

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil No. 0:08-CV-6478
v.)	
)	
WAGNER SPRAY TECH CORPORATION,)	STIPULATED JUDGMENT
a Minnesota corporation,)	<u>AND ORDER</u>
)	
and)	
)	
TECHTRONIC INDUSTRIES COMPANY, LTD.,)	
a Hong Kong corporation, conducting business in)	
the United States through various wholly-owned)	
subsidiaries including TECHTRONIC)	
INDUSTRIES NORTH AMERICA, INC.)	
)	
Defendants.)	
_____)	

WHEREAS, plaintiff, the United States of America, has filed a Complaint in this Court against Wagner Spray Tech Corporation (“Wagner”), and a subsequent Amended Complaint against Wagner and Techtronic Industries Company, Ltd. (“Techtronic”) (hereinafter Defendants), that seek civil penalties, alleging a failure to timely inform the Consumer Product Safety Commission (“CPSC” or the “Commission”) as required by law that certain cordless power drill battery chargers Techtronic manufactured and Wagner sold contained a defect or defects that could create a substantial product hazard and/or created an unreasonable risk of serious injury or death, and

WHEREAS, as referenced in the Amended Complaint, the Government (defined to include the United States of America and the CPSC) also commenced an action in United States District Court for the District of Maryland to enforce an administrative subpoena issued by the CPSC to Techtronic Industries North America (“TTINA”) a subsidiary of Techtronic, on January 29, 2008, and

WHEREAS, the administrative subpoena sought information from TTINA regarding certain Wagner drill battery chargers as well as certain other drill battery chargers manufactured by Techtronic under the brand names Ryobi (“Ryobi chargers”) and Sears/Craftsman (“Craftsman chargers”), and

WHEREAS, on December 29, 2008, the District of Maryland entered an order granting the motion to enforce the subpoena, directing TTINA to comply with the administrative subpoena as written, and administratively closing the case, and

WHEREAS, defendants have denied any fault or liability, including the validity of any of plaintiff’s allegations in this action, and TTINA has denied the allegations in the subpoena enforcement action in the District of Maryland.

TERMS OF AGREEMENT

Notwithstanding the above foregoing facts, allegations and denials, the government, Wagner, and Techtronic (hereinafter defined to include Techtronic Industries Company, Ltd., Techtronic Industries North America, Inc., and One World Technologies, Inc.) hereby agree as follows:

1. Defendants will pay a civil penalty to the United States Treasury of Eight Hundred Thousand Dollars (\$800,000) (“the penalty amount”).
2. The Amended Complaint shall be dismissed with prejudice.
3. The Government will fully release, acquit, and forever discharge Wagner and Techtronic and its current and former employees, agents, representatives, assigns and successors from all claims, demands, liabilities, actions, or causes of action, through the date of this agreement, including without limitation any claim for a civil penalty pursuant to 15 U.S.C. §§ 2068(a)(4) and 2069(a)(1), arising out of or in any way concerning any alleged failure by Wagner

and Techtronic to timely report information indicating that the Wagner chargers referenced in the Amended Complaint, and the Wagner, Ryobi, and Craftsman chargers covered by the CPSC's administrative subpoena (defined therein and hereinafter as "subject chargers"), had a defect or defects caused by overheating in the charging base that could create a substantial product hazard and/or created an unreasonable risk of serious injury.

4. The CPSC will withdraw the pending administrative subpoena. The Government will not seek information involving overheating in the charging base of any subject charger unless the CPSC learns of new information occurring after the date of this agreement that involves overheating in the charging base of any subject chargers. The Government will not take any action to reopen the administrative subpoena action in the District of Maryland.

5. The information previously submitted to the Government pursuant to the administrative subpoena shall fulfill Techtronic's reporting obligations involving overheating in the charging base of the subject chargers, unless Techtronic receives additional information that reasonably supports the conclusion that one or more of the subject chargers contains a defect involving overheating in the charging base that could create a substantial product hazard and/or unreasonable risk of serious injury or death, pursuant to 15 U.S.C. § 2064(b). The information previously submitted to the Government by Wagner shall fulfill Wagner's reporting obligations involving overheating in the charging base of the subject chargers, unless Wagner receives additional information that reasonably supports the conclusion that one or more of the subject chargers contains a defect involving overheating in the charging base that could create a substantial product hazard and/or unreasonable risk of serious injury or death, pursuant to 15 U.S.C. § 2064(b).

6. This agreement does not limit the ability of the Government to take appropriate action with respect to all pending and prospective inquiries by the CPSC concerning Wagner and Techtronic products, other than with respect to overheating in the charging base of the subject chargers, or relieve the defendants of their continuing duty to report to the CPSC information with respect to the above-referenced products or any other products manufactured, distributed or sold by defendants of any defects that could create a substantial product hazard and/or unreasonable risk of serious injury or death, pursuant to 15 U.S.C. § 2064(b).

THEREFORE, on the agreement of the parties upon the terms outlined above and without adjudication of any issue of fact or law and for good cause shown, it is hereby ORDERED, ADJUDGED and DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331, 1345 and 1355.
2. Venue in the District of Minnesota is proper under 28 U.S.C. §§ 1391(b), (c) and 1395(a).
3. The Amended Complaint states a claim upon which relief may be granted against Defendants under the Consumer Product Safety Act, 15 U.S.C. §§ 2064(b), 2068(a)(4) and 2069(a)(1).
4. Defendants have entered into this Order freely and without coercion. Each Defendant further acknowledges that it has read the provisions of this Consent Order and is prepared to abide by them.

ORDER

IT IS ORDERED that judgment in the amount of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) is hereby entered against defendants as a civil penalty, pursuant to 15 U.S.C. § 2069(a)(1).

A. Within ten (10) days after the entry of this Order, Defendants shall transfer the civil penalty payment in the form of a wire transfer in accordance with the instructions provided by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530. (Contact Ken Maddox at 202-307-0092 for instructions). If defendants fail to pay the penalty amount within ten days, interest on the penalty amount shall accrue and be paid at the federal rate of interest under the provisions of 28 U.S.C. §§ 1961 (a) and (b).

B. In the event of default of the payment required to be made by this Order, plaintiff shall be authorized to pursue any lawful means of collection of that sum, with or without further authorization from the Court. Defendants agree that, in such event, the facts alleged in the Amended Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Government to enforce their rights pursuant to this Order.

IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

SO ORDERED this 23rd day of July, 2009.

s/Ann D. Montgomery

UNITED STATES DISTRICT COURT JUDGE
U.S. DISTRICT COURT

We hereby stipulate to this judgment and consent to the entry of the foregoing Order.

**FOR DEFENDANT WAGNER
SPRAY TECH CORPORATION**

s/ Lee H. Simowitz
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DATED: July 23, 2009

**FOR DEFENDANT TECHTRONIC
INDUSTRIES COMPANY, LTD.**

s/ John B. Williams
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DATED: July 22, 2009

FOR THE PLAINTIFF

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DATED: July 22, 2009