

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

)
In the Matter of)
)
Black Dog Tavern)
Company, Inc.)

)

CPSC Docket No. _____

SETTLEMENT AGREEMENT AND ORDER

1. In accordance with 16 C.F.R. § 1118.20, Black Dog Tavern Company, Inc. (“BDT”) 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 – 2084 (“CPSA”).

3. BDT is a corporation organized and existing under the laws of Massachusetts, with its principal offices located in Vineyard Haven, Massachusetts. At all times relevant hereto, BDT sold apparel and accessories.

STAFF ALLEGATIONS

4. From May 2004 through January 2006, BDT sold approximately 9,700 children’s hooded sweatshirts with drawstrings through the hoods, style numbers K086, K088, K090, K062, and K063 (“Drawstring Sweatshirts”).

5. The Drawstring Sweatshirts are “consumer product(s),” and, at all times relevant hereto, BDT was a “retailer” of those consumer product(s), which were “distributed in commerce,” as those terms are defined in CPSA sections 3(a)(1), (6), (11), and (12), 15 U.S.C. § 2052(a)(1), (6), (11), and (12).

6. Although BDT reported no incidents or injuries from the Drawstring Sweatshirts, the Drawstring Sweatshirts did not meet ASTM F1816-97 and posed a strangulation hazard to children.

7. On February 15, 2006, the Commission and BDT announced a recall of the Drawstring Sweatshirts, informing consumers that they should immediately remove the drawstrings to eliminate the hazard. The recall plan, in part, required BDT to remove the drawstrings from the 7,326 Drawstring Sweatshirts in its inventory.

8. 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 urged them to make certain that all children’s upper outerwear sold in the United States complies with the ASTM standard. The letter stated 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 noted the CPSA’s section 15(b) reporting requirements.

9. On August 29, 2006, CPSC investigators visited two BDT stores, observed a total of 12 Drawstring Sweatshirts for sale, and purchased a total of three Drawstring Sweatshirts.

10. BDT's distribution in commerce of the Drawstring Sweatshirts through August 2006 failed to abide by the February 2006 corrective action plan and recall, the ASTM standard, and the staff's May 2006 defect notice.

11. BDT had presumed and actual knowledge that the Drawstring Sweatshirts distributed and sold after the recall 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). BDT had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts distributed and sold after the recall 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)(2) and (3), 15 U.S.C. § 2064(b)(2) and (3), required BDT to immediately inform the Commission of the defect and risk.

12. BDT did not report to the Commission regarding the post-recall distribution and sale of the Drawstring Sweatshirts until after the Staff informed BDT of the CPSC's August 29, 2006 purchase of the Drawstring Sweatshirts. BDT thereby failed to immediately inform the Commission as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. § 2064(b)(2) and (3). This failure violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4).

13. BDT knowingly failed to immediately inform the Commission of the defect and risk posed by the post-recall distribution and sale of the Drawstring Sweatshirts, as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). Pursuant to CPSA section 20, 15 U.S.C. § 2069, this failure subjected BDT to civil penalties.

BDT RESPONSE

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

AGREEMENT OF THE PARTIES

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

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

17. In settlement of the Staff's allegations, BDT shall pay a civil penalty in the amount of fifty thousand dollars (\$50,000.00). The civil penalty shall be paid in four (4) installments as follows: \$12,500.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; \$12,500.00 shall be paid on or before the six-month anniversary of service of the Commission's final Order accepting the Agreement; \$12,500.00 shall be paid on or before the one-year anniversary of service of the Commission's final Order accepting the Agreement; and \$12,500.00 shall be paid on or before the eighteen-month anniversary of service of the Commission's final Order accepting the Agreement. Each payment shall be by check payable to the order of the United States Treasury.

18. 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). 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*.

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

21. The Agreement and Order shall apply to, and be binding upon, BDT 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 BDT 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 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.

24. If after the effective date hereof, 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 BDT

(continued on next page)

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

BLACK DOG TAVERN COMPANY, INC.

Dated: _____ By: _____
Robert S. Douglas, Sr., President
Black Dog Tavern Company, Inc.
P.O. Box 2219
Beach Street Extension
Vineyard Haven, MA 02568

Dated: _____ By: _____
Michael J. Gidding, Esq.
Brown & Gidding, PC
3201 New Mexico Avenue, NW
Washington, DC 20016

Counsel for Black Dog Tavern Company, Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

J. Gibson Mullan
Assistant Executive Director
Office of Compliance and Field Operations

Ronald G. Yelenik, Acting Director
Legal Division
Office of Compliance and Field Operations

Dated: _____ By: _____
Seth B. Popkin, Trial Attorney
Legal Division
Office of Compliance and Field Operations

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 ____ day of _____,
20____.

BY ORDER OF THE COMMISSION:

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

Finally accepted and final Order issued on the ____ day of _____, 20____.

BY ORDER OF THE COMMISSION:

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