

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

_____))
In the Matter of))
))
SUNSACTIONS INC.))
_____))

CPSC Docket No. 11-C0010

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Sunsauctions Inc., including its officers, agents, directors, and assigns (collectively, “Sunsauctions”), and the staff of the United States Consumer Product Safety Commission (“Commission” or “Staff”) 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. Sunsauctions is a corporation, organized and existing under the laws of Virginia, with its principal offices located in Virginia Beach, Virginia. At all relevant times, Sunsauctions sold apparel, accessories, and other products.

STAFF ALLEGATIONS

4. Between March 2008 and November 2010, Sunsauctions sold and/or held for sale various children’s upper outerwear products with drawstrings at the hood or neck. Specifically, from March 2008 through July 2009, Sunsauctions sold and/or held for sale children’s upper outerwear products with drawstrings at the hood or neck (sweatshirts), manufactured by GJC

International and Top Image USA. From May 2009 through November 2010, Sunations sold and/or held for sale children's upper outerwear products with drawstrings at the hood or neck (sweatshirts), manufactured by Exist Inc. and Ragwear. The products identified in this paragraph are referenced collectively in this document as the "Sweatshirts."

5. The Sweatshirts were sold and/or held for sale to consumers by Sunations.

6. The Sweatshirts are "consumer product[s]," and, at all relevant times, Sunations 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, 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, Staff recommends that no children's upper outerwear sizes 2T to 12 be manufactured or sold to consumers with hood and neck drawstrings.

8. In June 1997, ASTM adopted a voluntary standard (ASTM F1816-97) incorporating the Guidelines. The Guidelines state that firms should be aware of the hazards of children's upper outerwear products with drawstrings at the hood or neck and should ensure that 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 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 sets forth the reporting requirements of CPSA section 15(b), 15 U.S.C. § 2064(b).

10. Sunsations’ 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.

11. On December 3, 2009 and March 10, 2011, the Commission announced Sunsations’ recalls of the Sweatshirts.

12. Sunsations 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). Sunsations had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that the Sweatshirts created an unreasonable risk of serious injury or death. Pursuant to CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), Sunsations was required to inform the Commission immediately of the defect and risk.

13. Sunsations knowingly failed to inform the Commission immediately 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 Sunsations to civil penalties.

RESPONSE OF SUNSATIONS

14. Between April 2006 and July 2009, Staff alleged that Sunsations sold and/or held for sale various children’s upper outerwear products with drawstrings at the hood or neck. From

May 2009 through November 2010, Staff also alleged that Sunsations sold and/or held for sale upper outerwear products manufactured by Exist Inc. and Ragwear, labeled sizes “S,” “M,” and “L,” and bearing drawstrings at the hood or neck, which Staff alleged were equivalent to children’s sizes 2T through 12. Sunsations and its agents, officers, and employees deny Staff’s allegations in paragraphs 4–13 above, including the allegation that Sunsations violated the CPSA.

15. Sunsations maintains that it never received any information that would support the conclusion that any hooded sweatshirts it sold were defective, within the meaning of the CPSA, until Staff contacted Sunsations in July 2009. Specifically, Sunsations maintains that it never received the Commission’s 2006 letter.

16. Immediately after Staff contacted Sunsations in July 2009, Sunsations initiated a recall of all defective products and offered consumers a full refund. The recall encompassed garments sold by stores in Virginia Beach, Virginia, Ocean City, Maryland, and North Carolina from April 2006 through July 2009.

17. In December 2009, Sunsations initiated a recall of sweatshirts manufactured by GJC International and Top Image USA and offered consumers a full refund for sweatshirts sold at stores in Virginia Beach, VA, Ocean City, MD, and North Carolina from April 2006 to July 2009. In March 2011, Sunsations initiated a recall of sweatshirts manufactured by Exist Inc. and Ragwear and offered consumers a full refund for sweatshirts sold at stores in Virginia Beach, Virginia, Ocean City, Maryland, and North Carolina from May 2009 through November 2010.

18. The Agreement and Order do not constitute an admission of liability on the part of Sunsations.

AGREEMENT OF THE PARTIES

19. Under the CPSA, the Commission has jurisdiction over this matter and over Sunsations.

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

21. In settlement of Staff's allegations, Sunsations shall pay a civil penalty in the amount of sixty thousand dollars (\$60,000.00). 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 electronically to the Commission *via* www.pay.gov.

22. The Commission will not seek any additional civil penalties from Sunsations for possible violations of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), regarding the alleged violations, or with respect to information contained in the Full Reports under CPSC § 15(b), 15 U.S.C. § 2064(b), and 16 C.F.R. § 1115.13(d), as of the date of the signing of this agreement.

23. Sunsations shall conduct a comprehensive review of its existing apparel inventory for purposes of identifying any upper outerwear bearing drawstrings at the hood or neck ("Drawstring Garments"), irrespective of whether such garments are sized, marketed, or otherwise intended for use by children. Through this review, an Inventory Review Completion Report will be prepared and submitted to Staff by Sunsations no later than ten (10) calendar days of service of the Commission's final Order accepting the agreement. A purpose of this inventory review is to provide guidance to Sunsations for determining what constitutes children's upper

outerwear within the meaning of the ASTM F1816-97 voluntary standard and related Commission guidelines.

24. Sunsations shall designate an employee to serve as its Product Safety Manager (“Manager”). The Manager’s duties will include, but will not be limited to, reviewing Sunsations’ current and future purchases of upper outerwear to ensure that Sunsations does not purchase for sale or distribute in commerce, children’s upper outerwear with drawstrings at the neck or hood.

25. The Inventory Review Completion Report shall include, to the extent available, the following information:

- a. A description (by style number) of the Drawstring Garments in inventory that Sunsations reviewed, and the approximate number of units of each Drawstring Garment that Sunsations holds in inventory as of the date of signing of this agreement;
- b. The style, most recent date(s) of purchase, the identity of the company/ies from which the Drawstring Garments was/were purchased, and (if applicable) the period of time during which Sunsations sold or offered for sale the Drawstring Garments;
- c. One sample of each available size of each Drawstring Garment identified during the course of the inventory review;
- d. A description of the step(s) Sunsations has taken to ameliorate the strangulation hazards posed by each of the Drawstring Garments;
- e. The identity of the Manager who Sunsations has designated as responsible for Product Safety;

f. A proposal outlining the methods by which the Manager will ensure that, from this point forward, Sunsations does not purchase children's upper outerwear bearing drawstrings; and

g. The following certification signed by an officer of Sunsations:

Pursuant to 28 U.S.C. § 1746, I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that the information is true and correct. I am aware that there are significant penalties for submitting false information to federal officials, including the possibility of fines and imprisonment.

h. The report shall be directed to the following Staff:

Seth Popkin
Lead Trial Attorney
Office of the General Counsel
Division of Compliance
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

26. Sunsations will not be liable for possible violations of subsection 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), based on any information that Sunsations reports to the Commission as part of the Inventory Review Completion Report described in paragraph 25 above. However, Sunsations remains potentially liable for other possible violations of section 19(a) of the CPSA, 15 U.S.C. § 2068(a), for information reported to the Commission after the date of the signing of this agreement. Except as expressly provided in this document, nothing in this Agreement is intended, nor may it be construed to alter Sunsations' potential liabilities under any and all applicable laws, statutory provisions, regulations, rules, standards, and/or bans enforced and administered by the Commission.

27. 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*.

28. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Sunsations 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 Sunsations 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.

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

30. The Agreement and the Order shall apply to, and be binding upon, Sunsations and each of its successors and assigns.

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

32. 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.

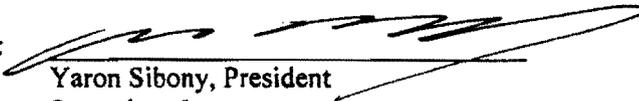
33. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Sunsatons agree that severing the provision materially affects the purpose of the Agreement and the Order.

34. Sunsatons represents that before making this Agreement it has consulted with its attorneys, and that its attorneys have participated in negotiating the substance of this Agreement and have reviewed the language of the Agreement. Sunsatons represents that it is fully satisfied with the services of its attorneys with respect to the Agreement, and that it has entered into the Agreement voluntarily and with full knowledge of its legal rights.

SUNSATONS INC.

Dated: 8/11/11

By:



Yaron Sibony, President
Sunsatons Inc.
353 Village Road
Virginia Beach, VA 23454

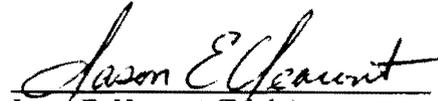
U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Cheryl A. Falvey
General Counsel

Mary B. Murphy
Assistant General Counsel
Office of the General Counsel

Dated: 8/12/2011

By:

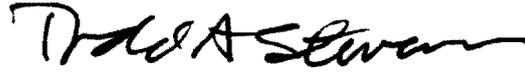


Jason E. Yearout, Trial Attorney
Division of Compliance
Office of the General Counsel

Provisionally accepted and provisional Order issued on the 2nd day of September

2011.

BY ORDER OF THE COMMISSION:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson". The signature is written in a cursive style with a horizontal line underneath.

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