

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

_____))
In the Matter of))
_____))
Kohl's Department Stores, Inc.))
_____))

CPSC Docket No. 09-C0033

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Kohl's Department Stores, Inc. ("Kohl's") 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. Kohl's is a corporation organized and existing under the laws of Delaware, with its principal offices located in Menomonee Falls, Wisconsin. At all times relevant hereto, Kohl's sold apparel, accessories, and other products.

STAFF ALLEGATIONS

4. From January to February, 2009, Kohl's held for sale and/or sold Seattle Cotton Works hooded sweatshirts with drawstrings at the neck ("Sweatshirts").

5. Kohl's sold Sweatshirts to consumers.

6. The Sweatshirts are "consumer product[s]," and, at all times relevant hereto, Kohl's was a "retailer" of those consumer products, which were "distributed in commerce," as

those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. § 2052(a)(5), (8), and (13).

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. Kohl's informed the Commission that there had been no incidents or injuries associated with the Sweatshirts.

11. Kohl'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 March 12, 2009, the Commission, in cooperation with the Sweatshirts' distributor, announced a recall of the Sweatshirts, informing consumers that they should immediately remove the drawstrings from the Sweatshirts to eliminate the hazard, or call the manufacturer to arrange for a full refund.

13. Kohl's 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). Kohl's 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 Kohl's to immediately inform the Commission of the defect and risk.

14. Kohl's 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 Kohl's to civil penalties.

KOHL'S RESPONSIVE ALLEGATIONS

15. Kohl's denies the Staff's allegations above, including, but not limited to, the allegations that Kohl's failed to timely notify the Commission about the Sweatshirts as required by CPSA sections 15(b)(3) and (4). Kohl's denies that it otherwise violated the CPSA or FHSA.

16. In order to supply products to Kohl's, vendors are required to represent and warrant to Kohl's that all merchandise delivered to Kohl's will comply with all existing laws, regulations, standards, orders, and rulings, including, but not limited to, the CPSA and the FHSA.

17. After confirming that the Sweatshirts contained drawstrings, Kohl's immediately (i) sent notice to all Kohl's stores to pull the Sweatshirts from the shelves, (ii) had the Sweatshirts pulled from the Kohls.com website, and (iii) took additional steps to prevent further sales of the Sweatshirts.

18. Kohl's timely notified the Commission of the Sweatshirts pursuant to section 15 of the CPSA.

19. Kohl's fully cooperated with the Commission and the Sweatshirts' distributor in providing information necessary for the Commission to determine, with the Sweatshirts' distributor, whether a recall was warranted.

20. Kohl's implemented the recall announced by the Commission and the Sweatshirts' distributor.

21. Kohl's has entered into the Agreement to avoid incurring additional expenses and the distraction of litigation. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing by Kohl's.

AGREEMENT OF THE PARTIES

22. Under the CPSA, the Commission has jurisdiction over this matter and over Kohl's.

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

24. In settlement of the Staff's allegations, Kohl's shall pay a civil penalty in the amount of four hundred twenty-five thousand dollars (\$425,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

25. Upon issuance of, and Kohl's compliance with, the final Order, the Commission regards this matter as resolved and agrees not to bring a civil penalty action against Kohl's based upon the Staff's allegations contained herein regarding the Sweatshirts.

26. 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*.

27. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Kohl's 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 Kohl's 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.

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

29. The Agreement and the Order shall apply to, and be binding upon, Kohl's and each of its successors and assigns.

30. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Kohl's and each of its successors and assigns to appropriate legal action.

31. 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.

32. 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 Kohl's agree that severing the

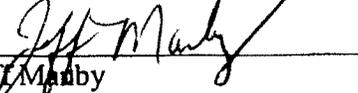
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provision materially affects the purpose of the Agreement and the Order.

Kohl's Department Stores, Inc

Dated: 7/29/09

By:

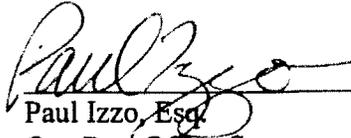


Jeff Marby
Executive VP, GMM – Men's/YMen's/Children's
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N56 W17000 Ridgewood Drive
Menomonee Falls, WI 53051

ppk

Dated: 8/3/09

By:



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Sharon, MA 02067
Counsel for Kohl's Department Stores, Inc.

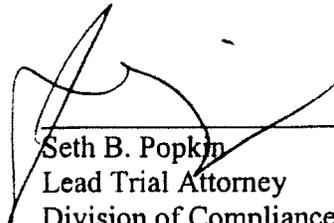
U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Cheryl A. Falvey
General Counsel

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

Dated: 8/11/09

By:



Seth B. Popkin
Lead Trial Attorney
Division of Compliance
Office of the General Counsel

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of)
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CPSC Docket No. 09-C0033

ORDER

Upon consideration of the Settlement Agreement entered into between Kohl's Department Stores, Inc. ("Kohl's") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Kohl's, 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

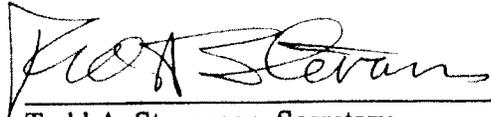
FURTHER ORDERED, that Kohl's shall pay a civil penalty in the amount of four hundred twenty-five thousand dollars (\$425,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Kohl's to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Kohl's

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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 2nd day of September,
2009.

BY ORDER OF THE COMMISSION:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", written over a horizontal line.

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