

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

_____)
In the Matter of)

HOBBY LOBBY STORES, INC.)
_____)

CPSC Docket No. 09-C0025

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Hobby Lobby Stores, Inc. ("Hobby Lobby") 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. Hobby Lobby is a corporation organized and existing under the laws of Oklahoma, with its principal offices located in Oklahoma City, Oklahoma. At all times relevant hereto, Hobby Lobby imported and/or sold toys and other children's products, among other merchandise such as arts and crafts, hobbies, picture framing, jewelry making, fashion fabrics, floral, cards and party items.

STAFF ALLEGATIONS

4. During August 2007, Hobby Lobby imported into the United States about 10,000 units of certain Halloween-themed plastic baskets, with two carrying handles, an emblem of a witch, bat or pumpkin attached to each side of the handle, and item number 5464201 located next to the price on the paper hangtag on the handle ("Basket(s)"). The Baskets were, in turn, offered for sale or sold to

consumers at Hobby Lobby stores nationwide from August 2007 through November 2007 for about \$1 per unit.

5. Also during August 2007, Hobby Lobby imported into the United States about 13,000 units of Easter-Themed Camouflage Eggs and Spinning Egg Top Toys. The Camouflage Easter Egg Treat Containers have Item #1031 printed on the front of the packaging and are white, brown and green camouflage colors, sold in a package of eight eggs, with "Made in China for Tony Development and Mfg Ltd; TST, Kin, HK" and UPC code number 43078 01031 printed on the back of the packing ("Egg(s)"). The Easter Spinning Egg Tops have Item # 1054 printed on the front of the packaging and are multi-colored and come in packages of a single egg and a rip cord, with "Made in China for Tony Development and Mfg Ltd. TST, Kin, HK" and UPC code number 43078 01054 printed on the back of the packaging ("Top(s)"). The Eggs and Tops were, in turn, offered for sale or sold to consumers at Hobby Lobby stores nationwide from January 2008 through March 2008, for about \$2.50 per unit and about \$2 per unit, respectively.

6. The Baskets, Eggs and Tops are "consumer product(s)," and, at all times relevant hereto, Hobby Lobby was a "manufacturer" and/or a "retailer" of those consumer product(s), which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(3), (5), (8), (11), and (13), 15 U.S.C. §§ 2052(a)(3), (5), (8), (11), and (13).

7. The Baskets, Eggs and Tops 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. Samples of the Baskets were tested by an independent laboratory for the presence of lead pursuant to the Ban. The test results demonstrated that certain samples of each contained levels of lead in excess of the permissible 0.06 percent limit set forth in the Ban. On or about October 30, 2007, the Commission informed Hobby Lobby of the violation.

9. On November 16, 2007, the Commission and Hobby Lobby announced a consumer-level recall of about 10,000 units of the Baskets because "Surface paint on the bat, pumpkin and witch emblems attached to the baskets contains excess levels of lead, which violates the federal lead paint ban."

10. Samples of the Eggs and Tops were tested by an independent laboratory for the presence of lead pursuant to the Ban. The test results demonstrated that certain samples of each contained levels of lead in excess of the permissible 0.06 percent limit set forth in the Ban. On or about March 13, 2008, the Commission informed Hobby Lobby of the violation.

11. On March 21, 2008, the Commission and Hobby Lobby announced a consumer-level recall of about 13,000 units of the Eggs and Tops because "The paint on the toys contains excessive levels of lead, violating the federal lead paint standard."

12. Although Hobby Lobby reported no incidents or injuries associated with the Baskets, Eggs and Tops, it 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 Baskets, Eggs and Tops 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 August 2007 and March 2008, Hobby Lobby manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the aforesaid banned hazardous Baskets, Eggs and Tops, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1). Hobby Lobby 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, Hobby Lobby is subject to civil penalties for the aforementioned violations.

HOBBY LOBBY'S RESPONSIVE ALLEGATIONS

16. Hobby Lobby denies the Staff's allegations set forth above that Hobby Lobby knowingly violated the CPSA or that it failed to take adequate action to ensure that none of the products contained lead containing paint.

AGREEMENT OF THE PARTIES

17. Under the CPSA, the Commission has jurisdiction over this matter and over Hobby Lobby.

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

19. In settlement of the Staff's allegations, Hobby Lobby shall pay a civil penalty in the amount of fifty thousand dollars (\$50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. This 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, Hobby Lobby 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 Hobby Lobby 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, Hobby Lobby 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 Hobby Lobby and those designated in paragraph 23 above 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 Hobby Lobby agree that severing the provision materially

affects the purpose of the Agreement and Order.

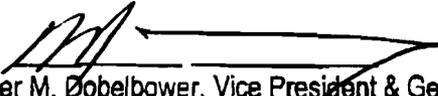
HOBBY LOBBY STORES, INC.

Dated: 3-3-09

By: 

Steve Green, President
Hobby Lobby Stores, Inc.
7707 SW 44th Street
Oklahoma City, OK 73179

Dated: 03-03-09

By: 

Peter M. Dobelbower, Vice President & General Counsel
Hobby Lobby Stores, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION
STAFF

Cheryl A. Falvey
General Counsel
Office of the General Counsel

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

Dated: 03/06/09

By: 

M. Reza Malhi, 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-C0025

ORDER

Upon consideration of the Settlement Agreement entered into between Hobby Lobby Stores, Inc. ("Hobby Lobby") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Hobby Lobby, 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

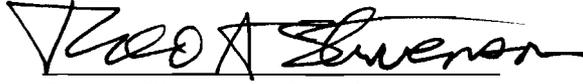
FURTHER ORDERED, that Hobby Lobby shall pay a civil penalty in the amount of fifty thousand dollars (\$50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Hobby Lobby to make any of the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Hobby Lobby at the federal legal

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

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

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, stylized initial "T".

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