

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of _____)
)
Winter Bee, Inc. _____)
_____)

CPSC Docket No. 11-C0002

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Winter Bee, Inc. (“Winter Bee”) and the staff (“Staff”) of the United States Consumer Product Safety Commission (“Commission”) enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order (“Order”) settle the Staff’s allegations set forth below.

PARTIES

2. The Staff is the staff of the Commission, an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. §§ 2051 – 2089 (“CPSA”).

3. Winter Bee is a corporation organized and existing under the laws of California, with its principal offices located in Los Angeles, California. At all times relevant hereto, Winter Bee sold apparel.

STAFF ALLEGATIONS

4. From December 2004 to December 2008, Winter Bee manufactured and distributed in commerce children’s hooded pullover and zipper sweatshirts with drawstrings at the neck (“Sweatshirts”).

5. Winter Bee sold Sweatshirts to retailers.

6. The Sweatshirts are “consumer product[s],” and, at all times relevant hereto, Winter Bee was a “manufacturer” of those consumer products, which were “distributed in commerce,” as those terms are defined in CPSA sections 3(a)(5), (8), and (11), 15 U.S.C. § 2052(a)(5), (8), and (11).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children’s Upper Outerwear (“Guidelines”) to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children’s upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816-97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission’s Director of the Office of Compliance to manufacturers, importers, and retailers of children’s upper outerwear. The letter urges them to make certain that all children’s upper outerwear sold in the United States complies with ASTM F1816-97. The letter states that the Staff considers children’s upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (“FHSA”) section 15(c), 15 U.S.C. § 1274(c). The letter also notes the CPSA’s section 15(b) reporting requirements.

10. Winter Bee informed the Commission that there had been no incidents or injuries associated with the Sweatshirts.

11. Winter Bee's distribution in commerce of the Sweatshirts did not meet the Guidelines or ASTM F1816-97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On June 10, 2009, the Commission announced Winter Bee's recall of the Sweatshirts.

13. Winter Bee had presumed and actual knowledge that the Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. § 1274(c)(1). Winter Bee had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), required Winter Bee to immediately inform the Commission of the defect and risk.

14. Winter Bee knowingly failed to immediately inform the Commission about the Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), and as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. § 2069, this failure subjected Winter Bee to civil penalties.

WINTER BEE'S RESPONSE

15. Winter Bee denies the Staff's allegations above that Winter Bee knowingly violated the CPSA.

AGREEMENT OF THE PARTIES

16. Under the CPSA, the Commission has jurisdiction over this matter and over Winter Bee.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Winter Bee, or a determination by the Commission, that Winter Bee knowingly violated the CPSA.

18. In settlement of the Staff's allegations, a civil penalty in the amount of two hundred thousand dollars (\$200,000.00) shall be imposed against Winter Bee. Based upon Winter Bee's representations in the correspondence and other documents that Winter Bee and its counsel submitted to the Staff concerning Winter Bee's financial condition and concerning Winter Bee's stated inability to pay the foregoing penalty (collectively, "Financial Representations"), and contingent upon the truthfulness, accuracy, and completeness of the Financial Representations, the foregoing civil penalty shall be suspended except for the amount of forty thousand dollars (\$40,000.00).

19. Winter Bee shall pay the \$40,000.00 nonsuspended portion of the civil penalty in four (4) installments as follows: \$25,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; \$5,000.00 shall be paid within one (1) year of the date of service of the Commission's final Order accepting the Agreement; \$5,000.00 shall be paid within sixteen (16) months of the date of service of the Commission's final Order accepting the Agreement; and \$5,000.00 shall be paid within twenty (20) months of the date of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

20. In negotiating and consenting to the terms of the Agreement, and in advising the Commission, the Staff has relied upon the Financial Representations. If, at any time, the Staff finds that any information provided as part of the Financial Representations was materially false, inaccurate, or incomplete, or that Winter Bee failed to disclose in the Financial Representations

any asset or income, materially misrepresented in the Financial Representations the value of any asset or income, or made any other material misrepresentation or omission in or relating to the Financial Representations and the information therein, the Staff may petition the Commission to, or the Commission may on its own initiative, modify the Order: (a) by lifting the suspension of the \$200,000.00 civil penalty; (b) by requiring that Winter Bee immediately pay the unpaid portion of the \$200,000.00 civil penalty; and/or (c) in any other manner that the Commission deems appropriate. Unless the Commission otherwise orders, the Agreement shall in all other respects remain in full force and effect.

21. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the *Federal Register* in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). In accordance with 16 C.F.R. § 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the *Federal Register*.

22. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Winter Bee knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Winter Bee failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

23. The Commission may publicize the terms of the Agreement and the Order.

24. The Agreement and the Order shall apply to, and be binding upon, Winter Bee and each of its successors and assigns.

25. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Winter Bee and each of its successors and assigns to appropriate legal action.

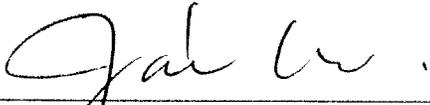
26. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

27. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Winter Bee agree that severing the

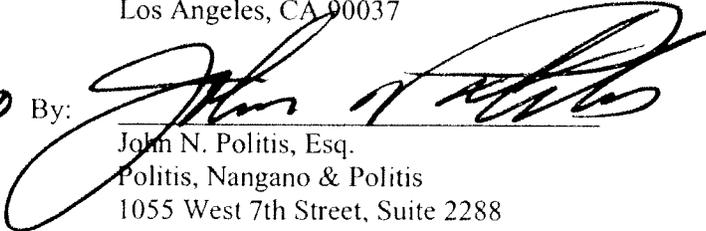
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provision materially affects the purpose of the Agreement and the Order.

Winter Bee, Inc.

Dated: Oct/15/10 By: 

Jai Nam Lee, President
Winter Bee, Inc.
4150 S. Main Street
Los Angeles, CA 90037

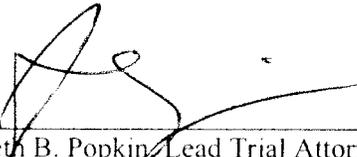
Dated: 10-15-2010 By: 

John N. Politis, Esq.
Politis, Nangano & Politis
1055 West 7th Street, Suite 2288
Los Angeles, CA 90017
Counsel for Winter Bee, Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Cheryl A. Falvey
General Counsel

Ronald G. Yelenik
Assistant General Counsel
Office of the General Counsel

Dated: 11-5-10 By: 

Seth B. Popkin, Lead Trial Attorney
Division of Compliance
Office of the General Counsel

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
)
Winter Bee, Inc.)
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CPSC Docket No. 11-C0002

ORDER

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

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

FURTHER ORDERED, that a civil penalty in the amount of two hundred thousand dollars (\$200,000.00) be, and hereby is, imposed against Winter Bee. Based upon Winter Bee's representations in the correspondence and other documents that Winter Bee and its counsel submitted to the Commission staff concerning Winter Bee's financial condition and concerning Winter Bee's stated inability to pay the foregoing penalty (collectively, "Financial Representations"), and contingent upon the truthfulness, accuracy, and completeness of the Financial Representations, the Commission suspends the foregoing civil penalty except for the amount of forty thousand dollars (\$40,000.00).

FURTHER ORDERED, that Winter Bee shall pay the \$40,000.00 nonsuspended portion of the civil penalty in four (4) installments as follows: \$25,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; \$5,000.00 shall be paid within one (1) year of the date of service of the Commission's final

Order accepting the Agreement; \$5,000.00 shall be paid within sixteen (16) months of the date of service of the Commission's final Order accepting the Agreement; and \$5,000.00 shall be paid within twenty (20) months of the date of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

FURTHER ORDERED, that the Commission staff's consent to this Order and the Commission's entry of this Order are premised upon the truthfulness, accuracy, and completeness of the Financial Representations. If, upon petition of the Commission staff, or upon the Commission's own initiative, the Commission finds that any information provided as part of the Financial Representations was materially false, inaccurate, or incomplete, or that Winter Bee failed to disclose in the Financial Representations any asset or income, materially misrepresented in the Financial Representations the value of any asset or income, or made any other material misrepresentation or omission in or relating to the Financial Representations and the information therein, then the Commission may modify the Order by lifting the suspension of the \$200,000.00 civil penalty, by requiring that Winter Bee immediately pay the unpaid portion of the \$200,000.00 civil penalty, and/or by making any other change to the Order that the Commission deems appropriate. Unless the Commission otherwise orders, the Agreement shall in all other respects remain in full force and effect.

FURTHER ORDERED, that upon the failure of Winter Bee to make any of the foregoing payments when due, the total amount of the \$40,000.00 nonsuspended portion of the civil penalty shall become immediately due and payable, and interest on the unpaid amount shall

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accrue and be paid by Winter Bee at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 7th day of December, 2010.

BY ORDER OF THE COMMISSION:



Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission