSA’s section 15(b) (15 U.S.C. § 2064(b)) reporting requirements.

10. CVS informed the Commission that there had been no reported incidents or injuries associated with the Jackets.

11. CVS's distribution in commerce of the Jackets did not meet either the Guidelines or ASTM F1816-97, failed to comport with Staff's May 2006 defect letter, and posed a strangulation hazard to children.

12. On March 25, 2009, the Commission, in cooperation with the Jackets' importer, announced a recall of the Jackets.

13. CVS had presumed and actual knowledge that the Jackets distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. § 1274(c)(1). CVS obtained information that reasonably supported the conclusion that the Jackets contained a defect that could create a substantial product hazard or that the Jackets created an unreasonable risk of serious injury or death. Pursuant to CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), CVS was required to immediately inform the Commission of the defect and risk.

14. CVS knowingly failed to immediately inform the Commission about the Jackets as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), and as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. § 2069, this failure subjected CVS to civil penalties.

CVS'S RESPONSIVE ALLEGATIONS

15. CVS denies Staff's allegations that CVS knowingly violated the CPSA and asserts that at the time it sold the Jackets, CVS did not have adequate notice that civil penalties could arise from its conduct. In imputing knowledge to CVS, Staff principally relies upon "Recommended Guidelines," which state that the "CPSC's drawstring guidelines do not

represent a standard or mandatory requirement set by the agency.” Staff also relies upon ASTM F1816-97, but this voluntary standard merely incorporates the Guidelines by reference.

16. In order to supply products to CVS, vendors are required to represent and warrant to CVS that all merchandise delivered to CVS will comply with all existing laws, regulations, standards, orders and rulings including, but not limited to, the CPSA.

17. CVS sold not more than 582 Jackets to consumers.

18. CVS is entering into the Agreement for settlement purposes only, and has made a business decision to avoid additional expenses and distractions related to further administrative process and litigation. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing on the part of CVS.

AGREEMENT OF THE PARTIES

19. Under the CPSA, the Commission has jurisdiction over this matter and over CVS.

20. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by CVS, or a determination by the Commission, that CVS knowingly violated the CPSA.

21. In settlement of Staff's allegations, CVS shall pay a civil penalty in the amount of forty-five thousand dollars (\$45,000.00). The civil penalty shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the Commission via www.pay.gov.

22. Upon 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). In accordance with 16 C.F.R. § 1118.20(f), 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 sixteenth (16th) calendar day after the date it is published in the *Federal Register*.

23. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, CVS knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether CVS failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

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

25. The Agreement and the Order shall apply to, and be binding upon, CVS and each of its successors and assigns.

26. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject CVS and each of its successors and assigns to appropriate legal action.

27. 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.

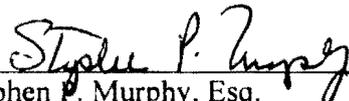
28. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the

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 CVS agree that severing the provision materially affects the purpose of the Agreement and the Order.

CVS Pharmacy, Inc.

Dated: 6/21/2011 By: 
Judith Sansone, Vice President
CVS Pharmacy, Inc.
One CVS Drive
Woonsocket, RI 02895

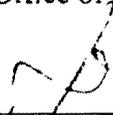
CVS
Legal Counsel *KE*

Dated: 6/21/11 By: 
Stephen P. Murphy, Esq.
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Washington, DC 20005-3373
Counsel for CVS Pharmacy, Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

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Dated: 6/28/11 By: 
Seth B. Popkin, Lead Trial Attorney
Division of Compliance
Office of the General Counsel

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
)
CVS Pharmacy, Inc.)
_____)

CPSC Docket No. 11-C0007

ORDER

Upon consideration of the Settlement Agreement entered into between CVS Pharmacy, Inc. ("CVS") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over CVS, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

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

FURTHER ORDERED, that CVS shall pay a civil penalty in the amount of forty-five thousand dollars (\$45,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the Commission via www.pay.gov. Upon the failure of CVS to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by CVS at the federal legal rate of

(continued on next page)

interest set forth at 28 U.S.C. § 1961(a) and (b).

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

2011.

BY ORDER OF THE COMMISSION:



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