

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of))
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FISHER-PRICE, INC.) CPSC Docket No. 07-
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a corporation.))
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_____))

SETTLEMENT AGREEMENT AND ORDER

1. This Settlement Agreement is made by and between the staff (the “staff”) of the U.S. Consumer Product Safety Commission (“CPSC” or the “Commission”) and Fisher-Price, Inc. (“Fisher-Price”), a corporation, in accordance with 16 C.F.R. § 1118.20 of the Commission’s Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (“CPSA”). This Settlement Agreement and the incorporated attached Order resolve the staff’s allegations set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the CPSA, 15 U.S.C. §§ 2051 – 2084.

3. Fisher-Price is a corporation organized and existing under the laws of the State of Delaware, with its principal corporate office located in East Aurora,

New York. At all times relevant herein, Fisher-Price designed, imported and sold toys and juvenile products.

STAFF ALLEGATIONS

4. Between June 17, 2002 and July 31, 2002, Fisher-Price imported and sold nationwide approximately 67,000 Little People® Animal Sounds Farm toys (the “Farm(s)” or “product(s)”). The Farms are shaped like a barn and make animal sounds when the doors of the cow or horse stall are opened.

5. The Farms are “consumer product(s)” and, at the times relevant herein, Fisher-Price was a “manufacturer” of “consumer product(s),” which were “distributed in commerce” as those terms are defined in sections 3(a)(1), (4), (11) and (12) of the CPSA, 15 U.S.C. §§ 2052(a)(1), (4), (11) and (12).

6. The Farms are defective because the ringed nail fasteners used to attach the toy “stall doors” in place can disengage from the product. If this should occur, young children could choke on or aspirate the loose nail fastener.

7. On or about September 11, 2002, Fisher-Price first learned of an incident in which a nail fastener disengaged from one of the stall doors.

8. By November 18, 2002, Fisher-Price had become aware of nine reports of nail fasteners coming loose from the stall doors, including one report from a consumer that a nail fastener came out and that her child placed it in her mouth.

9. By early February of 2003, Fisher-Price was aware of two telephone calls in which consumers indicated a concern that this problem posed a choking

hazard to children.

10. On February 14, 2003, Fisher-Price learned of a December 30, 2002 incident in which a 14-month old child aspirated a Farm nail fastener into his lung. The child was taken to a hospital where emergency surgery was performed to remove the nail fastener.

11. Despite being aware of the information set forth in paragraphs 4 through 10, Fisher-Price did not report to the Commission until March 14, 2003. By that time, Fisher-Price was aware of at least 33 reports of incidents in which a nail fastener came loose from the stall doors. These included four reports of children who put a fastener in the mouth (including a report of a child who cut the inside of her mouth), and one report of a child who required emergency surgery to remove an aspirated nail fastener from his lung.

12. Although Fisher-Price had obtained sufficient information to reasonably support the conclusion that the Farms contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to immediately inform the Commission of such defect or risk as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. § 2064(b)(2) and (3). In failing to do so, Fisher-Price “knowingly” violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

13. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Fisher Price is subject to civil penalties for its failure to make a timely report under section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

RESPONSE OF FISHER-PRICE

14. Fisher-Price denies that the Farms contain a defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death, and denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

15. Fisher-Price believes that the Farms do not violate any CPSC regulations regarding small parts or otherwise and do not violate any applicable safety standards.

16. Fisher-Price denies any liability or wrongdoing of any kind.

17. Fisher-Price was not advised of the December 30, 2002 incident, in which a consumer's child was reported to have aspirated a fastener, until February 14, 2003. The consumer advised Fisher-Price that the incident had been reported to the CPSC. Fisher-Price, nevertheless, filed a Full Report with the CPSC pursuant to Section 15(b) of the CPSA on March 14, 2003 and undertook a Fast Track Recall of the product on April 23, 2003.

AGREEMENT OF THE PARTIES

18. The Commission has jurisdiction over this matter and over Fisher-Price under the CPSA, 15 U.S.C. §§ 2051-2084.

19. In settlement of the staff's allegations, Fisher-Price agrees to pay a civil penalty of nine hundred seventy five thousand dollars (\$975,000.00) within twenty (20) calendar days of service of the Final Order of the Commission accepting this Settlement Agreement. This payment shall be made by check payable to the order of the United States Treasury.

20. The parties enter this Settlement Agreement for settlement purposes only. The Settlement Agreement does not constitute an admission by Fisher-Price or a determination by the Commission that Fisher-Price violated the CPSA's reporting requirements.

21. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the *Federal Register* in accordance with the procedure set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written requests not to accept the Settlement Agreement and Order within 15 calendar days, the Agreement and Order shall be deemed finally accepted on the 16th calendar day after the date it is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

22. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Fisher-Price knowingly, voluntarily and completely waives any rights it may have in this matter to the following: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission as to whether Fisher-Price failed to comply with the CPSA and the underlying regulations; (iv) a

statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

23. The Commission may publicize the terms of the Settlement Agreement and Order.

24. This Settlement Agreement shall apply to, and be binding upon Fisher-Price and each of its successors and assigns, its parent entity, its parent's subsidiaries, and each of their respective successors and assigns.

25. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. §§ 2051-2084, and a violation of the Order may subject those referenced in paragraph 24 above to appropriate legal action.

26. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

27. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, without written agreement thereto executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced, and approval by the Commission.

28. If, after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Fisher-Price

determine that severing the provision materially changes the purpose of the Settlement Agreement and Order.

FISHER-PRICE, INC.

Dated:

By: _____
Neil Friedman
President

By: _____
Neil A. Goldberg
Goldberg Segalla, LLP
665 Main Street, Suite 400
Buffalo, New York, 14203
Counsel for Fisher-Price, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION

John Gibson Mullan
Assistant Executive Director
Office of Compliance and Field Operations

Dated:

By: _____
Ronald G. Yelenik
Acting Director
Legal Division
Office of Compliance and Field Operations