

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
)
)
Concord Buying Group, Inc.,)
d/b/a A.J. Wright)
_____)

CPSC Docket No. 09-20007

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Concord Buying Group, Inc., d/b/a A.J. Wright (“A.J. Wright”) 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 Commission is 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. A.J. Wright is a corporation organized and existing under the laws of New Hampshire, with its principal offices located in Framingham, Massachusetts. At all times relevant hereto, A.J. Wright sold apparel.

STAFF ALLEGATIONS

4. From August to November, 2007, A.J. Wright held for sale and/or sold various quantities of the following children’s upper outerwear products with drawstrings at the hood or neck: Scope Imports boys’ hooded sweatshirts; Raw Blue sweatshirts; and Kidz World Inc. High

Energy USA boys' sweatshirts (collectively referred to herein as "Sweatshirts"). These Sweatshirts identifications correspond to and are coextensive with information A.J. Wright reported to the Staff about the Sweatshirts.

5. A.J. Wright sold Sweatshirts to consumers.

6. The Sweatshirts are "consumer product[s]," and, at all times relevant hereto, A.J. Wright was a "retailer" of those consumer products, which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. § 2052(a)(5), (8), and (13).

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 website 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. A.J. Wright informed the Commission that there had been no incidents or injuries from the Sweatshirts.

11. A.J. Wright’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. After distribution in commerce, recalls were announced regarding the Sweatshirts.

13. A.J. Wright 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). A.J. Wright 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 A.J. Wright to immediately inform the Commission of the defect and risk.

14. A.J. Wright 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 A.J. Wright to civil penalties.

A.J. WRIGHT'S RESPONSE

15. A.J. Wright denies the Staff's allegations set forth above, including, but not limited to, any allegation that A.J. Wright failed timely to notify the Commission in accordance with section 15 of the CPSA.

16. A.J. Wright requires that its vendors represent and warrant that all products sold to A.J. Wright comply with all applicable regulations, standards and requirements.

17. A.J. Wright promptly notified the Commission pursuant to section 15 of the CPSA without first being contacted by the Commission upon verifying that certain garments contained drawstrings at the hood or neck.

18. A.J. Wright fully cooperated with the Commission in providing information necessary for the Commission to determine, with the vendor, whether a recall was warranted and whether the vendor had sold affected garments to any other retailers.

19. A.J. Wright has entered into the Agreement for settlement purposes only, to avoid incurring additional expenses and the distraction of litigation. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing by A.J. Wright.

AGREEMENT OF THE PARTIES

20. Under the CPSA, the Commission has jurisdiction over this matter and over A.J. Wright.

21. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by A.J. Wright, or a determination by the Commission, that A.J. Wright knowingly violated the CPSA.

22. In settlement of the Staff's allegations, A.J. Wright shall pay a civil penalty in the amount of seventy thousand dollars (\$70,000.00) within twenty (20) calendar days of service of

the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

23. 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*.

24. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, A.J. Wright 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 A.J. Wright 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.

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

26. The Agreement and the Order shall apply to, and be binding upon, A.J. Wright and each of its successors and assigns.

27. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject A.J. Wright to appropriate legal action.

28. 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,

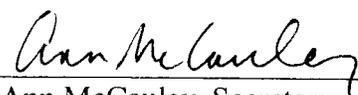
amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

29. 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 A.J. Wright agree that severing the

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

Concord Buying Group, Inc., d/b/a A.J. Wright

Dated: 3/2/09 By: 
Ann McCauley, Secretary
Concord Buying Group, Inc., d/b/a A.J. Wright
770 Cochituate Road
Framingham, MA 01701

Dated: 3/3/09 By: 
Eric A. Rubel, Esq.
Arnold & Porter LLP
555 12th Street, NW
Washington, DC 20004-1206
Counsel for Concord Buying Group, Inc.,
d/b/a A.J. Wright

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Cheryl A. Falvey
General Counsel

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

Dated: 3/6/09 By: 
Seth B. Popkin
Lead Trial Attorney
Division of Compliance
Office of the General Counsel

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CONSUMER PRODUCT SAFETY COMMISSION

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d/b/a A.J. Wright)
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CPSC Docket No. 09-00007

ORDER

Upon consideration of the Settlement Agreement entered into between Concord Buying Group, Inc., d/b/a A.J. Wright (“A.J. Wright”) and the U.S. Consumer Product Safety Commission (“Commission”) staff, and the Commission having jurisdiction over the subject matter and over A.J. Wright, 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.J. Wright shall pay a civil penalty in the amount of seventy thousand dollars (\$70,000.00) within twenty (20) calendar days of service of the Commission’s final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of A.J. Wright to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by

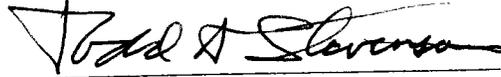
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A.J. Wright at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April,

2009.

BY ORDER OF THE COMMISSION:



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