UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
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COMMISSIONER PETER A. FELDMAN

STATEMENT OF COMMISSIONER PETER A. FELDMAN OPPOSING SETTLEMENT AGREEMENT WITH THE TJX COMPANIES, INC.

AUGUST 2, 2022

First, I appreciate the work of CPSC staff to achieve a $13 million penalty against The TJX Companies, Inc. (TJX), a global company that operates a number of well-known retail brands. This amount is higher than our most recent civil penalty case, and I am pleased that agency staff was able to negotiate a penalty that better reflects the seriousness of the violation, but I believe this settlement remains seriously deficient. Given the size of the company and the nature of the conduct at issue, even a maximum monetary penalty against TJX would lack any serious deterrent effect. To promote full compliance with the law, additional injunctive relief in the form of a third-party compliance monitor should have been required. While I offered an amendment calling for this additional relief, the Commission opted instead to settle this matter, keeping stronger terms, a maximum penalty, and the threat of litigation off the table. Unfortunately, the Commission is again missing an opportunity to send a strong message that it will make use of all its tools to create a principled and effective civil penalty regime.

TJX illegally sold over 1,200 recalled products, including hundreds of recalled infant sleepers known to be deadly. There is evidence that TJX continued to sell products for almost two years after the Commission notified it to stop. TJX actively ignored recalls and did not employ its inventory control technology responsibly. These illegal sales, and the fact that they went on for years, evidence, at best, systemic issues with TJX's internal controls and, at worst, callous disregard for the laws we enforce.

CPSC is authorized to pursue forward-looking injunctive relief to restrain future violations. In the proposed consent order, TJX agrees to maintain an in-house compliance program. That doesn't go nearly far enough. TJX already had a compliance program, reporting requirements, and access to state-of-the-art inventory control technology. Given that TJX is a repeat offender that has failed to monitor itself in the past, the proposed order's injunctive requirements are meaningless without some external verification to ensure the terms of the agreement are met.

While the Commission will review this matter going forward, it will do so at taxpayer expense and will necessarily divert attention and resources from other pressing matters. In the current budget environment, why should taxpayers bear this cost? As a federal appeals court concluded in *Spectrum*, outside monitors are commonly included in consent decrees to ensure compliance. An external third-party monitor, focused exclusively on TJX, would be more effective at ensuring future compliance, and would be borne at TJX's expense.

For years, the Commission has used its injunctive authority to require third-party monitors in cases where there is a reasonable likelihood of future violations. This type of relief is not novel. I am aware of at least four cases since 2010 where the Commission has entered a consent decree with a company to retain a third-party monitor. As mentioned above, in *Spectrum*, the Seventh Circuit affirmed the Commission's authority to require third-party monitoring. We should use this authority in this matter.

A central purpose of CPSC's civil penalty authority is to deter violations. While the fine here may seem significant, it is nowhere near the maximum relief we could have sought. In the case of a company that had almost $3.3 billion in profits and $49 billion in sales last year, I fear this $13 million fine, even with the mild injunctive relief TJX is agreeing to, amounts to nothing more than a parking ticket for TJX, a minor inconvenience.

My colleagues have stated that they want to see the Commission use all the tools we have available. Of the cases I have seen before this Commission, I can think of none more appropriate for this type of third-party remedy. If not now, when? The Commission's unwillingness to require a monitor or to litigate rather than settle reflects on our resolve in these matters.