

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of)	
)	
Mega Brands America, Inc. f/k/a)	CPSC Docket No.
Rose Art Industries, Inc.)	
)	

SETTLEMENT AGREEMENT

1. This Settlement Agreement (“Agreement”) is made by and between the staff (the "staff") of the U.S. Consumer Product Safety Commission (the “Commission”) and Mega Brands America, Inc., f/k/a Rose Art Industries, Inc., in accordance with 16 C.F.R. § 1118.20 of the Commission’s Procedures for Investigations, Inspections and Inquiries under the Consumer Product Safety Act (“CPSA”). This Agreement and the incorporated attached Order resolve the staff’s allegations set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the CPSA, 15 U.S.C. §§ 2051-2089.

3. Mega Brands America, Inc. (“Mega Brands America”) f/k/a Rose Art Industries, Inc. (“Rose Art”) is a New Jersey corporation, with its principal office located in Livingston, NJ. Rose Art was wholly owned by Jeffrey Rosen, Lawrence Rosen, and Sydney Rosen until purchased by Mega Bloks, Inc. (a Canadian corporation) on July 26, 2005. Pursuant to the terms of the purchase agreement, Mega Bloks, Inc. could not assume operational control of Rose Art until December 31, 2005. Thereafter, Jeffrey Rosen and Lawrence Rosen remained in senior management positions at Rose Art until

their respective departures on April 3, 2006 and May 9, 2006. On June 15, 2006, Rose Art was renamed “Mega Brands America”.

4. Mega Brands, Inc. f/k/a Mega Bloks, Inc. (“Mega Brands”) is a Canadian corporation located in Montreal, Quebec, Canada. Mega Brands is the parent company of Mega Brands America.

5. At all times relevant herein, Rose Art designed and manufactured the Magnetix magnet toys subject to this Settlement Agreement and Order.

STAFF ALLEGATIONS

6. Between January 2003 and December 2005, Rose Art manufactured and/or imported Magnetix magnetic building sets (hereinafter “Magnetix set(s)” or “the set(s).”¹)

7. Magnetix sets are “children’s product[s]” and “consumer product[s]” and, at the times relevant herein, Rose Art was a “manufacturer” of “children’s product[s]” and “consumer product[s]” which were “distributed in commerce” as those terms are defined in sections 3(a)(2), (5), (8), and (11) of the CPSA, 15 U.S.C. § 2052(a)(2), (5), (8) and (11).

8. The Magnetix sets are defective because magnets embedded in small plastic pieces contained in the sets could come loose and fall out of the plastic casing.

9. This defect creates a substantial risk of injury to children under section 15(c) of the Federal Hazardous Substances Act, 15 U.S.C. § 1274(c) because, if two or more magnets (or one magnet and one metallic ball) from a set are ingested by a child,

¹ Magnetix sets continued to be manufactured after 2005, however due to manufacturing and design improvements instituted by Mega Brands America, these sets are not the subject of the allegations set forth in this Agreement.

they can attract each other through intestinal walls, causing perforations, twisting and/or blockage of the intestines, infection, blood poisoning and death.

10. On December 14, 2005, Rose Art filed an “initial report” pursuant to section 15(b) of the CPSA, 15 U.S.C. § 2064(b), concerning the death of a 22 month old child who died on November 24, 2005. The child had ingested multiple magnets from a Magnetix set on separate occasions which subsequently joined together in his small intestine, causing a blockage and sepsis, which led to his death. Rose Art’s report identified the product as a Magnetix “X-treme Combo Flashing Lights Castle.” The firm attributed the release of magnets from the plastic pieces to unusually abusive play by the decedent’s older siblings. The initial report essentially contained no other information.

11. At the time of its initial report, Rose Art was in possession of at least one report of a child suffering an unspecified injury from ingesting a magnet from a Magnetix set and over 1100 consumer complaints that magnets had come loose or fallen out of plastic pieces from dozens of different Magnetix models, but failed to include that information in its report as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

12. On January 13, 2006, CPSC staff sent Rose Art a letter requesting a Full Report pursuant to 16 C.F.R. § 1115.13(d). Requested information included copies of the following: product liability suits and/or claims of personal injury; consumer complaints, dealer complaints, warranty claims, an identification of the products, and the total number of products involved. In addition, the letter advised the firm that it had a continuing obligation to supplement or correct its full report if the firm learned of other incidents or injuries or information that affected the scope, prevalence or seriousness of the defect or hazard.

13. On February 1, 2006, Rose Art submitted an incomplete and inadequate Full Report. The firm provided limited information about the “X-treme Combo Flashing Lights Castle” despite relevant knowledge that the population of affected products included over 255 different Magnetix set models. In addition, the firm failed to provide any information regarding complaints involving magnets falling out of Magnetix pieces.

14. On March 28, 2006, Rose Art provided staff with a chart entitled “Consumer Calls/Warranty” claims in response to the staff’s repeated requests for complaint and incident data. The chart lacked detail and critical information rendering it effectively useless. The CPSC staff requested all source documents used in the creation of the chart. The staff was told that the firm did not retain any source documents regarding complaint and incident data.

15. On March 31, 2006, CPSC and Rose Art announced a voluntary recall whereby the firm agreed to provide replacement products for consumers with children under the age of 6. The press release announced that CPSC was aware of one child who died and four children who were seriously injured as a result of ingesting or aspirating magnets that fell out of Magnetix pieces.

16. Following the recall, CPSC staff sought additional product information from the firm including complaint data. In September 2006, the staff came across information which indicated the firm did in fact retain records of consumer complaints with some level of detail.

17. On October 16, 2006, the Commission issued a Special Order and Subpoena to Mega Brands America compelling the firm to produce all injury and incident records pertaining to Magnetix.

18. On December 1, 2006, Mega Brands submitted a response for Mega Brands America. According to documents provided, between January 2004 and December 14, 2005 (the date on which Rose Art reported the death of the child), Rose Art had received over 1100 complaints of magnets falling out or otherwise liberating from the plastic pieces in over 67 different models of Magnetix. In addition, Rose Art had received notice of a child being injured from ingesting a magnet a few weeks prior to the child's death. According to the documents, by the time the recall was announced in March 2006, Rose Art had received over 1500 complaints about magnets falling out of Magnetix pieces.

19. The information eventually obtained by the Subpoena was required by statute to be included in Rose Art's Full Report and supplemented on an ongoing basis thereafter. The firm's failure to provide full complaint and incident data directly and detrimentally affected the staff's ability to assess the hazard and implement an effective corrective action program commensurate with the risk created.

20. Pursuant to section 19(a)(3) of the CPSA, 15 U.S.C. § 2068(a)(3), it is unlawful to "...fail or refuse to...provide information...as required under this Act or rule there under." Under section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), it is unlawful to fail to furnish information required by section 15(b) of the Act.

21. In failing to provide or furnish information as required under the CPSA and as set forth above, Mega Brands America "knowingly" violated sections 19(a)(3) and (4) of the CPSA, 15 U.S.C. § 2068(a)(3) and (4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

22. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Mega Brands America is subject to civil penalties for failure to provide or furnish information in violation of section 19 of the CPSA, 15 U.S.C. § 2068.

RESPONSE OF MEGA BRANDS AMERICA

23. Mega Brands America and its parent, Mega Brands, contend that Mega Brands did not know of the Magnetix defects at the time Mega Brands acquired Rose Art in June 2005. Documentary evidence establishes that Rose Art's prior owners knew, since at least late 2003 or early 2004, that there were design and manufacturing defects in Magnetix which caused magnets to detach. Rose Art's prior owners have admitted under oath, at no point in time did they ever advise anyone at Mega Brands of the Magnetix problems.

24. On May 24, 2005, when CPSC staff sent a letter requesting Rose Art to provide information concerning choking and near choking incidents involving Magnetix sets as well as "copies of all consumers or dealer complaints, including electronic records warranty claims and reports of injury related to the products being investigated [Magnetix]", Rose Art had the opportunity to disclose hundreds of incidents involving magnets coming loose, but it failed to do so. Notably, at that point in time, Rose Art was negotiating a civil penalty with CPSC for a reporting violation concerning another of its products, and was fully cognizant of its reporting obligations under the law. Mega Brands believes that had Rose Art disclosed all Magnetix consumer complaints in its response to the May 24, 2005 letter, the defect of magnets coming loose would have come to light much earlier.

25. Mega Brands claims that once it learned these facts, it promptly agreed to a more comprehensive recall of the product, which occurred in April 2007.

26. Nevertheless, Mega Brands America understands that, regardless of the reason, Rose Art and Mega Brands America failed to provide and/or furnish information to the CPSC as required under the CPSA.

AGREEMENT OF THE PARTIES

27. The Commission has jurisdiction over this matter and over Mega Brands America under the CPSA.

28. The parties enter this Agreement for settlement purposes only. The Agreement does not constitute an admission by Mega Brands America nor a determination by the Commission that Mega Brands America violated the CPSA's reporting requirements.

29. In settlement of the staff's allegations, Mega Brands America agrees to pay a civil penalty of \$1.1 million (\$1,100,000.00) in three installments. The first installment of \$400,000 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting this Agreement. The second installment of \$350,000 shall be paid within three (3) months of service of the Commission's final Order accepting this Agreement. The third and final installment of \$350,000 shall be paid within six (6) months of service of the Commission's final Order accepting this Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

30. The Commission agrees to take no further action involving Mega Brands America with respect to CPSC File Nos. CA080229 (Magtastik and Magnetix Jr. Pre-School Magnetic Toys) and CA070073 (MagnaMan-Magnetic Action Figures.)

31. Upon provisional acceptance of this Agreement by the Commission, the Commission shall place this Agreement on the public record and shall publish it 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 requests not to accept the Agreement within 15 calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the Federal Register.

32. Upon final acceptance of this Agreement by the Commission and issuance of the final Order, Mega Brands America knowingly, voluntarily and completely waives any rights it may have in this matter to the following: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (iii) a determination by the Commission as to whether Mega Brands America failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

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

34. The Agreement and Order shall apply to, and be binding upon Mega Brands America and each of its successors and assigns.

35. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject those referenced in paragraph 34 above to appropriate legal action.

36. This 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

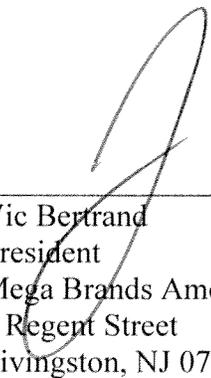
Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

37. If any provision of this 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 Mega Brands America determine that severing the provision materially affects the purpose of the Agreement and Order.

MEGA BRANDS AMERICA, INC.

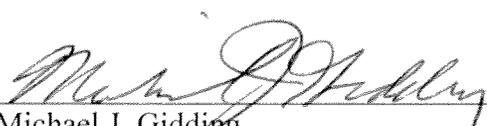
Dated: 3/19/09

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