

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

_____)	
In the Matter of)	
)	
Acuity Brands, Inc.)	CPSC Docket No. _____
_____)	

SETTLEMENT AGREEMENT AND ORDER

1. In accordance with 16 C.F.R. § 1118.20, Acuity Brands, Inc. and the staff (“Staff”) of the United States Consumer Product Safety Commission (“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, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. §§ 2051 – 2084 (“CPSA”).

3. Acuity Brands, Inc. is a corporation organized and existing under the laws of the state of Delaware, and its principal offices are located in Atlanta, Georgia. Acuity Brands, Inc.’s businesses, among other things, design and manufacture lighting equipment. Lithonia Lighting conducted the product recalls referenced in the Agreement and identified itself as the manufacturer of those recalled products. Lithonia Lighting is a division of, and is wholly owned by, Acuity Lighting Group, Inc., which is wholly owned by Acuity Brands, Inc. Lithonia Lighting is also a brand of lighting products sold by Acuity Lighting Group, Inc. Acuity Brands, Inc., Acuity Lighting Group, Inc., and Lithonia Lighting are collectively referred to herein as “Acuity.”

4. Paragraphs 5 through 38 constitute the Staff's allegations based on the Staff's investigations. Paragraphs 39 through 48 constitute Acuity's responsive allegations disputing the Staff's allegations.

STAFF ALLEGATIONS

ELM/ELM II Emergency Lights

5. From August 1992 to May 1997, Acuity manufactured, and wholesalers and distributors sold, approximately 1.2 million ELM/ELM2 emergency lights later recalled on April 13, 2001 ("ELM Lights"). The ELM Lights were installed near exit doors in buildings such as schools, offices, and shopping centers, to aid in evacuation in the event of an emergency.

6. Each ELM Light is a "consumer product" that Acuity "distributed in commerce," and Acuity is a "manufacturer" of that consumer product, as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. §§ 2052(a)(1), (4), (11), and (12).

7. The ELM Lights had an electrical component that could overheat when connected to 277-volt electrical systems, and that could melt and burn the light enclosure and other objects, posing a fire hazard.

8. From January 1996 through September 2000, Acuity received reports of ELM Light capacitor failures and incidents from 33 sites, involving 109 failed capacitors, many of which included incidents of smoking, melting, rupturing, burning, and fire. Results included melted or damaged light enclosures, damaged walls and carpet, and one injury, i.e., a burned finger. From 1996 to 1999, Acuity replaced 345 ELM Lights due to the hazard.

9. Beginning in 1996, Acuity conducted testing and analysis, and it made an engineering change relating to the hazard by switching to a different and safer type of capacitor.

By July 1997, Acuity was replacing ELM Lights having defective capacitors with new units having the new capacitors.

10. From 1998 to 1999, Underwriters Laboratories wrote 4 letters to Acuity advising it of the CPSA's reporting requirements and/or of the ELM Lights' risk of fire, serious injury, or death. In 2000, Acuity received a letter from the Commission staff advising of the CPSA reporting requirements.

11. By July 1997, Acuity had obtained information that reasonably supported the conclusion that the ELM Lights contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. As of that date, Acuity had received reports from 12 sites, and the reports involved 60 failed (overheated) capacitors, at least 8 fire incidents, and 1 light that exploded, suffered smoke and heat damage, and had a capacitor failure not contained within the light enclosure. As of that date, Acuity had replaced some of the original capacitors with safer ones. CPSA sections 15(b)(2) and (3), 15 U.S.C. §§ 2064(b)(2) and (3), required Acuity to immediately inform the Commission of the defect or risk.

12. Acuity did not report to the Commission regarding the ELM Lights until October 19, 2000, thereby failing to immediately inform the Commission as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. §§ 2064(b)(2) and (3). This failure violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4).

13. Acuity knowingly failed to immediately inform the Commission of the ELM Lights' defect or risk, as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). Pursuant to CPSA section 20, 15 U.S.C. § 2069, this failure subjected Acuity to civil penalties.

HID Lights

14. From November 2002 through October 2003, Acuity manufactured, and from November 2002 through February 2004, lighting and electrical supply distributors sold, approximately 52,600 indoor high intensity discharge lights later recalled on March 29, 2004 (“HID Lights”). The HID Lights have acrylic lenses and/or reflectors, and they are generally used in industrial locations and commercial locations such as retail spaces, warehouses, and gymnasiums.

15. Each HID Light is a “consumer product” that Acuity “distributed in commerce,” and Acuity is a “manufacturer” of that consumer product, as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. §§ 2052(a)(1), (4), (11), and (12).

16. The HID Lights had an electrical component that could leak fluid that might degrade the acrylic lenses and reflectors, causing them to crack and fall from significant heights in pieces or in their entirety. Falling acrylic could injure people below.

17. From May 2003 through January 2004, Acuity received reports of HID Light failures from 18 sites, with 197 incidents in which acrylic lenses or reflectors cracked. These incidents included 56 occasions in which acrylic lenses, reflectors, or pieces fell from the lights. One injury occurred involving a forehead laceration and eye damage. During this time, Acuity replaced 770 HID Lights due to the hazard.

18. By the summer of 2003, Acuity knew that bad and leaking capacitors caused cracking acrylic, and Acuity learned of concerns about the defect, the potential for personal injury, and people fearing that falling reflectors could hit them.

19. Beginning in the summer of 2003, Acuity received defect analyses through which it learned more about the defect and hazard, and Acuity took further corrective action of its own,

instructing its manufacturing facilities to stop using these capacitors because they were failing due to a manufacturing defect. In November 2003, due to ongoing and numerous failures from the defect, Acuity directed a change in the component vendor.

20. By August 2003, Acuity had obtained information that reasonably supported the conclusion that the HID Lights contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. As of that date, Acuity knew that at 4 different sites, a total of 88 incidents occurred in which acrylic lenses or reflectors cracked, including 17 incidents in which acrylic lenses, reflectors, or pieces fell. CPSA sections 15(b)(2) and (3), 15 U.S.C. §§ 2064(b)(2) and (3), required Acuity to immediately inform the Commission of the defect or risk.

21. Acuity did not report to the Commission regarding the HID Lights until February 6, 2004, thereby failing to immediately inform the Commission as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. §§ 2064(b)(2) and (3). This failure violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4).

22. Acuity knowingly failed to immediately inform the Commission of the HID Lights' defect or risk, as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). Pursuant to CPSA section 20, 15 U.S.C. § 2069, this failure subjected Acuity to civil penalties.

HID Expansion Lights

23. From April through October 2002, Acuity manufactured, and from April 2002 through February 2004, distributors sold, approximately 40,600 indoor high intensity discharge lights later recalled on March 8, 2005 ("HID Expansion Lights"). The HID Expansion Lights have the same features, uses, defects, and hazard as the HID Lights described above. The HID

Expansion Lights differ from the HID Lights in that Acuity manufactured the former from April through October 2002, a manufacture period preceding the manufacture period for the HID Lights. These additional products resulted in an expansion, one year later, of the original recall, to include this additional manufacture period (“Expansion Period”).

24. Each HID Expansion Light is a “consumer product” that Acuity “distributed in commerce,” and Acuity is a “manufacturer” of that consumer product, as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. §§ 2052(a)(1), (4), (11), and (12).

25. From September 2003 through June 2004, Acuity received reports from 10 sites of Expansion Period products (i.e., the recalled HID Expansion Lights, as well as other lights that did not have acrylic and were not included in the recall but did have the same defective capacitors) leaking, cracking, and/or falling. From these 10 sites, Acuity learned of the following incident facts: At least 162 Expansion Period products with leaking capacitors only (no cracking/falling acrylic); 60 HID Expansion Lights with cracked lenses and/or reflectors that did not fall; and 31 HID Expansion Lights with lenses and/or reflectors that fell. At these sites, Acuity did 644 Expansion Period product replacements.

26. In September 2003, Acuity received the first site report about Expansion Period leaking capacitors. From April 5 to June 13, 2004, Acuity received reports from 6 sites having HID Expansion Lights with cracked lenses and/or reflectors.

27. Acuity acknowledged that its analysis for the HID Lights related as well to the HID Expansion Lights. Acuity also acknowledged that the HID Expansion Lights involved the same potential risk previously tested and that led to the HID Lights recall. Acuity conceded that as of February 2004, it knew the defect and took corrective action by stopping sale and doing replacements.

28. By April 2004, Acuity had obtained information that reasonably supported the conclusion that the HID Expansion Lights contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. §§ 2064(b)(2) and (3), required Acuity to immediately inform the Commission of the defect or risk.

29. Acuity did not report to the Commission regarding the HID Expansion Lights until October 8, 2004, thereby failing to immediately inform the Commission as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. §§ 2064(b)(2) and (3). This failure violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4).

30. Acuity knowingly failed to immediately inform the Commission of the HID Expansion Lights' defect or risk, as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). Pursuant to CPSA section 20, 15 U.S.C. § 2069, this failure subjected Acuity to civil penalties.

HID Cord Lights

31. From June 1999 through May 2002, Acuity manufactured, and lighting and electrical supply distributors sold, approximately 120,000 indoor high intensity discharge lights later recalled on March 11, 2005 ("HID Cord Lights"). The HID Cord Lights are generally used in locations such as retail spaces, light manufacturing areas, warehouse spaces, and gymnasiums.

32. Each HID Cord Light is a "consumer product" that Acuity "distributed in commerce," and Acuity is a "manufacturer" of that consumer product, as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. §§ 2052(a)(1), (4), (11), and (12).

33. The cord of the HID Cord Lights could drip plasticizer fluid that might degrade the acrylic lenses and reflectors, causing them to crack and fall from significant heights in pieces or in their entirety. Falling acrylic could injure people below.

34. From June 2002 through September 2004, Acuity learned of 15 sites at which there were at least 510 failing HID Cord Lights (i.e., lights with cracking or falling lenses or reflectors, and/or dripping cords). These incidents included 6 falling lenses, more than 286 cracking reflectors, 19 falling reflectors, and at least 202 dripping cords that had not yet resulted in cracking or falling reflectors. During this time, Acuity replaced or made arrangements to replace over 2,000 HID Cord Lights.

35. From June 2002 to September 2004, Acuity learned of defect information, the potential for personal injury, and people concerned that falling lenses and reflectors could hit them. During this time, Acuity received increasing information about the cord fluid being incompatible with acrylic and about acrylic cracking due to fluid leaking from cords. In August 2003, Acuity learned of the cord manufacturer's intent to do a corrective action by revising the cord's design, and in October 2003, Acuity acknowledged the defect issues and defective cords.

36. By July 2003, Acuity had obtained information that reasonably supported the conclusion that the HID Cord Lights contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. As of that date, Acuity had learned of 7 sites with 224 failing HID Cord Lights, including 5 falling lenses, 123 cracking reflectors, 4 falling reflectors, and at least 92 dripping cords not yet resulting in acrylic cracking or falling. Acuity replaced 431 HID Cord Lights at these sites. Also by July 2003, Acuity had learned of the cord fluid as the incidents' cause, and Acuity recognized the safety

issue. CPSA sections 15(b)(2) and (3), 15 U.S.C. §§ 2064(b)(2) and (3), required Acuity to immediately inform the Commission of the defect or risk.

37. Acuity did not report to the Commission regarding the HID Cord Lights until September 27, 2004, thereby failing to immediately inform the Commission as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. §§ 2064(b)(2) and (3). This failure violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4).

38. Acuity knowingly failed to immediately inform the Commission of the HID Cord Lights' defect or risk, as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). Pursuant to CPSA section 20, 15 U.S.C. § 2069, this failure subjected Acuity to civil penalties.

ACUITY'S RESPONSIVE ALLEGATIONS

39. Acuity contests and denies the Staff's allegations and enters into the Agreement to resolve the Staff's allegations without the expense and distraction of litigation. By agreeing to this settlement, Acuity does not admit any of the allegations set forth above in the Agreement or any fault, liability, or statutory or regulatory violation.

40. Acuity voluntarily, and without the Commission having first requested information from Acuity, notified the Commission in each of the matters described above.

41. Acuity closely monitored its reporting obligations under the CPSA. Acuity never knowingly failed to file a required report with the Commission or knowingly committed any other violation of the CPSA. Acuity has continued to improve its efforts to meet its reporting obligations under the CPSA.

42. Acuity's actions were to a significant degree influenced by its belief, based upon its initial review of the facts, that the Commission did not have jurisdiction over the products in question.

43. Acuity voluntarily conducted corrective actions with respect to the products identified in the Staff's allegations. It did so pursuant to the Commission's "Fast Track" program, and neither the Commission nor the Staff has ever made any determination that the products at issue contained a defect that could create either a substantial product hazard or an unreasonable risk of serious injury or death.

44. For several reasons, the actual risk associated with the products at issue was much lower in fact than implied by the Staff's description of incidents involving the products. These reasons include the fact that not all products subject to the corrective actions contained the problem that contributed to the performance failures described in the corrective actions. Moreover, even many of the product units that would have been so affected would not have caused harm due to varying circumstances. The fact that only two minor injuries occurred with respect to the products described in the Staff's allegations demonstrates that the actual, manifested risk from the products at issue was virtually nonexistent.

45. With respect to three of the four reports that the Staff has alleged were untimely, the component at issue was made by a third-party supplier and not by Acuity.

46. The Staff's recitation of incidents involving failure modes of varying levels of severity as evidence that the products were unsafe or should have been subject to the Commission's reporting requirements is over inclusive. Acuity evaluated its reporting obligations to the Commission based upon its assessment of risk, and it distinguished between risk issues and product performance issues in its evaluation of incidents. Acuity considered

many of the incidents set forth in the Staff's allegations to be performance issues, based upon information available at the time. Product performance issues that do not demonstrate a substantial product hazard or an unreasonable risk of serious injury or death are not reportable to the Commission, regardless of whether Acuity responded to customer requirements by providing replacement products.

47. The limitations period for bringing any claim regarding the ELM Lights has expired.

48. The HID Expansion Lights matter discussed in the Staff's allegations does not constitute a reporting violation separate from the alleged HID Lights reporting violation.

AGREEMENT OF THE PARTIES

49. Under the CPSA, the Commission has jurisdiction over this matter and over Acuity.

50. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Acuity, or a determination by the Commission, that Acuity has knowingly violated the CPSA. The Agreement does not constitute a Commission finding of fact or law with respect to any of the Agreement's allegations.

51. In settlement of the Staff's allegations, Acuity shall pay a civil penalty in the amount of seven hundred thousand dollars (\$700,000.00) 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.

52. 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). 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*.

53. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Acuity 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 Acuity 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 with respect to the Staff's allegations in the Agreement.

54. The Commission may publicize the terms of the Agreement and Order. In publicizing the Agreement and Order, the Commission will comply with the requirements of law, including CPSA section 6(b), 15 U.S.C. § 2055(b), to the extent applicable.

55. Acuity's full and timely payment to the United States Treasury of a civil penalty in the amount of seven hundred thousand dollars (\$700,000.00) as required herein resolves the Staff's allegations in the Agreement with respect to the following: (a) Acuity; (b) any Acuity parent, subsidiary, affiliate, division, or related entity; (c) any shareholder, director, officer, employee, agent, or attorney of any entity referenced in (a) or (b) above; and (d) any successor, heir, or assignee of any entity referenced in (a), (b), or (c) above.

56. The Agreement and Order shall apply to, and be binding upon, Acuity and each of its successors and assigns.

57. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Acuity to appropriate legal action.

58. 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 their 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, and that is approved by the Commission.

59. 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 Acuity

(continued on next page)

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

ACUITY BRANDS, INC.

Dated: _____ By: _____

Vernon J. Nagel, President
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U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

J. Gibson Mullan
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Office of Compliance

Ronald G. Yelenik, Acting Director
Legal Division
Office of Compliance

Dated: _____ By: _____

Seth B. Popkin, Trial Attorney
Legal Division
Office of Compliance

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
)
)
Acuity Brands, Inc.)
_____)

CPSC Docket No. _____

ORDER

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

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

FURTHER ORDERED, that Acuity shall pay a civil penalty in the amount of seven hundred thousand dollars (\$700,000.00) within twenty (20) calendar days of service of the final Order upon Acuity. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Acuity to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Acuity at the federal legal rate of interest set forth at 28 U.S.C. §§ 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the ___ day of _____, 20__.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
Consumer Product Safety Commission

Finally accepted and final Order issued on the ____ day of _____, 20__.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary
Consumer Product Safety Commission