



United States
Consumer Product Safety Commission

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chair Alex Hoehn-Saric
 Commissioner Dana Baiocco
 Commissioner Peter A. Feldman
 Commissioner Rich Trumka Jr.
 Commissioner Mary Boyle

ITEM:

The TJX Companies, Inc.
Recommendation to accept \$13 million settlement for alleged violations of the Consumer Product Safety Act
(Briefing package dated July 13, 2022, OS No. 0136)

DECISION:

The Commission voted (4-0-1) to provisionally accept under 16 C.F.R. § 1118.20(d), the Settlement Agreement and Order, which orders The TJX Companies, Inc. to pay a civil penalty of \$13 million and to take other remedial actions. The provisional Settlement Agreement and Final Order will be announced in the Federal Register. The Division of Enforcement and Litigation (CEL) in the Office of Compliance and Field Operations negotiated the proposed settlement agreement. The agreement resolves staff allegations that TJX violated section 19(a)(2)(B) of the Consumer Product Safety Act (“CPSA”) by knowingly selling, offering for sale, and distributing, between March 2014 and October 2019, a total of approximately 1,205 units of 21 different recalled consumer products through its brick-and-mortar retail stores and online.

Chair Hoehn-Saric, Commissioners Baiocco, Trumka and Boyle voted to provisionally accept the Settlement Agreement and Order and announce its acceptance in the *Federal Register*.

Commissioner Feldman voted to take other action (see attachment).



United States
Consumer Product Safety Commission

For the Commission:

Alberta E. Mills
Secretary

*Ballot vote due July 29, 2022

(On July 18, 2022, Commissioner Feldman transferred the ballot vote to a decisional meeting. On July 21, 2022, the Commission voted unanimously (5-0) by poll to hold a closed decisional meeting on July 29, 2022 at 10:00 a.m. On July 28, 2022, Commissioner Feldman reverted the matter back to ballot vote. Per the DMPs, the ballot vote due date is July 29, 2022; the date for which the decisional meeting was scheduled to take place).

Attachment from Commissioner Feldman

Statement by Commissioner Feldman

Statement by Commissioner Trumka

Commissioner Feldman - Take Other Action Vote
Not approved by the Commission

The TJX Companies, Inc., Take Other Action

- (1) Staff is directed to continue negotiations with TJX Companies, Inc. (“TJX”) seeking additional injunctive relief that includes engaging an outside product safety expert (“Safety Expert”) to evaluate TJX’s compliance processes, including implementation of any changes required under a settlement agreement, and make recommendations for additional improvements materially consistent with paragraph (2) and applicable case law. *See generally United States v. Spectrum Brands, Inc.*, 924 F.3d 337 (7th Cir. 2018).
- (2) The Safety Expert shall:
 - a. be retained at TJX’s sole expense;
 - b. have no personal or financial ties to TJX;
 - c. have a sufficient background, training, and education to be qualified to assist in reviewing and recommending changes to TJX’s safety program for compliance, with particular emphasis on compliance with CPSA section 15(b) reporting requirements and procedures necessary to prevent the sale of recalled products;
 - d. be identified by TJX within 30 days of the final approval of any Consent Order Agreement, pursuant to 16 C.F.R. 1118.20, to the Assistant Executive Director for the Office of Compliance and Field Operations (“AED for Compliance”) or as negotiated, any other similar senior CPSC employee, for approval or rejection on any reasonable basis, in his/her sole discretion;
 - e. provide monitoring and oversight for a period of three years from the effective date of any Consent Order Agreement; and
 - f. among other responsibilities, provide TJX, with a copy to the AED for Compliance, recommended improvements to TJX’s compliance program that are reasonably necessary to ensure ongoing compliance, which TJX shall implement within 60 calendar days. If TJX objects to a recommendation, it shall notice the AED for Compliance or any other suitable senior employee within 10 business days that it believes the recommendation is unrelated to its past violations of or compliance with the Consumer Product Safety Act, as amended, or is otherwise unreasonable. The AED for Compliance or any other suitable senior employee shall reasonably sustain or reject TJX’s objection, and this decision will be unreviewable.
- (3) If TJX agrees to the provisions in paragraphs (1) and (2), staff shall present a new Consent Order Agreement and Order to the Commission for review and provisional acceptance under 16 C.F.R. § 1118.20(d).
- (4) If TJX does not agree to the provisions in paragraphs (1) and (2), then staff is authorized to refer the matter to the Department of Justice for litigation.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814
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.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

COMMISSIONER RICH TRUMKA JR.

**CPSC LEVIES \$13 MILLION PENALTY ON THE TJX COMPANIES,
OWNERS OF T.J. MAXX, MARSHALLS, AND HOMEGOODS FOR
KNOWINGLY DISTRIBUTING RECALLED CONSUMER PRODUCTS**

AUGUST 2, 2022

Today's \$13 million civil penalty against TJX represents CPSC's next chapter of real accountability and deterrence. TJX knowingly sold recalled products, the great majority of which were inclined infant sleepers tied to infant deaths, like the Fisher-Price Rock 'n Play.

CPSC will continue to deter misconduct through all available tools. This case warranted a large civil penalty, other cases may call for criminal prosecution. Strong and frequent use of CPSC's enforcement authority will keep consumers safe and healthy.