

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

\_\_\_\_\_)  
In the Matter of )  
 )  
Coolibar, Inc., )  
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\_\_\_\_\_)

CPSC Docket No. 09-0013

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Coolibar, Inc. (“Coolibar”) 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. Coolibar is a corporation organized and existing under the laws of the State of Minnesota, with its principal offices located in St Louis Park, MN. Coolibar is an importer, and retailer of sun protection apparel and other sun protection products.

STAFF ALLEGATIONS

4. From March 2005 to April 2008, Coolibar imported about 6,100 children’s sun block jackets and hoodies with drawstrings (“Drawstring Jackets”) for sale to consumers through its website and catalog.

5. The Drawstring Jackets are “consumer product[s],” and, at all times relevant hereto, Coolibar was a “manufacturer” and “retailer” of those consumer products, which were “distributed in commerce,” as those terms are defined in CPSA sections 3(a)(5), (8), (11) and (13), 15 U.S.C. § 2052(a), (5) (8), (11), and (13).

6. 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.

7. 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.

8. 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.

9. Coolibar reported to the Commission there had been no incidents or injuries involving Drawstring Jackets.

10. Coolibar's distribution in commerce of the Drawstring Jackets 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.

11. On June 26, 2008, the Commission and Coolibar announced a recall of the Drawstring Jackets. The recall informed consumers that they should immediately remove the drawstrings to eliminate the hazard.

12. Coolibar had presumed and actual knowledge that the Drawstring 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). Coolibar had obtained information that reasonably supported the conclusion that the Drawstring Jackets 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 Coolibar to immediately inform the Commission of the defect and risk.

13. Coolibar knowingly failed to immediately inform the Commission about the Drawstring 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 Coolibar to civil penalties.

#### COOLIBAR RESPONSE

14. Coolibar denies the Staff's allegations that Coolibar violated the CPSA.

#### AGREEMENT OF THE PARTIES

15. Under the CPSA, the Commission has jurisdiction over this matter and over Coolibar.

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

17. In settlement of the Staff's allegations, Coolibar shall pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000.00) in three (3) installments as follows: The first installment payment of \$8,334.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second installment payment of \$8,333.00 shall be paid within one (1) year of service of the Commission's final Order accepting the Agreement; and the third installment of \$8,333.00 shall be paid within two (2) years of service of the Commission's final Order accepting the Agreement. Each installment payment shall be by check payable to the order of the United States Treasury.

18. 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*.

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Coolibar 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 Coolibar 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.

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

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

22. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those referenced in paragraph 21 to appropriate legal action.

23. 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.

24. 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 Coolibar agree that severing the

(Continued on next page)

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

COOLIBAR, INC.;

Dated: 1/19/09 By: \_\_\_\_\_



John Barrow  
President  
Coolibar, Inc.  
2401 Edgewood Avenue S.  
St. Louis Park, MN 55426

Dated: 1/21/09 By: \_\_\_\_\_



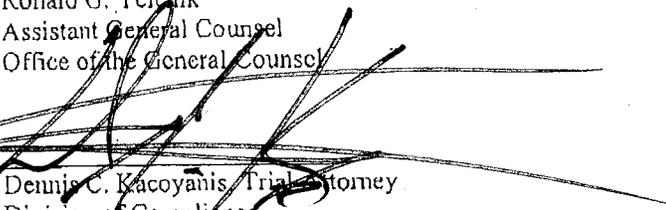
Mark R. Kaster, Esquire  
Counsel for Respondent Coolibar, Inc.  
Dorsey & Whitney, LLP  
50 South Sixth Street  
Suite 1500  
Minneapolis, MN 20814

U.S. CONSUMER PRODUCT SAFETY COMMISSION

Cheryl A. Falvey  
General Counsel

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

Dated: 01/27/09 By: \_\_\_\_\_



Dennis C. Kacoyanis, Trial Attorney  
Division of Compliance  
Office of the General Counsel

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

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CPSC Docket No. 09-00013

ORDER

Upon consideration of the Settlement Agreement entered into between Coolibar, Inc., d/b/a High Energy USA ("Coolibar") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Coolibar, 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, Coolibar shall pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000.00) in three (3) installments as follows: The first installment payment of \$8,334.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second installment payment of \$8,333.00 shall be paid within one (1) year of service of the Commission's final Order accepting the Agreement; and the third installment of \$8,333.00 shall be paid within two (2) years of service of the Commission's final Order accepting the Agreement. Each installment payment shall be by check payable to the order of the United States Treasury. Upon the failure of Coolibar to make any of the foregoing payments when due, the entire amount of the civil penalty shall become due and payable and

interest on the unpaid amount shall accrue and be paid by Coolibar 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 7th day of April, 2009.

BY ORDER OF THE COMMISSION:



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