

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

_____))
In the Matter of))
_____))
DOWNEAST CONCEPTS, INC.))
_____))
_____)

CPSC Docket No. 09-C0022

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Downeast Concepts, Inc. ("Downeast") and the staff ("Staff") of the United States Consumer Product Safety Commission ("CPSC" or the "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. Downeast is a corporation organized and existing under the laws of Maine, with its principal offices located in Yarmouth, Maine. At all times relevant hereto, Downeast imported and/or sold painted metal water bottles.

STAFF ALLEGATIONS

4. Between February 2006 and February 2007, Downeast imported into the United States about 18,000 units of metal water bottles, marketed under the "Backyard and Beyond" brand and painted with assorted animal and insect graphics on the exterior (Model Numbers: 60442, 60448, 67402, 67404, 67442, 67444, 67742, 67744, 67746 and 67748 ("Bottle(s)"). Downeast distributed most of the subject products to major retailers, gift shops, convenience stores, mass merchandise and

drug stores nationwide from February 2006 through January 2008 and said products were then sold for about \$8.00 per unit.

5. The Bottles are "consumer product(s)," and, at all times relevant hereto, Downeast was a "manufacturer" of those consumer product(s), which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(3), (5), (8), and (11), 15 U.S.C. §§ 2052(a)(3), (5), (8), and (11).

6. The Bottles are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 C.F.R. Part 1303 (the "Ban"). Under the Ban, toys and other children's articles must not bear "lead-containing paint," defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 C.F.R. § 1303.2(b)(1)

7. Downeast reported to CPSC on January 25, 2008 that recent testing of samples of the Bottles by an independent laboratory had demonstrated that various colors of paints used to create the designs on the outside surface of the Bottles contained a total lead content ranging from 0.07 percent to as high as 59.78 percent. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

8. On March 25, 2008, the Commission and Downeast announced a consumer-level recall of about 18,000 units of the Bottles because "Surface paint on the metal water bottles contains excessive levels of lead, violating the federal lead paint standard."

9. Although Downeast reported no incidents or injuries associated with the Bottles, it failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

10. The Bottles constitute "banned hazardous products" under CPSA section 8 and the Ban, 15 U.S.C. § 2057 and 16 C.F.R. §§ 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

11. Between February 2006 and January 2008, Downeast manufactured for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the aforesaid banned hazardous Bottles, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1). Downeast committed these prohibited acts "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

12. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Downeast is subject to civil penalties for the aforementioned violations.

DOWNEAST'S RESPONSIVE ALLEGATIONS

13. Downeast denies the Staff's allegations set forth above that Downeast knowingly violated the CPSA.

AGREEMENT OF THE PARTIES

14. Under the CPSA, the Commission has jurisdiction over this matter and over Downeast.

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

16. In settlement of the Staff's allegations, Downeast shall pay a civil penalty in the amount of thirty thousand dollars (\$30,000.00). The civil penalty shall be paid 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.

17. Upon the Commission's 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) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the *Federal Register*.

18. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Downeast 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 Commission's Order or actions; (3) a determination by the Commission of whether Downeast 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.

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

20. The Agreement and Order shall apply to, and be binding upon, Downeast and each of its successors and assigns.

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

22. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

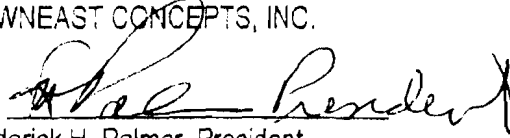
23. If any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order,

such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Downeast agree that severing the provision materially affects the purpose of the Agreement and Order.

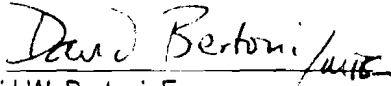
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DOWNEAST CONCEPTS, INC.

Dated: 3/18/09

By: 
Frederick H. Palmer, President
Downeast Concepts, Inc.
86 Downeast Drive
Yarmouth, ME 04096

Dated: 3/20/09


By: 
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U.S. CONSUMER PRODUCT SAFETY COMMISSION
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Assistant General Counsel
Office of the General Counsel

Dated: 4/14/09

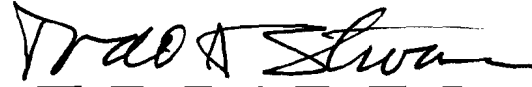
By: 
M. Reza Malihi, Trial Attorney
Office of the General Counsel

By: 
Neal S. Cohen, Trial Attorney
Office of the General Counsel

interest set forth at 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 10th day of July, 2009.

BY ORDER OF THE COMMISSION:



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