

6. The Drawstring Jackets are “consumer product[s],” and, at all times relevant hereto, Urgent Gear 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 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. Urgent Gear reported to the Commission there had been no incidents or injuries from the Drawstring Jackets.

11. Urgent Gear's distribution in commerce of the Drawstring Jackets 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 March 11, 2008, the Commission and Urgent Gear announced a recall of the Drawstring Jackets. The recall informed consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. Urgent Gear had presumed and actual knowledge that the Drawstring Jackets 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). Urgent Gear had obtained information that reasonably supported the conclusion that the Drawstring Jackets 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 Urgent Gear to immediately inform the Commission of the defect and risk.

14. Urgent Gear knowingly failed to immediately inform the Commission about the Drawstring Jackets 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 Urgent Gear to civil penalties.

URGENT GEAR RESPONSE

15. Urgent Gear denies the Staff's allegations that Urgent Gear violated the CPSA.

AGREEMENT OF THE PARTIES

16. Under the CPSA, the Commission has jurisdiction over this matter and over Urgent Gear.

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

18. In settlement of the Staff's allegations, Urgent Gear shall pay a civil penalty in the amount of thirty-five thousand dollars (\$35,000.00) in four (4) installment payments as follows: The first installment payment of eight thousand seven hundred-fifty dollars (\$8,750.00) shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second installment payment of eight thousand seven hundred-fifty dollars (\$8,750.00) shall be paid within four (4) months of service of the Commission's final Order accepting the Agreement; the third installment payment of eight thousand seven hundred-fifty dollars (\$8,750.00) shall be paid within eight (8) months of the Commission's final Order accepting the Agreement; and the fourth installment payment of eight thousand seven hundred-fifty dollars (\$8,750.00) shall be paid within twelve (12) months of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

19. 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*.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Urgent Gear knowingly, voluntarily, and completely waives any rights it may have

regarding the Staff's allegations 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 Urgent Gear 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.

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

22. The Agreement and the Order shall apply to, and be binding upon, Urgent Gear and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Urgent Gear to appropriate legal action.

24. 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.

25. 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 Urgent Gear agree that severing the

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URGENT GEAR INC

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

URGENT GEAR, INC.

Dated: 11-5-08 By: *Bob Ruffian*
Bob Ruffian
CEO
Urgent Gear, Inc.
728 E. Commercial Street
Los Angeles, CA 90012

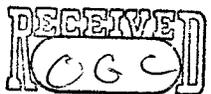
Dated: 11/05/08 By: *Barry E. Powell*
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Grinnald, Desiderio, Lebowitz, Silverman & Klestadt, LLP
Attorneys for Urgent Gear, Inc.
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U.S. CONSUMER PRODUCT SAFETY COMMISSION

C Cheryl A. Falvey
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Ronald G. Yelenik
Assistant General Counsel
Division of Compliance
Office of the General Counsel

Dated: 11/05/08 By: *[Signature]*
Dimitri C. Kacoyanis, Trial Attorney
Division of Compliance
Office of the General Counsel



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due, interest on the unpaid amount shall accrue and be paid by Urgent Gear 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