

5. The Necklaces and Bracelets are "consumer product(s)," and, at all times relevant hereto, Cardinal was a "manufacturer" and/or a "retailer" of those consumer product(s), which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(3), (5), (8), (11), and (13), 15 U.S.C. §§ 2052(a)(3), (5), (8), (11), and (13).

6. The Necklaces and Bracelets 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. On February 16, 2007, the Staff obtained samples of the Necklaces from one of Cardinal's customers based in Illinois, which subsequently were tested at the CPSC Laboratory for the presence of lead. The test results demonstrated that the yellow paint on certain Necklace samples contained a total lead content from 0.519 percent to 0.726 percent. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

8. Cardinal reported to CPSC on April 10, 2007 that recent testing of the Bracelets by an independent laboratory had demonstrated that their surface coating contained a total lead content as high as 1.5 percent. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

9. On April 17, 2007, the Commission and Cardinal announced a consumer-level recall of about 900,000 units of the Necklaces and Bracelets because "The paint on this jewelry contains high levels of lead. Lead is toxic if ingested by young children and can cause adverse health effects."

10. Although Cardinal reported no incidents or injuries associated with the Necklaces and Bracelets, 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.

11. The Necklaces and Bracelets 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.

12. Between November 2005 and April 2007, Cardinal sold, manufactured for sale, offered 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 Necklaces and Bracelets, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1). Cardinal committed these prohibited acts "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

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

CARDINAL RESPONSE

14. Cardinal denies the Staff's allegations set forth above that Cardinal knowingly violated the CPSA.

AGREEMENT OF THE PARTIES

15. Under the CPSA, the Commission has jurisdiction over this matter and over Cardinal.

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

17. In settlement of the Staff's allegations, Cardinal shall pay a civil penalty in the amount of one hundred thousand dollars (\$100,000.00). The civil penalty shall be paid in two (2) installments as follows: \$50,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; and \$50,000.00 shall be paid within six (6) months 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.

18. The CPSC agrees to take no further action involving Cardinal with respect to CPSC Sample Nos. 07-302-0148 and 07-302-0149 (Children's Rings with Dice or Horseshoes, Release No. 07-174), and CPSC No. RP070318 (Children's Turquoise Rings, Release No. 07-189).

19. 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*.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Cardinal 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 Cardinal 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 Order.

22. The Agreement and Order shall apply to, and be binding upon, Cardinal 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 Cardinal 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 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.

25. 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 Cardinal agree that severing the provision materially

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affects the purpose of the Agreement and Order.

CARDINAL DISTRIBUTING COMPANY, INC.

Dated: 11-13-08

By: Daniel Paszkiewicz
Daniel Paszkiewicz, President
Cardinal Distributing Company, Inc.
6801 Quad Avenue
Baltimore, MD 21237

Dated: 11-14-08

By: Caroline A. Pilch
Caroline A. Pilch, Esq.
Yen Pilch Komadina & Flemming, P.C.
6017 North 15th Street
Phoenix, AZ 85014
Counsel for Cardinal Distributing Company, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION
STAFF

Cheryl A. Falvey
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Office of the General Counsel

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

Dated: 4/14/09

By: M. Reza Malih
M. Reza Malih, Trial Attorney
Division of Compliance
Office of the General Counsel

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
)
CARDINAL DISTRIBUTING)
COMPANY, INC.)
_____)

CPSC Docket No. 09-C0028

ORDER

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

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

FURTHER ORDERED, that Cardinal shall pay a civil penalty in the amount of one hundred thousand dollars (\$100,000.00). The civil penalty shall be paid in two (2) installments as follows: \$50,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; and \$50,000.00 shall be paid within six (6) months 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. Upon the failure of Cardinal to make any of the foregoing payments when due, (i) the entire amount of the civil penalty shall become due and payable, and (ii) interest on the outstanding balance shall accrue and be paid by Cardinal at the federal legal rate of

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

Provisionally accepted and provisional Order issued on the 8th day of July, ~~2008~~ ²⁰⁰⁹.

BY ORDER OF THE COMMISSION:



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