

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
Hill Sportswear, Inc.)	CPSC Docket No. <u>09-C0034</u>
)	

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Hill Sportswear, Inc. (“Hill”) 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 – 2089 (“CPSA”).

3. Hill is a corporation organized and existing under the laws of California, with its principal offices located in Paramount, California. At all times relevant hereto, Hill sold apparel.

STAFF ALLEGATIONS

4. From 2003 through 2008, Hill manufactured, held for sale, and/or sold children’s hooded pullover and zipper sweatshirts with drawstrings at the neck, style numbers HK008 and HK009 (collectively, “Sweatshirts”).

5. Hill sold Sweatshirts to retailers.

6. The Sweatshirts are “consumer product[s],” and, at all times relevant hereto, Hill 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. In November 2008, a three-year old boy reportedly strangled to death when his Sweatshirt's drawstring became stuck on a playground slide.

11. Hill's distribution in commerce of the Sweatshirts 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 February 12, 2009, the Commission announced Hill's recall of the Sweatshirts.

13. Hill had presumed and actual knowledge that the Sweatshirts 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). Hill had obtained information that reasonably supported the conclusion that the Sweatshirts 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 Hill to immediately inform the Commission of the defect and risk.

14. Hill knowingly failed to immediately inform the Commission about the Sweatshirts 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 Hill to civil penalties.

HILL'S RESPONSIVE ALLEGATIONS

15. Hill denies the Staff's allegations that Hill knowingly violated the CPSA and denies the other allegations above, including, but not limited to, the allegations that Hill had actual knowledge (i) that the Sweatshirts posed a strangulation risk; (ii) that the Sweatshirts presented a substantial risk of injury to children; and (iii) that Hill failed to immediately inform the Commission about the Sweatshirts. Hill further denies the Staff's allegations that Hill

obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or an unreasonable risk of serious injury or death. To the contrary, Hill alleges that as soon as it had actual notice of the Commission's guidelines, it promptly complied with all such guidelines.

AGREEMENT OF THE PARTIES

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

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

18. In settlement of the Staff's allegations, Hill shall pay a civil penalty in the amount of one hundred thousand dollars (\$100,000.00). The civil penalty shall be paid in four (4) installments as follows: \$25,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; \$25,000.00 shall be paid within one hundred twenty (120) calendar days of service of the Commission's final Order accepting the Agreement; \$25,000.00 shall be paid within two hundred forty (240) calendar days of service of the Commission's final Order accepting the Agreement; and \$25,000.00 shall be paid within three hundred sixty-five (365) calendar days 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.

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, Hill 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 Hill 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, Hill and each of its successors and assigns.

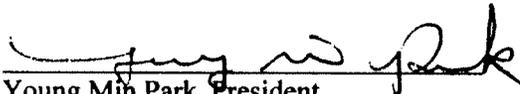
23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Hill and each of its successors and assigns to appropriate legal action.

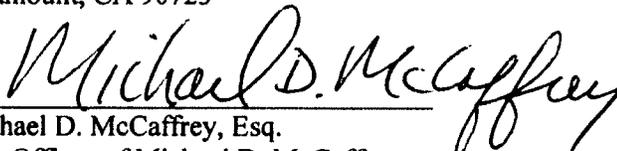
24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered 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 Hill agree that severing the provision materially affects the purpose of the Agreement and the Order.

Hill Sportswear, Inc.

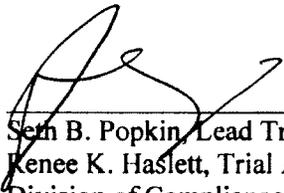
Dated: 08/06/2009 By: 
Young Min Park, President
Hill Sportswear, Inc.
16250 Gundry Avenue
Paramount, CA 90723

Dated: 8/10/09 By: 
Michael D. McCaffrey, Esq.
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Counsel for Hill Sportswear, Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

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Dated: 8-12-09 By: 
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Division of Compliance
Office of the General Counsel

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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CPSC Docket No. 09-C0034

ORDER

Upon consideration of the Settlement Agreement entered into between Hill Sportswear, Inc. (“Hill”) and the U.S. Consumer Product Safety Commission (“Commission”) staff, and the Commission having jurisdiction over the subject matter and over Hill, 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 Hill shall pay a civil penalty in the amount of one hundred thousand dollars (\$100,000.00). The civil penalty shall be paid in four (4) installments as follows: \$25,000.00 shall be paid within twenty (20) calendar days of service of the Commission’s final Order accepting the Agreement; \$25,000.00 shall be paid within one hundred twenty (120) calendar days of service of the Commission’s final Order accepting the Agreement; \$25,000.00 shall be paid within two hundred forty (240) calendar days of service of the Commission’s final Order accepting the Agreement; and \$25,000.00 shall be paid within three hundred sixty-five (365) calendar days 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 Hill to make any of the foregoing payments when due, the total amount of the civil penalty shall become immediately due and payable, and interest

on the unpaid amount shall accrue and be paid by Hill 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 3rd day of September,
2009.

BY ORDER OF THE COMMISSION:



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