

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
)

The Bon-Ton Stores, Inc.)
_____)

CPSC Docket No. 09-00016

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, The Bon-Ton Stores, Inc. ("Bon-Ton") 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 – 2089 ("CPSA").

3. Bon-Ton is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal offices located in York, PA. Bon-Ton is a retailer selling a wide selection of apparel, shoes, jewelry, fragrances, and accessories.

STAFF ALLEGATIONS

4. On or about August 30, 2007, Bon-Ton purchased from a U.S. importer approximately 12, 200 boys' hooded sweatshirts with drawstrings ("Drawstring Sweatshirts").

5. From August 2007 through November 2007, Bon-Ton sold and/or offered for sale the Drawstring Sweatshirts to consumers.

6. The Drawstring Sweatshirts are “consumer product[s],” and, at all times relevant hereto, Bon-Ton 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, the 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, the Staff recommends that there be no hood and neck drawstrings in children’s upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816-97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure 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 the 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 notes the CPSA’s section 15(b) reporting requirements.

10. Bon-Ton reported to the Commission there had been no incidents or injuries involving the Drawstring Sweatshirts.

11. Bon-Ton's distribution in commerce of the Drawstring Sweatshirts did not meet the Guidelines or ASTM F1816-97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On November 27, 2007, the Commission and Bon-Ton announced a recall of the Drawstring Sweatshirts. The recall informed consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. Bon-Ton had presumed and actual knowledge that the Drawstring Sweatshirts 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). Bon-Ton had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts 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)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), required Bon-Ton to immediately inform the Commission of the defect and risk.

14. Bon-Ton knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts 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 Bon-Ton to civil penalties.

BON-TON RESPONSE

15. Bon-Ton denies the Staff's allegations that Bon-Ton violated the CPSA or the FHSA including, but not limited to the allegations that Bon-Ton failed to immediately inform the Commission about the Drawstring Sweatshirts as required by section 15(b) of the CPSA, *supra*.

16. Bon-Ton contends that within 24 hours of learning of the presence of Drawstring Sweatshirts in its stores, Bon-Ton had the Drawstring Sweatshirts removed and took steps to prevent the further sales of Drawstring Sweatshirts.

17. Bon-Ton asserts that within 24 hours of learning of the presence of Drawstring Sweatshirts in its stores, Bon-Ton filed a section 15(b) report to the Commission.

18. In cooperation with the Commission, Bon-Ton announced the recall of Drawstring Sweatshirts. As part of the recall, Bon-Ton posted recall notices in its stores, provided a toll-free telephone line for consumers and posted information regarding the recall on its website.

AGREEMENT OF THE PARTIES

19. Under the CPSA, the Commission has jurisdiction over this matter and over Bon-Ton.

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

21. In settlement of the Staff's allegations, Bon-Ton shall pay a civil penalty in the amount of fifty-thousand dollars (\$50,000.00) within forty-five (45) days of receipt of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

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, Bon-Ton knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations 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 Bon-Ton 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. Upon issuance of, and Bon-Ton's compliance with the final Order, the Commission regards this matter as resolved and agrees not to bring a civil penalty action against Bon-Ton based upon the Staff's allegations set forth in paragraphs 4-14 above regarding the Drawstring Sweatshirts.

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

26. The Agreement and the Order shall apply to, and be binding upon, Bon-Ton and each of its successors and assigns.

27. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those named in paragraph 26 to appropriate legal action.

28. 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.

29. 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 Bon-Ton agree that severing the

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provision materially affects the purpose of the Agreement and the Order.

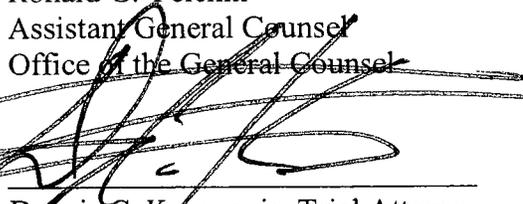
THE BON-TON STORES, INC.

Dated: January 6, 2009 By: 
Robert E. Stern, Esquire
Vice President and General Counsel
The Bon-Ton Stores, Inc.
2801 East Market Street
York, PA 17402

U. S. CONSUMER PRODUCT SAFETY COMMISSION

Cheryl A. Falvey
General Counsel

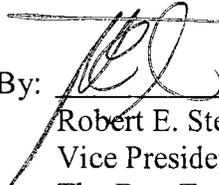
Ronald G. Yelenik
Assistant General Counsel
~~Office of the General Counsel~~

Dated: 01/06/09 By: 
Dennis C. Kacoyanis, Trial Attorney
Division of Compliance
Office of the General Counsel

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THE BON-TON STORES, INC.

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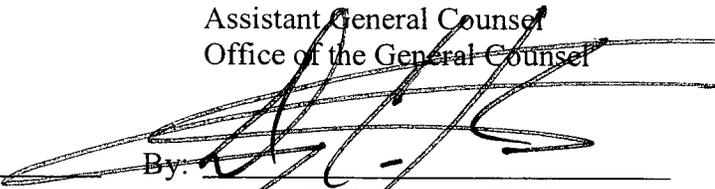
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Ronald G. Yelenik
Assistant General Counsel
Office of the General Counsel

Dated: 01/06/09

By: 
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Division of Compliance
Office of the General Counsel

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of
The Bon-Ton Stores, Inc.

CPSC Docket No. 09-C0016

ORDER

Upon consideration of the Settlement Agreement entered into between The Bon-Ton Stores, Inc. ("Bon-Ton") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Bon-Ton, 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 Bon-Ton shall pay a civil penalty in the amount of fifty-thousand dollars (\$50,000.00) within forty-five (45) days of receipt of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Bon-Ton to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Bon-Ton at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

(continued on next page)

Provisionally accepted and provisional Order issued on the 8th day of April, 2009.

BY ORDER OF THE COMMISSION:



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