



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

July 21, 2005

Frederick B. Locker, Esquire
Locker, Brainin & Greenberg
420 Fifth Ave.
New York, NY 10018

CPSC 05-C0009
Rose Art Industries, Inc.,
a corporation

Dear Mr. Locker:

The Settlement Agreement and Order in the above-captioned matter was provisionally accepted by the U.S. Consumer Product Safety Commission and published in the *Federal Register*. The *Federal Register* public comment period has expired and the Commission received no requests not to accept the Settlement Agreement. Accordingly, by operation of the law, the subject Settlement Agreement is deemed finally accepted.

Payment of the civil penalty required by the ORDER shall be made according to the terms of the ORDER. A copy of the final ORDER is enclosed. Please pay by check made payable to the UNITED STATES TREASURY and mail your payments to John Gibson Mullan Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd A. Stevenson".

Todd A. Stevenson
Secretary
Consumer Product Safety Commission

Enclosure

cc: Ronald G. Yelenik, Sr. Trial Attorney
M. Reza Malihi, Trial Attorney



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

June 30, 2005

Frederick B. Locker, Esquire
Locker, Brainin & Greenberg
420 Fifth Avenue
New York, NY 10018

CPSC 05-C0009
Rose Art Industries, Inc.
a Corporation

Dear Mr. Locker:

You are hereby notified that the Consumer Product Safety Commission has provisionally accepted the Settlement Agreement and Order in the matter of Rose Art Industries, Inc. , a corporation CPSC 05-C0009.

The Commission has placed the Agreement on the public record and shall announce provisional acceptance of the Agreement in the Federal Register. The Commission will receive and consider any comments or views concerning the Agreement that may be filed by interested persons within 15 days following announcement in the Federal Register.

The Commission may withdraw its acceptance of the Agreement if comments or views submitted disclose facts or considerations which indicate that the Agreement is inappropriate, improper or inadequate. Unless the Commission orders otherwise, the Agreement will be considered finally accepted by the Commission on the 16th calendar day after the date of the announcement in the Federal Register.

Sincerely,

Todd A. Stevenson
Secretary
Consumer Product Safety Commission

Enclosure

cc: Ronald G. Yelenik, Sr. Trial Attorney
M. Reza Malihi, Trial Attorney

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

_____))
In the Matter of))
Rose Art Industries, Inc.) CPSC Docket No. 05-C0009
a corporation))
_____)

SETTLEMENT AGREEMENT AND ORDER

1. This Settlement Agreement is made by and between the staff (the "staff") of the U.S. Consumer Product Safety Commission (the "Commission") and Rose Art Industries, Inc. ("Rose Art" or "Respondent"), a corporation, 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 Settlement Agreement and the incorporated attached Order settle the staff's allegations set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. §§ 2051-2084.

3. Rose Art is a corporation organized and existing under the laws of the State of New Jersey with its principal corporate offices located in Livingston, New Jersey. Respondent manufactures art materials, toys and stationery products.

STAFF ALLEGATIONS

4. Between August 1997 and December 2001, Rose Art manufactured and sold nationwide approximately 124,000 Glamour Gear Soap Making Kits, models 4054 and 4121 (the "Kit(s)" or the "product(s)"). Each Kit includes bars of soap, molds, and a plastic cup to melt soap chunks. These Kits are intended for use by children eight years of age and older.

5. The Kits are "consumer products" and Respondent is a "manufacturer" of "consumer products," which were "distributed in commerce" as those terms are defined in sections 3(a)(1), (4), (11) and (12) of the CPSA, 15 U.S.C. § 2052(a)(1), (4), (11), and (12).

6. The Kits are defective because the plastic cup used to heat the soap in a microwave oven may become deformed or develop a hole in the bottom, causing the hot soap contained therein to leak from the cup. If this occurs, young children and others may sustain serious burn injuries.

7. Between January 1998 and January 2002, Rose Art received reports of 10 children who were burned by hot soap while removing the plastic cup from a microwave oven. The majority of these children sustained second and third degree burns.

8. Despite being aware of the aforementioned reports, Rose Art did not inform the Commission about this information until February 14, 2002, when it submitted both a section 15 and a section 37 report.

9. Although Rose Art had obtained sufficient information to reasonably support the conclusion that the Kits contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, long before February 14,

2002, it failed to immediately inform the Commission of such defect or risk as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3) . By failing to do so, Rose Art violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

10. Respondent committed this failure to immediately inform the Commission of the subject defect or risk “knowingly” as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), and pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Respondent is subject to civil penalties.

RESPONSE OF ROSE ART

11. Rose Art denies the allegations of the staff that the Kits contain a defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death , and denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. § 2064(b). Respondent also denies that the products when maintained and used properly create a substantial product hazard or an unreasonable risk of serious injury or death under section 15(b) of the CPSA, 15 U.S.C. § 2064(b). Respondent asserts that it did not “knowingly” violate any reporting requirements under the CPSA. Respondent further asserts that any injury associated with the use of its products was attributable to unreasonable consumer misuse of the products contrary to instructions and without adequate adult supervision.

12. Notwithstanding its denial that the Kits contain a defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death, Respondent nevertheless, cooperated with the staff in recalling the products.

AGREEMENT OF THE PARTIES

13. The Commission has jurisdiction over this matter and over Rose Art under the CPSA, 15 U.S.C. §§ 2051-2084.

14. In settlement of the staff's allegations, Rose Art agrees to pay a civil penalty of three hundred thousand dollars (\$300,000.00) in two installments. The first installment of one hundred fifty thousand dollars (\$150,000.00) shall be paid within twenty (20) calendar days of service of the Final Order of the Commission accepting this Settlement Agreement. The second installment of one hundred fifty thousand dollars (\$150,000.00) shall be paid on or before January 31, 2006. These payments shall be made by check payable to the order of the United States Treasury.

15. The parties enter into this Settlement Agreement for settlement purposes only. The Settlement Agreement does not constitute an admission by Rose Art, or a determination by the Commission that Rose Art has violated the CPSA's reporting requirements.

16. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the *Federal Register* in accordance with the procedure set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the *Federal Register*.

17. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Rose Art 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 actions; (iii) a determination by the Commission as to whether Respondent failed to comply with the CPSA and its underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

18. The Commission may publicize the terms of the Settlement Agreement and Order.

19. This Settlement Agreement and Order shall apply to, and be binding upon Respondent and each of its successors and assigns.

20. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. §§ 2051-2084, and a violation of the Order may subject Respondent to appropriate legal action.

21. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

22. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced, and approved by the Commission.

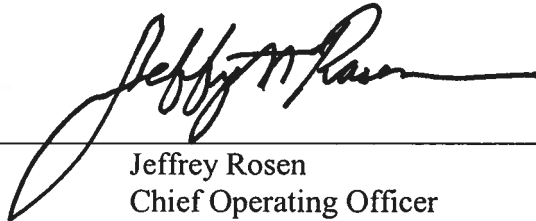
23. If, after the effective date hereof, any provision of this Settlement

Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Respondent determine that severing the provision materially impacts the purpose of the Settlement Agreement and Order.

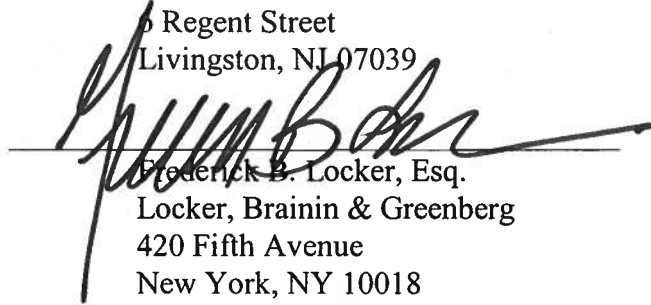
ROSE ART INDUSTRIES, INC.

Dated: 4/25/05

By: _____



Jeffrey Rosen
Chief Operating Officer
Rose Art Industries, Inc.
5 Regent Street
Livingston, NJ 07039



Frederick B. Locker, Esq.
Locker, Brainin & Greenberg
420 Fifth Avenue
New York, NY 10018
Counsel for Rose Art Industries, Inc.

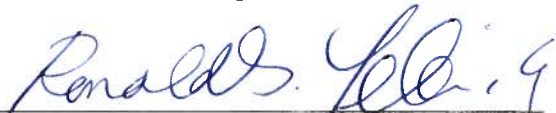
U.S. CONSUMER PRODUCT SAFETY COMMISSION

John Gibson Mullan, Director
Office of Compliance

Eric L. Stone, Director
Legal Division
Office of Compliance

Dated: 4/27/05

By: _____



Ronald G. Yelenik, Senior Attorney
M. Reza Malihi, Trial Attorney
Legal Division
Office of Compliance

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of)

Rose Art Industries, Inc.)

a corporation)
)
_____)

CPSC Docket No. 05- c0009

ORDER

Upon consideration of the Settlement Agreement entered into between Rose Art Industries, Inc. ("Rose Art") and the staff of the U.S. Consumer Product Safety Commission (the "Commission"), and the Commission having jurisdiction over the subject matter and over Rose Art, and it appearing that the Settlement Agreement is in the public interest, it is

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

FURTHER ORDERED, that Rose Art shall pay a civil penalty of three hundred thousand dollars, (\$300,000.00) in two installments. The first installment of one hundred fifty thousand dollars (\$150,000.00) shall be paid within twenty (20) calendar days of service of the Final Order of the Commission accepting the Settlement Agreement. The second installment of one hundred fifty thousand dollars (\$150,000.00) shall be paid on or before January 31, 2006. These payments shall be made by check payable to the order of the United States Treasury. Upon the failure of Rose Art to make a payment or upon the making of a late payment, (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 at the federal legal rate of interest under the provisions of 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 30th day of June, 2005.

BY ORDER OF THE COMMISSION:



Todd A. Stevenson, Secretary
Consumer Product Safety Commission

Finally accepted and Final Order issued on the 22nd day of July, 2005.

BY ORDER OF THE COMMISSION:



Todd A. Stevenson, Secretary
Consumer Product Safety Commission