

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of

Hamilton Beach/Proctor-Silex, Inc.

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)
) CPSC Docket No. 05-C0007
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SETTLEMENT AGREEMENT AND ORDER

1. Hamilton Beach/Proctor-Silex, Inc. (hereinafter “HB/PS” or “Respondent”) enters into this Settlement Agreement and Order (hereinafter, “Settlement Agreement” or “Agreement”) with the staff of the U.S. Consumer Product Safety Commission (the “Commission”), and agrees to the entry of the attached Order incorporated by reference herein. The Settlement Agreement resolves the Commission staff’s allegations set forth below.

I. THE PARTIES

2. The Commission is an independent federal regulatory commission responsible for the enforcement of the Consumer Product Safety Act (“CPSA”), 15 U.S.C. §§ 2051-2084.

3. HB/PS is headquartered in Glen Allen, Virginia, and incorporated in Delaware.

II. STAFF ALLEGATIONS

4. In the last five years, HB/PS has failed to report in a timely manner concerning three separate products: countertop toasters, juice extractors, and slow cookers, in violation of section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

5. Each of these products was sold to and/or used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and was, therefore, a “consumer product” as defined in section 3(a)(1) of the CPSA, 15 U.S.C. § 2052(a)(1). Furthermore, HB/PS was an importer and, therefore, was a “manufacturer” of these

toasters, juice extractors, and slow cookers, for distribution in “commerce,” as those terms are defined in sections 3(a)(4) and (12) of the CPSA, 15 U.S.C. § 2052(a)(4), (12).

A. The Countertop Toasters

6. HB/PS imported and distributed model 24205 and 24208 countertop toasters (the “subject toasters” or “toasters”) from April 1997 through September 1999. These toasters were manufactured for HB/PS by Durable Electrical Metal Factory, Ltd., in China. These traditional upright electric toasters had four extra-wide slots that could toast either bagels or bread. On the front of the toasters was a bread lifter for raising or lowering the food, as well as a control dial, numbered 1-6, which consumers used to adjust the degree of toasting. The model 24205 was white, and model 24208 was black and chrome. Both models had the name “Proctor-Silex” in grey letters on the front panel.

7. The subject toasters were defective because their heating elements could remain on after the food in the toaster “popped up,” which should have caused the heating element to disengage. As a result, the toaster could set afire its contents.

8. Between 1997 and 1999, HB/PS learned of three consumer reports of damage to kitchen cabinets or countertops due to fires and received over 230 consumer complaints involving toasters that may have failed to turn off. The company also knew of product changes to attempt to correct the problem.

9. Before reporting the subject toasters to the Commission on November 9, 1999, HB/PS had obtained information which reasonably supported the conclusion that the subject toasters contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury.

10. Respondent failed to report to the Commission in a timely manner, as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b). In doing so, HB/PS violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

11. Respondent committed this failure to report to the Commission “knowingly” as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), subjecting Respondent to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

B. The Juice Extractors

12. HB/PS imported and distributed juice extractor models 67150, 67180, 67180W, 67199, 395WS and 3920JS (the “subject juice extractors” or “juice extractors”) between 1992 and October 2001. Simatelex Manufacturing Company, Ltd. (1991 to 1995) and Join-One Enterprise Co. Ltd. (1996 to 2001) manufactured these juice extractors for HB/PS. All of the juice extractors consisted of the same basic pieces: a base, a strainer basket (consisting of a strainer and a metal cutter), a top cover with a food chute (through which the food to be juiced was fed with a pusher), a juice cup, and a refuse pulp bin. The juicer bases, constructed of white plastic with the name “Hamilton Beach” on the side, housed the juicer motors, ranging from 140-150 watts (Simatelex) to 300-350 watts (Join-One).

13. The subject juice extractors contained a defect that could cause the strainer basket and lid to break apart, posing a risk of injury to nearby consumers who could be struck by pieces of metal or plastic.

14. Between 1992 and 2001, HB/PS received 59 consumer complaints related to the alleged defect. Consumer reports of injuries included four consumers who received lacerations requiring stitches and five consumers alleging possible eye injuries.

15. Before reporting the subject juice extractors to the Commission on October 8, 2001, HB/PS had obtained information which reasonably supported the conclusion that the

subject juice extractors contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury.

16. Respondent failed to report to the Commission in a timely manner, as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b). In doing so, HB/PS violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

17. Respondent committed this failure to report to the Commission “knowingly” as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), subjecting Respondent to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

C. The Slow Cookers

18. HB/PS imported and distributed slow cooker models 33390, 33475, 33575, 33590, 33675, 33690, 33725, 33850, 33860, 33680, 33320, 33320FD, 33325, 33375, 33380, 33625A, 106661, and 106851 (the “subject slow cookers” or “slow cookers”) from January 1999 through December 2002. These slow cookers were manufactured for HB/PS by Huamei Electronics Co., Ltd., in China. These slow cookers shared the same basic elements: a cooker base with a heating element and handles, a ceramic inset where the food to be cooked was placed, and a tight-fitting lid. Most of the subject slow cookers were sold under the “Hamilton Beach” or “Proctor Silex” names, with the brand name printed on the particular unit’s front. They were round or oval, were solid white or had various print designs on the outside, and had 3.5 quart to 6.5 quart capacities.

19. The subject slow cookers were defective because their handles could crack and break off when the product was lifted. This defect posed a risk of burns from hot food spilling onto consumers.

20. Between 1999 and 2001, HB/PS received over 2000 complaints of cracked or broken slow cooker handles, including two reports of consumers who required medical attention for injuries, as well as information regarding product changes to attempt to address the problem of handles breaking.

21. Before February 4, 2002, when HB/PS first shared incident and other data on the slow cookers with the staff, HB/PS had obtained information which reasonably supported the conclusion that the subject slow cookers contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury.

22. Respondent failed to report to the Commission in a timely manner, as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b). In doing so, Respondent violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

23. Respondent committed this failure to report to the Commission “knowingly” as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), subjecting Respondent to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

III. RESPONSE OF HB/PS

24. HB/PS contests and denies the staff’s allegations set forth above in this Settlement Agreement. HB/PS enters into this Settlement Agreement and Order to resolve this claim without the expense and distraction of litigation. By agreeing to this settlement, HB/PS does not admit any of the allegations set forth above in this Settlement Agreement, or any fault, liability or statutory or regulatory violation.

25. HB/PS, voluntarily and without the Commission having requested information from HB/PS, notified the Commission in each of the matters described above. In addition, HB/PS voluntarily recalled each of the products in cooperation with the Commission.

26. At all times HB/PS closely monitored its reporting obligations under the Consumer Product Safety Act. HB/PS never knowingly failed to file a required report with the Commission. HB/PS has continued to improve its efforts to meet its reporting obligations under the CPSA.

IV. AGREEMENT OF THE PARTIES

27. The Consumer Product Safety Commission has jurisdiction over this matter and over Respondent under the Consumer Product Safety Act, 15 U.S.C. §§ 2051-2084.

28. Respondent agrees to be bound by and comply with this Settlement Agreement and Order.

29. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the CPSA's reporting requirements, or a finding of fact or law by the CPSC of any of the allegations in this Settlement Agreement.

30. In settlement of the staff's allegations, Respondent agrees to pay a civil penalty of one million, two hundred thousand and 00/100 dollars (\$1,200,000), in full settlement of this matter, and payable within twenty (20) calendar days of receiving service of the final Settlement Agreement and Order.

31. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with CPSA and the underlying regulations, (4) to a

statement of findings of fact and conclusions of law and (5) to any claims under the Equal Access to Justice Act.

32. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the *Federal Register* in accordance with the procedures set forth in 16 CFR § 1118.20(e). If the Commission does not receive any written objections within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the *Federal Register*.

33. The Commission may publicize the terms of this Settlement Agreement and Order upon provisional acceptance of this Agreement by the Commission.

34. HB/PS's full and timely payment to the United States Treasury of a civil penalty in the amount of one million two hundred thousand dollars (\$1,200,000) resolves the allegations in paragraphs 4-23 above with respect to (a) HB/PS, (b) any HB/PS parent, subsidiary, affiliate, division, or related entity; (c) any shareholder, director, officer, employee, agent or attorney of any entity referenced in (a) or (b) above; and (d) any successor, heir, or assign of any entity referenced in (a), (b), or (c) above.

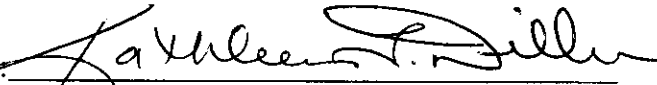
35. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. §§ 2051-2084. Violation of this Order may subject Respondent to appropriate legal action.

36. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

37. The provisions of this Settlement Agreement and Order shall apply to Respondent, its parent, and each of their successors and assigns.

HAMILTON BEACH/PROCTOR-SILEX, INC.

Dated: 3/24/05

By: 

E. A. Rubel

Eric A. Rubel
Respondent's Attorney

U.S. CONSUMER PRODUCT SAFETY COMMISSION

John Gibson Mullan, Director
Office of Compliance

Eric L. Stone, Director
Legal Division,
Office of Compliance

Dated: 3/28/05

By: 

Andrea S. Paterson, Trial Attorney
Legal Division,
Office of Compliance

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)

Hamilton Beach/Proctor-Silex, Inc.)
_____)

CPSC Docket No. 05-C0007

ORDER

Upon consideration of the Settlement Agreement between Respondent Hamilton Beach/Proctor-Silex, Inc., and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Hamilton Beach/Proctor-Silex, Inc., and it appearing that the Settlement Agreement and Order is in the public interest, it is

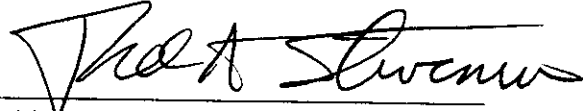
ORDERED that the Settlement Agreement be, and hereby is, accepted and it is

FURTHER ORDERED that Hamilton Beach/Proctor-Silex, Inc., shall pay the United States Treasury a civil penalty in the amount of one million, two-hundred thousand and 00/100 dollars, (\$1,200,000.00), payable within twenty (20) days of the service of the Final Order upon Hamilton Beach/Proctor-Silex, Inc. Upon the failure of Hamilton Beach/Proctor-Silex, Inc., to make payment or upon the making of a late payment by Respondent (a) the entire amount of the civil penalty shall be due and payable, and (b) 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

March 2005.

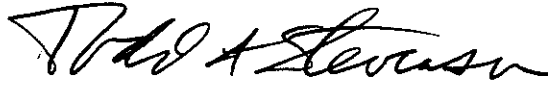
BY ORDER OF THE COMMISSION:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", written over a horizontal line.

Todd A. Stevenson, Secretary
Consumer Product Safety Commission

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

BY ORDER OF THE COMMISSION:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", written over a horizontal line.

Todd A. Stevenson, Secretary
Consumer Product Safety Commission