

CONSUMER PRODUCT SAFETY COMMISSION

(CPSC Docket No. 11-C0004)

Ms. Bubbles, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission

ACTION: Notice

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 C.F.R. § 1118.20(e).¹ Published below is a provisionally-accepted Settlement Agreement with Ms. Bubbles, Inc., containing a civil penalty of \$40,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by **(insert date that is 15 calendar days from publication date)**.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 11-C0004, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, General Attorney,
Division of Enforcement and Information, Office of the General Counsel, Consumer Product
Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone
(301) 504-7587. SUPPLEMENTARY INFORMATION: The text of the Agreement and Order
appears below.

February 16, 2011

(Date)

Todd A. Stevenson

Secretary

¹ The Commission voted 5-0 to publish this notice of the provisional Settlement Agreement and Order.
Commissioner Nord issued a statement, and the statement can be found at <http://www.cpsc.gov/pr/statements.html> .

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

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In the Matter of)	
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Ms. Bubbles, Inc.)	CPSC Docket No. <u>11-C0004</u>
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SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Ms. Bubbles, Inc. (“Ms. Bubbles”) 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. Ms. Bubbles 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, Ms. Bubbles sold apparel.

STAFF ALLEGATIONS

4. Beginning in May 2007, Ms. Bubbles imported and further distributed in commerce, through sale and/or holding for sale, girl’s denim passport jackets with terrycloth and drawstrings (collectively, “Jackets”).

5. Ms. Bubbles sold Jackets to retailers.

6. The Jackets are “consumer product[s],” and, at all times relevant hereto, Ms. Bubbles 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. Ms. Bubbles's distribution in commerce of the 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.

11. On January 6, 2009, the Commission announced Ms. Bubbles's recall of the Jackets.

12. Ms. Bubbles had presumed and actual knowledge that the 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). Ms. Bubbles had obtained information that reasonably supported the conclusion that the 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 Ms. Bubbles to immediately inform the Commission of the defect and risk.

13. Ms. Bubbles knowingly failed to immediately inform the Commission about the 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 Ms. Bubbles to civil penalties.

MS. BUBBLES'S RESPONSE

14. Ms. Bubbles denies the Staff's allegations above that Ms. Bubbles knowingly violated the CPSA or that the Jackets contained drawstrings.

AGREEMENT OF THE PARTIES

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

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

17. In settlement of the Staff's allegations, Ms. Bubbles shall pay a civil penalty in the amount of forty thousand dollars (\$40,000.00). 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.

18. 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*.

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Ms. Bubbles 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 Ms. Bubbles 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.

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

21. The Agreement and the Order shall apply to, and be binding upon, Ms. Bubbles and each of its successors and assigns.

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

23. 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.

24. 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 Ms. Bubbles agree that severing the provision materially affects the purpose of the Agreement and the Order.

(continued on next page)

MS. BUBBLES, INC.

Dated: January 4, 2011 By: _____

Anil Chugh
Controller
Ms. Bubbles, Inc..
2731 South Alameda Street
Los Angeles, CA 90058

Dated: January 10, 2011 By: _____

John V. Tamborelli, Esquire
Stone Rosenblatt Cha
21550 Oxnard Street
Main Plaza, Suite 200
Woodland Hills, CA 91367
Counsel for Ms. Bubbles, 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: 01/10/2011

By: _____

Dennis C. Kacoyanis, General Attorney
Division of Enforcement and Information
Office of the General Counsel

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

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ORDER

Upon consideration of the Settlement Agreement entered into between Ms. Bubbles, Inc. (“Ms. Bubbles”) and the U.S. Consumer Product Safety Commission (“Commission”) staff, and the Commission having jurisdiction over the subject matter and over Ms. Bubbles, 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 Ms. Bubbles shall pay a civil penalty in the amount of forty thousand dollars (\$40,000.00) 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 Ms. Bubbles to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Ms. Bubbles at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

(continued on next page)

Provisionally accepted and provisional Order issued on the 11th day of February, 2011.

BY ORDER OF THE COMMISSION:

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

[FR Doc. 2011-4068 Filed 02/23/2011 at 8:45 am; Publication Date: 02/24/2011]