

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. _____

GOODMAN COMPANY, L.P.,

Jury Demand

Defendant.

_____ /

**COMPLAINT FOR CIVIL PENALTIES
AND PERMANENT INJUNCTIVE RELIEF**

Plaintiff, United States of America, by its undersigned attorneys, brings this action on behalf of the United States Consumer Product Safety Commission (“CPSC”) against Defendant Goodman Company, L.P. (“Goodman” or “Defendant”) for violation of the Consumer Product Safety Act (“CPSA”), as amended, 15 U.S.C. § 2051 et seq.

INTRODUCTION

1. Defendant violated the CPSA by failing to timely inform the CPSC of a fire risk posed by air conditioning and heating units, many of which were installed in hotels, schools, and hospitals. Instead of timely reporting, Defendant fixed or replaced individual units, sometimes *en masse* at facilities that had suffered fires. When Goodman finally got around to reporting the fire risk, its submissions misled the CPSC about the extent of the problem by falsely reporting only three fires. In fact, there were more. After this initial report, there were additional fires, six of which Defendant failed to timely report.

2. The United States seeks a civil penalty and injunctive relief against Defendant because it knowingly failed to immediately report to the CPSC upon receiving information that

reasonably supported the conclusion that its product (1) contained a defect that could create a substantial product hazard, and/or (2) created an unreasonable risk of serious injury or death. 15 U.S.C. §§ 2064(b)(3), (b)(4), 2068(a)(4), 2069(a)(1). The United States also seeks civil penalties for making material misrepresentations to a CPSC officer or employee in the course of an investigation under the CPSA. 15 U.S.C. §§ 2068(a)(13), 2069(a)(1).

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355(a) and 15 U.S.C. § 2071(a)(1). Venue in this District is proper under 28 U.S.C. §§ 1391(b), (c), and 1395(a).

DEFENDANT

4. Defendant is a Delaware limited partnership whose principal place of business is in Houston, Texas.

5. Defendant manufactures consumer products.

CONSUMER PRODUCT SAFETY ACT

6. The CPSA is enforced by the CPSC. The CPSC is an independent federal agency created to protect the public against unreasonable risks of injury from consumer products. The principal offices of the CPSC are at 4330 East West Highway, Bethesda, Maryland, 20814. 16 C.F.R. § 1000.4.

7. Under the CPSA, every manufacturer or distributor of a consumer product that is distributed in commerce “shall immediately” notify the CPSC of certain events. 15 U.S.C. § 2064(b).

8. The requirement to immediately notify the CPSC is triggered, as relevant here, by either of two circumstances:

a. First, a manufacturer of a consumer product distributed in commerce “who obtains information which reasonably supports the conclusion that such product . . . contains a defect which could create a substantial product hazard” must immediately inform the CPSC unless the manufacturer has actual knowledge that the CPSC has been adequately informed of the defect. 15 U.S.C. § 2064(b)(3). The CPSA defines “substantial product hazard” as a product defect that “creates a substantial risk of injury to the public.” 15 U.S.C. § 2064(a)(2).

b. Second, a manufacturer of a consumer product distributed in commerce “who obtains information which reasonably supports the conclusion that such product . . . creates an unreasonable risk of serious injury or death” must immediately inform the CPSC unless the manufacturer has actual knowledge that the CPSC has been adequately informed of the risk. 15 U.S.C. § 2064(b)(4). The Commission has defined “serious injury” to include any significant injury, including injuries “necessitating hospitalization which require actual medical or surgical treatment.” 16 C.F.R. § 1115.6(c).

9. One purpose of the reporting requirement is to protect the public from unreasonable risks of injury from consumer products. Companies must report “immediately” to enable the CPSC to take action to address the hazard or risk by, for example, implementing a product recall.

10. The requirement to report “immediately” means “within 24 hours” after a company has obtained the requisite information regarding a defect or unreasonable risk. 16 C.F.R. § 1115.14(e). “If a firm elects to conduct an investigation in order to evaluate the existence of reportable information, the 24-hour period begins when the firm has information which reasonably supports the conclusion that its consumer product . . . contains a defect which

could create a substantial product hazard, or creates an unreasonable risk of serious injury or death.” *Id.* A firm should not wait for serious injury to occur before reporting. 16 C.F.R. § 1115.6(a).

11. Failing to furnish information required by 15 U.S.C. § 2064(b) is a prohibited act under the CPSA. 15 U.S.C. § 2068(a)(4).

12. The CPSA also prohibits any person from making a material misrepresentation to an officer or employee of the CPSC in the course of an investigation. 15 U.S.C. § 2068(a)(13).

13. Any person who knowingly commits a prohibited act in violation of 15 U.S.C. § 2068(a) is subject to a civil penalty. 15 U.S.C. § 2069(a)(1). The CPSA defines “knowingly” as “(1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable [person] who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.” 15 U.S.C. § 2069(d).

THE SUBJECT PTACs

14. This case concerns a product known as a packaged terminal air conditioner/heater (“PTAC”). PTACs are installed through the wall and used for room heating and cooling at hotels, schools, hospitals, and other commercial settings, and in residential settings, such as apartments.



A recalled PTAC. Source: CPSC website.

15. The PTACs at issue in this case are 3.5 kilowatt, 230/208 volt units that use 20-amp power cords and were manufactured by Defendant between January 2007 and April 2008 (“Subject PTACs”).

16. Defendant is the manufacturer of the Subject PTACs, as defined in 15 U.S.C. § 2052(a)(11).
17. Defendant manufactured more than 233,000 of the Subject PTACs.
18. The Subject PTACs were sold under the brand names Goodman, Amana, Comfort-Aire, Century, and York International.
19. Defendant sold the Subject PTACs at wholesale prices ranging from \$700 to \$1,000.
20. The Subject PTACs were manufactured and distributed for sale to consumers: (a) for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; and (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.
21. Each Subject PTAC is a “consumer product” as defined in 15 U.S.C. § 2052(a)(5).

DEFENDANT’S KNOWLEDGE OF THE FIRE RISK WAS INFORMED
BY THE 2008 RECALL OF A DIFFERENT MODEL PTAC

22. Defendant’s knowledge of the defect or risk associated with the Subject PTACs was informed by its previous actions regarding a different PTAC model, namely 5.0 kilowatt units that use 30-amp power cords (“5.0 kW PTACs”).
23. The 5.0 kW PTACs are nearly identical to the Subject PTACs, with the primary difference being that the 5.0 kW PTACs have a larger electric heater size that requires a 30-amp power cord.
24. On or about July 1, 2008, Goodman submitted a report to the CPSC concerning 5.0 kW PTACs that Goodman manufactured between February 2007 and April 2008. Goodman reported that the terminal crimps on the power cord leads were insufficiently tight. “This

insufficient crimping by the power cord manufacturer may, under certain circumstances, result in heat that can cause the PTAC control board to deteriorate and eventually permit electrical arcing between the control board pads,” Goodman explained. “The potential risk created by the power cords is deterioration of the PTAC control board and, in rare instances, smoke or fire.” On August 27, 2008, Defendant and the CPSC jointly announced a recall of the 5.0kW PTACs under Safety Alert #08-602, <http://www.cpsc.gov/en/recalls/2008/goodman-company-recalls-air-conditionerheat-pump-ptac-units-due-to-fire-hazard/>, which was reannounced on December 8, 2009, under Press Release # 10-058, <http://www.cpsc.gov/Recalls/2010/Goodman-Company-Reannounces-Recall-of-Air-ConditionerHeat-Pump-Units-Due-to-Fire-Hazard/>.

25. The “issue has not arisen with respect to 3.5 kW and smaller PTAC units,” which use 20-amp power cords, Goodman stated in that 2008 report. “Even in the event of an insufficient crimp on the terminal for a 20-amp cord, the current draw would not result in temperatures that might lead to deterioration of the control board insulation.”

26. Goodman may have believed in 2008 that improper crimping on the Subject PTACs did not create a risk of smoke or fire, but it should have reevaluated such belief as reports about fires, smoke, and overheating related to Subject PTACs started to pour in.

DEFENDANT’S KNOWLEDGE OF DEFECTIVE AND HAZARDOUS SUBJECT PTACs

2008-2009

27. In or about May 2008, Defendant learned that the “[c]ontrol board and power cord overheated” on a Subject PTAC. The “wire and board” had “melted.”

28. In or about August 2009, Defendant was notified by a hotel company that four PTACs at separate hotels had caught fire. One of the four was a Subject PTAC. A vice president for Defendant wrote in a letter that “we do not know the true cause of failure” but the

“origin of the overheat occurred in the control board area.” More specifically, the letter stated, the origin “appears to have occurred in the line-voltage area of the control board.”

29. In 2009, Defendant received information about overheated control boards or power cords on at least three Subject PTACs:

- a. In or about January 2009: a “relay burnt on the board and melted the wires in the control board area”;
- b. In or about July 2009: “the unit has a melted pad under the heater”;
- c. In or about December 2009: “unit burnt up ... at the power cord connections to the control board”.

30. In addition, between September and December 2009, Defendant received calls reporting at least seven Subject PTACs whose control boards were burnt. One of the callers reported that the “board burnt all the way through the touch pad.”

2010

31. In or about March 2010, Defendant learned that the control board of a Subject PTAC at a hotel in Middleton, Wisconsin had “smoked up the room and had to be put out with [a] fire ext[inguisher].”

32. In 2010, Defendant also received information about overheated control boards or power cords on at least 12 Subject PTACs, including:

- a. In or about February 2010: “board burnt and burnt all the wires in the control board area”;
- b. Also in or about February 2010: “Unit has melted wires, melted board, cord, and pad”;

- c. In or about June 2010: “board smokes and burnt some melting tips of couple of wires”;
- d. In or about July 2010: “board smoking”;
- e. In or about September 2010: “unit burnt board and wiring”;
- f. In or about October 2010: “the board has burnt and melted all the wiring and power cord on the unit”;
- g. In or about July 2010: “board started smoking.”

33. In addition, also in 2010, Defendant received calls reporting at least 14 Subject PTACs whose control boards were burnt.

2011

34. In or about March 2011, Defendant learned that a “control board caught fire and burned up [the] harness that went to compressor” for a Subject PTAC at a hotel in Waynesboro, Virginia. Defendant also learned that “the board and wires are burnt up” and that “smoke came out of the unit.”

35. Also in or about March 2011, Defendant learned that a Subject PTAC at a residence “caught on fire” and that the board had “burnt-up.”

36. In or about May 2011, Defendant learned that a Subject PTAC at a hotel in North Syracuse, New York was “damaged by fire” and the “fire origin [was] in the area of” the power cord. Referring to the hotel, an employee of Defendant wrote that “[t]his property had 1 unit that caught fire and is being replaced.” Defendant subsequently replaced the control boards and power cords for over 100 Subject PTACs at the hotel.

37. In 2011, Defendant also received information about overheated control boards or power cords on at least 22 Subject PTACs, including:

- a. In or about February 2011: “cord melted”;
- b. In or about March 2011: “board had melted on this unit and melted and smoked on wires connected to board”;
- c. Also in or about March 2011: “control board heat relay melted and cord melted wire”;
- d. In or about April 2011: “3 boards burnt spots and wires damaged”;
- e. In or about June 2011: “board is dead and there is smoke coming out of it”;
- f. In or about November 2011: “unit board burnt up and burnt all the wiring.”

38. In addition, also in 2011, Defendant received calls reporting at least 33 Subject PTACs whose control boards were burnt.

2012

39. In or about February 2012, Defendant learned that a Subject PTAC at a hotel in Fort Smith, Arkansas “caught on fire.”

40. In 2012, Defendant also received information about overheated control boards or power cords on at least seven Subject PTACs, including:

- a. In or about January 2012: “unit burnt up the board, melted all the wires to the control board”;
- b. Also in or about January 2012: “Wires overheated and melted all wires at board”;
- c. In or about February 2012: “The board and wiring burnt up,” and the “[c]ontrol panel was shooting sparks in the air”;
- d. In or about May 2012: “the board and all the wiring burnt”;

- e. Also in or about May 2012: “The control board burnt and melted all the wiring in the unit and touch pad” and “[a]lso burnt the wall”;
- f. In or about August 2012: “the board started smoking.”

41. In addition, in 2012, Defendant received calls reporting at least 26 Subject PTACs whose control boards were burnt.

2013

42. In or about February 2013, Defendant learned that a Subject PTAC at a hotel in Indianapolis, Indiana had caught fire. Defendant subsequently replaced the power cords and control boards for approximately 135 Subject PTACs at the hotel.

43. Also in or about February 2013, Defendant learned that a Subject PTAC at a hotel in Spring Valley, Illinois “had the control board catch on fire and burnt the board and wiring in the unit.”

44. In or about May 2013, Defendant learned that a Subject PTAC at a hotel in Pocatello, Idaho had caught fire. Defendant subsequently replaced the power cords and control boards for more than 200 Subject PTACs at the hotel and five affiliated hotels in Idaho, Utah, and Washington.

45. Also in or about May 2013, Defendant learned that a Subject PTAC at a hotel in West Bend, Wisconsin had caught fire. The fire allegedly caused over \$127,000 in damage.

46. In or about May 2013, Defendant began an internal investigation regarding the Subject PTACs.

47. On or about July 23, 2013, a consultant for Defendant informed Defendant that “[i]nitial analysis” of power cord cables for the Subject PTACs “indicates resistive heating.” On or about August 2, 2013, the consultant informed Defendant that improperly-crimped power

cords for the Subject PTACs “would have higher contact resistance and resistive heating.” Defendant knew that resistive heating on power cords creates a risk of smoke or fire.

REPORT AND RECALL

48. Despite having knowledge of information about a defect or risk of the Subject PTACs catching fire, Defendant did not notify the CPSC of any defect or risk regarding the Subject PTACs before November 26, 2013.

49. On or about November 26, 2013, Defendant submitted an initial report to the CPSC regarding the Subject PTACs, pursuant to 15 U.S.C. § 2064(b). On or about December 12, 2013, Defendant submitted a full report to the CPSC.

50. Prior to the submission of the initial and full reports, the CPSC was not adequately informed that the Subject PTACs contained a defect or defects that could create a substantial product hazard or that the Subject PTACs created an unreasonable risk of serious injury.

51. By knowingly failing to report immediately to the CPSC, Defendant violated the CPSA. 15 U.S.C. § 2064(b)(3), (b)(4) and 2068(a)(4). Under the CPSC’s regulations, “immediately” means “within 24 hours,” 16 C.F.R. § 1115.14(e), but Defendant failed to report for months and years. Defendant acted “knowingly” within the meaning of the CPSA, because it either had actual knowledge of the defect or risk or could have obtained such knowledge upon the exercise of due care. 15 U.S.C. § 2069(d).

52. On August 27, 2014, Defendant and the CPSC jointly announced a recall of the Subject PTACs, under Recall # 14-263, <http://www.cpsc.gov/en/recalls/2014/goodman-company-recalls-air-conditioning-and-heating-units/>, informing consumers to immediately stop using and unplug the Subject PTACs, and providing replacement power cords.

MISREPRESENTATIONS TO THE CPSC

53. Defendant made material misrepresentations to an officer or employee of the CPSC in the course of an investigation under the CPSA.

54. In Defendant's initial report to the CPSC, as well as in the subsequent full report, Defendant proposed supplying owners of Subject PTACs with replacement power cords.

55. The CPSC conducted an investigation to determine whether to accept the proposal submitted by Defendant. The investigation was especially important because the manufacturer of the power cords disputed the role of the power cords, if any, in the overheating incidents. The CPSC's investigation thus included determining whether Defendant's proposed remedy would reduce the risk. The CPSC's investigation also included determining what information to announce to the public to maximize the effectiveness of any recall.

56. Each incident involving fire or smoke was material to the CPSC's investigation into the nature of the Subject PTAC's defect and hazard and whether Defendant's proposed remedy would reduce the risk.

57. In the course of the CPSC's investigation, Defendant made the following material misrepresentations to an officer or employee of the CPSC regarding the number of reported fire incidents concerning the Subject PTACs:

- a. Defendant's full report stated that there were "three reports of overheating incidents in 2013 that allegedly originated from 3.5 kw PTAC units using the inadequately-crimped 20-amp [power] cord[.]"
- b. Defendant's full report stated that Defendant has "not received notice of any additional reported overheating incidents potentially attributable to the [] 20-amp power cord..."

- c. An email sent on behalf of Defendant on or about April 15, 2014 stated that “out of more than 230,000 units sold, Goodman has received notice of only three reported fire incidents.”

58. In fact, at the time of those statements, Defendant had received scores of additional reports of overheating, including reports of fire, potentially attributable to the Subject PTACs’ 20-amp power cord.

59. Defendant subsequently informed the CPSC of two additional fires, bringing the total incidents reported by Goodman, prior to issuance of the CPSC’s press release, to five. The actual number of incidents was considerably higher.

60. Because of Defendant’s misrepresentations, the CPSC press release announcing the recall underrepresented the number of reports by stating that “Goodman has received five reports of power cords smoking or catching on fire.”

GOODMAN FAILS TO TIMELY REPORT ADDITIONAL FIRES

61. After submitting the initial and full reports, Defendant learned of additional fires involving Subject PTACs, but Defendant failed to timely report them to the CPSC:

- a. A fire at a hotel in Oregon that Defendant received notice of in or about March 2014 but did not report to the CPSC until February 2015.
- b. A fire at a hotel in Nova Scotia, Canada, that Defendant received notice of in or about October 2014 but did not report to the CPSC until April 2016.
- c. A fire at a hotel in Medford, New York that Defendant received notice of in or about December 2014 but did not report to the CPSC until April 2016.
- d. A fire at a hotel in College Park, Georgia that Defendant received notice of in or about January 2015 but did not report to the CPSC until April 2016.
- e. A fire at an apartment complex in Brigantine, New Jersey that Defendant received notice of in or about June 2015 but did not report to the CPSC until April 2016.

f. A fire at a hotel in Greensburg, Pennsylvania that Defendant received notice of in or about July 2015 but did not report to the CPSC until April 2016.

62. The six fires referenced above were reported by Defendant to the CPSC at least 10 months after Defendant learned of the fires.

63. During the time frame of the above-referenced fires, the CPSC was monitoring the recall and continuing its investigation to determine whether the recall was effective at causing power cords to be replaced and whether the replacement power cords effectively reduced the risk.

64. During the time frame of the above-referenced fires, Defendant knew of the CPSC's investigation into whether it violated the CPSA's reporting requirement. Defendant's failure to timely report the above-referenced fires occurred while Defendant knew it was under investigation by the CPSC for failing to timely report earlier fires.

65. On February 17, 2016, in conjunction with Defendant, the CPSC reannounced the recall of Subject PTACs and expanded the recall to include certain additional products manufactured by Defendant containing the same defective power cords. The reannouncement and expansion were announced under Recall Number 16-102, <http://www.cpsc.gov/en/recalls/2016/goodman-company-expands-recall-of-air-conditioning-and-heating-units/>. The above-referenced fires all occurred and were known to Goodman prior to that February 2016 announcement but still were not reported to the CPSC until two months after the announcement.

DEFENDANT'S ONGOING ACTIVITIES

66. Defendant has not implemented and maintained a reasonable and effective program or system for complying with the reporting requirements of the CPSA.

67. There is a reasonable likelihood that Defendant will continue to violate the CPSA reporting requirements.

COUNT I

68. Paragraphs 1-67 are incorporated by reference and realleged as if set forth fully herein.

69. Separately as to each individual Subject PTAC distributed in commerce, Defendant knowingly failed to immediately inform the CPSC upon obtaining information that reasonably supported the conclusion that the Subject PTAC contained a defect or defects, including but not limited to, a defect or defects in design or manufacturing that could create a substantial product hazard (*i.e.*, a defect or defects that could create a substantial risk of injury to the public) in violation of 15 U.S.C. §§ 2064(a)(2), (b)(3) and 2068(a)(4).

70. These violations continued from the time Defendant obtained the information regarding the defect(s) until it finally furnished adequate information regarding the defect(s) to the CPSC. In addition, these violations occurred each time Defendant obtained information regarding the defect(s).

COUNT II

71. Paragraphs 1-70 are incorporated by reference and realleged as if set forth fully herein.

72. Separately as to each individual Subject PTAC distributed in commerce, Defendant knowingly failed to immediately inform the CPSC upon obtaining information that

reasonably supported the conclusion that the Subject PTAC created an unreasonable risk of serious injury, in violation of 15 U.S.C. §§ 2064(b)(4) and 2068(a)(4).

73. These violations continued from the time Defendant obtained the information regarding the unreasonable risk of serious injury until it finally furnished adequate information regarding the unreasonable risk of serious injury to the CPSC. In addition, these violations occurred each time Defendant obtained information regarding the unreasonable risk of serious injury.

COUNT III

74. Paragraphs 1-73 are incorporated by reference and realleged as if set forth fully herein.

75. Defendant knowingly made material misrepresentations to an officer or employee of the CPSC in the course of an investigation under the CPSA, in violation of 15 U.S.C. § 2068(a)(13).

COUNT IV

76. Paragraphs 1-75 are incorporated by reference and realleged as if set forth fully herein.

77. There is a reasonable likelihood that Defendant will continue to violate the CPSA reporting requirement, warranting injunctive relief pursuant to 15 U.S.C. § 2071(a)(1).

JURY DEMAND

The United States demands a trial by jury on all Counts so triable.

RELIEF REQUESTED

WHEREFORE, the United States respectfully requests that this Court:

I. Assess civil penalties against Defendant, in accordance with 15 U.S.C. § 2069, for each separate violation, and the related series of violations, as alleged in Counts I, II and III of this Complaint.

II. Award the United States injunctive relief against Defendant as set forth in Count IV, in accordance with 15 U.S.C. § 2071(a)(1), that would: (1) require Defendant to comply with the reporting requirements of the CPSA and its accompanying regulations; (2) assure such compliance by requiring Defendant to establish internal recordkeeping and monitoring systems designed to provide timely reports to the CPSC whenever Defendant obtain information which reasonably supports the conclusion that any of their products contain a defect which could create a substantial product hazard or creates an unreasonable risk of serious injury or death to consumers; and (3) provide for liquidated damages in the event that Defendant fails to comply with the reporting requirements of the CPSA, or any injunctive relief ordered by this Court.

III. Award Plaintiff judgment for its costs and for such other and further relief that this Court deems just and proper.

Dated: September 8, 2016

Respectfully submitted,

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