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GENERAL COUNSEL

NO. 022 083

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UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of
Jo-Ann Stores, Inc.

CPSC Docket No. _____

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Jo-Ann Stores, Inc. ("Jo-Ann") and the staff ("Staff") of the United States Consumer Product Safety Commission ("CPSC" or the "Commission") enter into this Settlement Agreement ("Agreement"). The Agreement and the incorporated attached Order ("Order") settle the Staff's allegations set forth below.

PARTIES

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

3. Jo-Ann is a corporation organized and existing under the laws of the State of Ohio, with its principal offices located in Hudson, Ohio. At all times relevant hereto, Jo-Ann imported, offered for sale and sold various children's products.

STAFF ALLEGATIONS

4. Jo-Ann imported various Robbie Ducky™ children's products including the Kids Watering Cans ("Watering Cans") from February 2007 through August 2007, the children's toy rakes, hoes, brooms and spades ("Garden Tools") from January 2007 through September 2007, and Children's Water Globes ("Water Globes") in September 2007 (collectively, "Robbie Ducky products").

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Jo-Ann sold the Robbie Ducky products at its retail stores nationwide during those periods for between \$5 and \$10 per unit.

5. The Robbie Ducky products are "consumer product(s)," and, at all times relevant hereto, Jo-Ann was a "manufacturer" and "retailer" of those consumer product(s), which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(3), (5), (8), (11) and (13), 15 U.S.C. §§ 2052(a)(3), (5), (8), (11) and (13).

6. The Robbie Ducky products are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 C.F.R. Part 1303 (the "Lead-Paint Ban"). Under the Lead-Paint Ban, toys and other children's articles must not bear or contain "lead-containing paint," defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 C.F.R. § 1303.2(b)(1).¹

7. On August 24, 2007, Jo-Ann reported to CPSC that it had commissioned an independent laboratory to conduct testing of samples of the Watering Cans for the presence of lead in their surface coatings. The test results demonstrated that a sample Watering Can contained lead in excess of the permissible 0.06 percent limit set forth in the Lead-Paint Ban.

8. On August 28, 2007, the Commission and Jo-Ann announced a consumer-level recall of about 6,000 units of the Watering Cans because "[t]he beak of the watering can contains lead in the paint, which violates the federal law prohibiting lead paint on children's toys. Lead is toxic if ingested by young children and can cause adverse health effects."

¹ At the time of the alleged violations stated in this Settlement Agreement, the permissible limit of 0.06 was in effect for the Lead-Paint Ban. As of August 14, 2009, the limit was amended to 0.009 percent pursuant to 15 U.S.C. § 1278a(f)(1).

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GENERAL COUNSEL

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9. On September 14, 2007, Jo-Ann reported to CPSC that it had commissioned an independent laboratory to conduct testing of samples of the Garden Tools for the presence of lead in their surface coatings. The test results demonstrated that a sample of Garden Tools contained lead in excess of the permissible 0.06 percent limit set forth in the Lead-Paint Ban.
10. On September 26, 2007, the Commission and Jo-Ann announced a consumer-level recall of about 16,000 Garden Tools because "[s]urface paint on the handle of the rake can contain excessive levels of lead paint, violating the federal lead paint standard." This recall was expanded on October 25, 2007 to include an additional 97,000 units of children's leaf rakes, hoes, brooms and spades because these Garden Tools contained excessive levels of lead in violation of the Lead-Paint Ban.
11. On November 14, 2007, Jo-Ann reported to CPSC that it had commissioned an independent laboratory to conduct testing of samples of the Water Globes for the presence of lead in their surface coatings. The test results demonstrated that a sample of Water Globes contained lead in excess of the permissible 0.06 percent limit set forth in the Lead-Paint Ban.
12. On December 13, 2007, the Commission and Jo-Ann announced a consumer-level recall of about 60 Water Globes because "[t]he painted base of the water globes contain excessive levels of lead, violating the federal lead paint standard."
13. Although Jo-Ann reported no incidents or injuries from the Robbie Ducky products, it failed to take adequate action to ensure that they did not bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.
14. The Robbie Ducky products constitute "banned hazardous products" under CPSA section 8 and the Lead-Paint Ban, 15 U.S.C. § 2057 and 16 C.F.R. §§ 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the

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permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

15. From January 2007 through September 2007, Jo-Ann sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, with respect to the Robbie Ducky products, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1). Jo-Ann committed these prohibited acts "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

16. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Jo-Ann is subject to civil penalties for the aforementioned violations.

JO-ANN'S RESPONSIVE ALLEGATIONS

17. Jo-Ann denies the Staff's allegations set forth above that Jo-Ann knowingly violated the CPSA or any of its regulations. Jo-Ann believes that it reasonably relied upon its suppliers to manufacture products compliant with all applicable safety regulations.

18. Jo-Ann alleges that, to the best of its knowledge at the time when the Robbie Ducky products were imported, offered for sale and sold by the firm, they complied with the requirements of the Lead-Paint Ban. Jo-Ann notified CPSC of the lead-containing paint problems associated with the Robbie Ducky products promptly upon discovering them. After promptly investigating the facts, Jo-Ann voluntarily conducted each of the three recalls in cooperation with CPSC.

19. Jo-Ann has consistently acted in a cooperative manner with CPSC and engaged in corrective action without being so directed by either CPSC or by any third party.

AGREEMENT OF THE PARTIES

20. Under the CPSA, the Commission has jurisdiction over this matter and over Jo-Ann.

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GENERAL COUNSEL

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21. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Jo-Ann, nor does it constitute a determination by the Commission, that Jo-Ann has knowingly violated the CPSA.
22. In settlement of the Staff's allegations set forth above, Jo-Ann shall pay a civil penalty in the amount of fifty thousand dollars (\$50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.
23. The Commission will not seek or initiate any enforcement action against Jo-Ann for civil penalties, based upon information known to CPSC through the date of the final acceptance of this Agreement, for possible violations of the reporting requirements of section 15(b), 15 U.S.C. § 2064(b), regarding any Robbie Ducky products. The Commission's agreement not to seek penalties as stated herein will not relieve Jo-Ann from the continuing duty to report to CPSC any new, additional or different information as required by CPSA section 15(b), 15 U.S.C. § 2064(b) and the regulations at 16 C.F.R. Part 1115. Except as expressly provided herein, nothing in this Agreement is intended nor may be construed to preclude, limit, or otherwise reduce Jo-Ann's potential liabilities under any and all applicable law, statutory provisions, regulations, rules, standards, and/or bans enforced or administered by CPSC.
24. Upon 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). 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) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the *Federal Register*.

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GENERAL COUNSEL

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25. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Jo-Ann 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 Commission's Order or actions; (3) a determination by the Commission of whether Jo-Ann 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.

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

27. The Agreement and Order shall apply to, and be binding upon, Jo-Ann and each of its successors and assigns.

28. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those referenced in ¶ 27 to appropriate legal action.

29. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

30. If after the effective date hereof, any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Jo-Ann agree that severing the provision materially affects the purpose of the Agreement and Order.

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GENERAL COUNSEL

NO. 024 DE

NO. 022 DE
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Dated: 1/13/10

JO-ANN STORES, INC.

By: David B. Goldston

David B. Goldston
Senior Vice President, General Counsel & Secretary
Jo-Ann Stores, Inc.
5556 Darrow Road
Hudson, Ohio

Dated: 1/13/10

By: Joanne E. Mattiace

Joanne E. Mattiace, Esq.
Law Offices of Joanne E. Mattiace
58 Stroudwater Place
Westbrook, ME 04092-4044
Counsel for Jo-Ann Stores, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION
STAFF

Cheryl A. Falvey
General Counsel
Office of the General Counsel

Ronald G. Yelenik
Assistant General Counsel, Division of Compliance
Office of the General Counsel

Dated: 1/14/10

By: Sean R. Ward

Sean R. Ward
Trial Attorney, Division of Compliance
Office of the General Counsel

58 Stroudwater Place
Westbrook, Maine 04092
207-856-1700
207-856-1001
www.productsafetylaw.net

**Law Offices Of
Joanne E. Mattiace**

Fax

To: Sean Ward, Esq. **From:** Joanne E. Mattiace
Fax: 1-301-504-0403 **Pages:** 10
Phone: **Date:** January 13, 2010
Re: Jo-Ann Stores Penalty Paperwork **cc:**
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Thank you!

Joanne E. Mattiace