

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of _____

FIRST LEARNING
COMPANY LIMITED _____

CPSC Docket No. 09-C0026

SETTLEMENT AGREEMENT AND ORDER

1. In accordance with 16 C.F.R. § 1118.20, First Learning Company Limited ("First Learning") 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, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. §§ 2051 – 2089 ("CPSA").

3. First Learning is a corporation organized and existing under the laws of Hong Kong, People's Republic of China (PRC), with its principal offices located in Kowloon, Hong Kong, PRC. First Learning's network of manufacturer representatives conduct business on its behalf through offices located in the United States. At all times relevant hereto, First Learning manufactured and/or sold toys and other children's products, among other merchandise.

STAFF ALLEGATIONS

4. Between April 2006 and August 2006, First Learning manufactured in China for sale in the United States about 9,400 units of certain "Soldier Bear" toys, including the Soldier Bear Wooden Pull-Along Learning Blocks Wagon, style number 6320, UPC code number 834162002158; the

Soldier Bear Time Teacher, style # 6231, UPC # 834162002646; and the Soldier Bear Wooden Riding Horse, style number 6349, and UPC code number 834162003698 (collectively, "Soldier Bear Toy(s)"). From August 2006 through October 2007, First Learning offered the Soldier Bear Toys for sale or sold them to a retailer, which, in turn, offered for sale or sold these products to consumers.

5. Beginning in or before October 2006, First Learning manufactured in China for sale in the United States about 15,000 units of certain Big Wooden Learning Blocks and Jumbo Wooden Train Sets. The Big Wooden Learning Blocks consisted of 30 or 60 block pieces, sold as either the Big Wooden Learning Blocks (30 pieces), style number 7210, UPC code number 14559211, or the Big Wooden Learning Blocks (60 pieces), style number 7211, UPC code number 14559235 (collectively, the "Learning Block(s)"). The Jumbo Wooden Train Sets consisted of 70 wooden pieces, sold as style number 13275A, and UPC code number 14217340 ("Train Set(s)"). From October 2006 through November 2007, First Learning offered the Learning Blocks and Train Sets for sale or sold them to a retailer, which, in turn, offered for sale or sold these products to consumers.

6. The Soldier Bear Toys, Learning Blocks, and Train Sets are "consumer product(s)," and, at all times relevant hereto, First Learning was a "manufacturer" of those consumer product(s), which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(3), (5), (8), and (11), 15 U.S.C. §§ 2052(a)(3), (5), (8), and (11).

7. The Soldier Bear Toys, Learning Blocks, and Train Sets 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 "Ban"). Under the Ban, toys and other children's articles must not bear "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)

8. In October and November 2007, the Staff obtained the results of testing conducted by an independent testing laboratory, showing that multiple samples of the Soldier Bear Toys failed to comply with the Ban. The testing demonstrated that the red surface coating on certain components of the Soldier Bear Wooden Pull-Along Learning Blocks Wagon contained a total lead content of 1,400 mg/kg; that the black, green, orange, and red surface coatings on certain components of the Soldier Bear Time Teacher contained a total lead content from 820 mg/kg to 13,000 mg/kg; and that the orange/yellow surface coating on the Soldier Bear Wooden Riding Horse contained a total lead content of 18,000 mg/kg. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban. First Learning learned of these failing test results shortly after completion of this testing.

9. On October 15, 2007, the Staff obtained samples of the Learning Blocks and Train Sets from a retail store. In November 2007, the staff tested these samples. The testing demonstrated that the orange paint on a component of the Big Wooden Learning Blocks (30 pieces) contained a total lead content of 2.633 percent; that orange paint on a component of the Big Wooden Learning Blocks (60 pieces) contained a total lead content of 0.07 percent; and that yellow paint on a component of the Train Set contained a total lead content of 0.065 percent. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban. Through contacts with the retailer and/or the staff, First Learning learned of these failing test results shortly after completion of this testing.

10. On December 19, 2007, the Commission and the retailer announced a consumer-level recall of products, including, but not limited to, about 9,400 Soldier Bear Toys, because “[t]he surface paint on the toys contains excessive levels of lead, violating the federal lead paint standard.”

11. On January 24, 2008, the Commission and the retailer announced a consumer-level recall of about 15,000 units of the Learning Blocks and Train Sets because “[s]urface paint on some pieces of the toys contains excessive levels of lead, violating the federal lead paint standard.”

12. Although no incidents or injuries were reported by First Learning or the retailers in connection with the Soldier Bear Toys, Learning Blocks and Train Sets, First Learning failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

13. The Soldier Bear Toys, Learning Blocks and Train Sets constitute "banned hazardous products" under CPSA section 8 and the 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 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.

14. Between April 2006 and November 2007, First Learning sold, manufactured for sale, offered for sale, or distributed in commerce in the United States, or caused one or more of such acts, with respect to the Soldier Bear Toys, Learning Blocks and Train Sets, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1). First Learning committed these prohibited acts "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

15. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, First Learning is subject to civil penalties for the aforementioned violations.

FIRST LEARNING RESPONSE

16. First Learning denies the Staff's allegations set forth above that First Learning knowingly violated the CPSA.

AGREEMENT OF THE PARTIES

17. Under the CPSA, the Commission has jurisdiction over this matter and over First Learning.

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

19. In settlement of the Staff's allegations, First Learning shall pay a civil penalty in the amount of fifty thousand dollars (\$50,000.00). The civil penalty shall be paid in three (3) installments as follows: \$10,000.00 shall be paid within thirty (30) calendar days of service of the Commission's final Order accepting the Agreement; \$15,000.00 shall be paid within one hundred and twenty (120) calendar days of service of the Commission's final Order accepting the Agreement; and \$25,000.00 shall be paid within one hundred and eighty (180) calendar days of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

20. 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*.

21. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, First Learning 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 First Learning 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.

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

23. The Agreement and Order shall apply to, and be binding upon, First Learning and each of its successors and assigns.

24. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject First Learning to appropriate legal action.

25. 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.

26. If 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 First Learning agree that severing the provision materially

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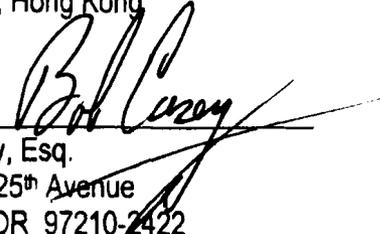
affects the purpose of the Agreement and Order.

FIRST LEARNING COMPANY LIMITED

Dated: 12-10-2008

By: 
Leung Suk Yue, Secretary and Director
First Learning Company Limited
Room 401, 4th Floor, Block A
Sun Fung Centre, 88 Kwok Shui Road
Kwai Hing, Hong Kong

Dated: 12-12-2008

By: 
Bob Casey, Esq.
1205 NW 25th Avenue
Portland, OR 97210-2422
Counsel for First Learning Company Limited

U.S. CONSUMER PRODUCT SAFETY COMMISSION
STAFF

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Dated: 3/6/09

By: 
M. Reza Malihi, 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-C0026

ORDER

Upon consideration of the Settlement Agreement entered into between First Learning Company Limited ("First Learning") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over First Learning, and it appearing that the Settlement Agreement and Order are in the public interest, it is

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

FURTHER ORDERED, that First Learning shall pay a civil penalty in the amount of fifty thousand dollars (\$50,000.00). The civil penalty shall be paid in three (3) installments as follows: \$10,000.00 shall be paid within thirty (30) calendar days of service of the Commission's final Order accepting the Agreement; \$15,000.00 shall be paid within one hundred and twenty (120) calendar days of service of the Commission's final Order accepting the Agreement; and \$25,000.00 shall be paid within one hundred and eighty (180) calendar days of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury. Upon the failure of First Learning to make any of the foregoing payments when due, (i) the entire amount of the civil penalty shall become due and payable, and (ii) interest on the outstanding balance shall accrue and be paid by First Learning at the federal legal rate of interest

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set forth at 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of July, 2009, 2008.

BY ORDER OF THE COMMISSION:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson". The signature is written in a cursive style with a large initial "T".

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