

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
)

MATTEL, INC.)
)

and)
)

FISHER-PRICE, INC.)
_____)

CPSC Docket No. _____

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Mattel, Inc. ("Mattel") and Fisher-Price, Inc. ("Fisher-Price") and the staff ("Staff") of the United States Consumer Product Safety Commission ("CPSC" or the "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. Mattel is a corporation organized and existing under the laws of the state of Delaware, with principal offices located in El Segundo, California. Fisher-Price, a wholly-owned subsidiary of Mattel, is a corporation organized and existing under the laws of the state of Delaware, with principal offices located in East Aurora, New York. At all times relevant hereto, Mattel and Fisher-Price (collectively, the "Firms") designed, imported and sold toys and children's products.

STAFF ALLEGATIONS REGARDING MATTEL

4. Between January 19, 2007 and July 27, 2007, Mattel imported into the United States approximately 253,000 units of "Sarge" die cast toy cars with markings of "China" and a "7EA" date code on the bottom ("Toy Cars"). Mattel shipped the Toy Cars to retailers from May 2007 to August 2007, and, in turn, they were sold to consumers at retail stores nationwide during that period for between \$7 and \$20 per unit.

5. Between September 30, 2006 and August 20, 2007, Mattel imported into the United States approximately 633,000 units of Barbie ® accessory toys consisting of the following models: Barbie Dream Puppy House Playset; Barbie Dream Kitty Condo Playset; Barbie Table & Chairs Kitchen Playset; Barbie Bathtub & Toilet Bathroom Playset; Barbie Living Room Playset; Barbie Desk & Chair Bedroom Playset; and Barbie Couch & Table Living Room Playset (collectively, "Accessory Toys"). Mattel shipped 439,000 of the Accessory Toys to retailers during that period, and, in turn, they were sold to consumers at retail stores nationwide from October 2006 to August 2007 for about \$10 per unit.

6. The Toy Cars and the Accessory Toys (collectively, "Mattel Products") are "consumer product(s)," and, at all times relevant hereto, Mattel was a "manufacturer" of those consumer products, which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(3), (5), (8), and (11), 15 U.S.C. § 2052(a)(3), (5), (8), and (11).

7. The Mattel Products are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 C.F.R. Part 1303 (the "Lead Paint Ban"). Under the Lead Paint Ban, toys and other children's articles must not bear "lead-containing paint," defined as paint or other surface coating materials whose lead content is more than 0.06

percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16
C.F.R. § 1303.2(b)(1)

8. During the summer of 2007, samples of the Mattel Products were tested for the presence of lead pursuant to the Lead Paint Ban. The test results demonstrated that certain samples of each of the Mattel Products contained levels of lead in excess of the permissible 0.06 percent limit set forth in the Lead Paint Ban.

9. On August 14, 2007, the Commission and Mattel announced a recall of the Toy Cars because "[s]urface paints on the toys could contain levels of lead in excess of federal standards." Similarly, on September 4, 2007, the Commission and Mattel announced a recall of the Accessory Toys because "[s]urface paints on the toys contain excessive levels of lead which is prohibited under federal law." At the time of each of the aforementioned recalls Mattel reported no incidents or injuries associated with the Mattel Products and excessive lead. Lead is toxic if ingested by young children and can cause adverse health consequences.

10. Mattel failed to ensure that the Mattel Products complied with the Lead Paint Ban.

11. The Mattel Products constitute "banned hazardous products" under CPSA section 8 and the Lead Paint Ban, 15 U.S.C. § 2057 and 16 C.F.R. §§ 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

12. Between September 2006 and August 2007, Mattel sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the Mattel Products, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1). Mattel committed these prohibited acts "knowingly," as that term 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, Mattel is subject to civil penalties for the aforementioned violations.

STAFF ALLEGATIONS REGARDING FISHER-PRICE

14. Between April 19, 2007 and July 6, 2007, Fisher-Price imported approximately 967,000 units of various "Sesame Street," "Dora the Explorer," and other licensed character toys, comprising 83 different models (collectively, "Licensed Character Toys"). Fisher-Price shipped about 678,000 of the Licensed Character Toys to retailers from May 2007 to August 2007 and, in turn, they were sold to consumers at retail stores nationwide during that period for between \$5 and \$40 per unit.

15. Between May 19, 2007 and August 1, 2007, Fisher-Price imported into the United States approximately 8,900 units of Big Big World 6-in-1 Bongo Band toys ("Bongo Band Toys"). Fisher-Price shipped the Bongo Band Toys to retailers from May 2007 to August 2007, and, in turn, they were sold to consumers at retail stores nationwide from July 2007 to August 2007 for about \$20 per unit.

16. Between July 31, 2006 and September 4, 2006, Fisher-Price imported into the United States approximately 3,000 units of GEOTRAX Freightway Transport locomotive toys and 80,000 units of GEOTRAX Special Track Pack locomotive toys (collectively, "GEOTRAX Toys"). Fisher-Price shipped the GEOTRAX Toys to retailers from August 2006 to July 2007, and in turn, they were sold to consumers at retail stores nationwide from September 2006 to August 2007 for between \$3 and \$16 per unit.

17. Between May 17, 2007 and August 11, 2007, Fisher-Price imported into the United States approximately 37,500 units of Go Diego Go Animal Rescue Boat toys ("Boat Toys"). Fisher-Price shipped the Boat Toys to retailers during that period, and in turn, they were sold to consumers at retail stores nationwide from June 2007 through October 2007 for about \$20 per unit.

18. The Licensed Character Toys, Bongo Band Toys, GEOTRAX Toys, and Boat Toys (collectively, "Fisher-Price Products") are "consumer product(s)," and, at all times relevant hereto, Fisher-Price was a "manufacturer" of those consumer products, which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(3), (5), (8), and (11), 15 U.S.C. § 2052(a)(3), (5), (8), and (11).

19. The Fisher-Price Products are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Lead Paint Ban.

20. During the summer and fall of 2007, samples of the Fisher-Price Products were tested for the presence of lead pursuant to the Lead Paint Ban. The test results demonstrated that certain samples of each of the Fisher-Price Products contained levels of lead in excess of the permissible 0.06 percent limit set forth in the Lead Paint Ban.

21. On August 2, 2007, the Commission and Fisher-Price announced the recall of the Licensed Character Toys because "[s]urface paints on the toys could contain excessive levels of lead." Similarly, on September 4, 2007, a recall was announced regarding the Bongo Band Toys and the GEOTRAX Toys, because surface paints on the toys contain levels of lead in excess of the permissible 0.06 percent limit set forth in the Lead Paint Ban. This was followed by the October 25, 2007 announcement of a recall of the Boat Toys because "[s]urface paints on the toys contain excessive levels of lead, which violates the federal standard prohibiting lead paint on children's toys." At the time of each of the aforementioned recalls Fisher-Price reported no incidents or injuries associated with the Fisher-Price Products. Lead is toxic if ingested by young children and can cause adverse health consequences.

22. Fisher-Price failed to ensure that the Fisher-Price Products complied with the Lead Paint Ban.

23. The Fisher-Price Products constitute "banned hazardous products" under CPSA section 8 and the Lead Paint Ban, 15 U.S.C. § 2057 and 16 C.F.R. §§ 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

24. Between July 2006 and August 2007, Fisher-Price sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the Fisher-Price Products, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1). Fisher-Price committed these prohibited acts "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

25. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Fisher-Price is subject to civil penalties for the aforementioned violations.

THE FIRMS' RESPONSE

26. Mattel denies the Staff's allegations set forth above that it knowingly violated the CPSA.

27. Fisher-Price denies the Staff's allegations set forth above that it knowingly violated the CPSA.

AGREEMENT OF THE PARTIES

28. Under the CPSA, the Commission has jurisdiction over this matter and over the Firms.

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

30. In settlement of the Staff's allegations, Mattel shall pay, for and on behalf of both Firms, a civil penalty in the total amount of two million three hundred thousand dollars (\$2,300,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. This payment shall be made by check payable to the order of the United States Treasury.

31. The Commission will not seek civil penalties for possible violations of sections 19(a)(1) and 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(1) and (4), regarding any information as to which the Firms, between March 1, 2007 and January 28, 2009, have adequately informed the CPSC (i) by submitting a Full Report under CPSA section 15(b), 15 U.S.C. § 2064(b), and 16 C.F.R. § 1115.13(d), and/or (ii) by submitting complete information voluntarily by agreement with the Office of Compliance and Field Operations during said period. The Commission's agreement not to seek penalties will not relieve the Firms from the continuing duty to report to CPSC any new, additional or different information as required by CPSA section 15(b), 15 U.S.C. § 2064(b) and the regulations at 16 C.F.R. Part 1115. Regarding any information adequately and timely reported to CPSC by the Firms after January 28, 2009, whether submitted by agreement or otherwise, the Firms remain potentially liable for possible violations of section 19(a) of the CPSA, 15 U.S.C. § 2068(a), other than subsection 19(a)(4), 15 U.S.C. § 2068(a)(4). Except as expressly provided herein, nothing in this Agreement is intended nor may be construed to preclude, limit, or otherwise reduce the Firms' potential liabilities under any and all applicable laws, statutory provisions, regulations, rules, standards, and/or bans enforced or administered by CPSC.

32. 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). 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) days,

the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the *Federal Register*.

33. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, the Firms knowingly, voluntarily, and completely waive any rights they 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 the Firms 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.

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

35. The Agreement and Order shall apply to, and be binding upon, the Firms and each of their successors and assigns.

36. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those referenced in paragraph 35 to appropriate legal action.

37. 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.

38. If 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 the Firms agree that severing the provision materially

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affects the purpose of the Agreement and Order.

MATTEL, INC.

Dated: 5-28-09

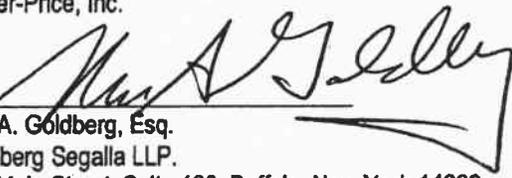
By: 
Robert Normile
Senior Vice President, General Counsel and Secretary
Mattel, Inc.

FISHER-PRICE, INC.

Dated: 5-28-09

By: 
Robert Normile
Senior Vice President and Secretary
Fisher-Price, Inc.

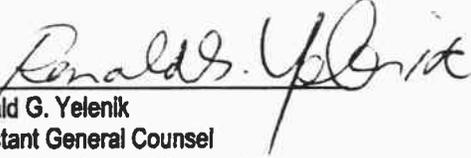
Dated: 5/28/09

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

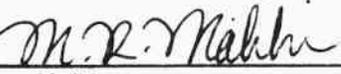
U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Cheryl A. Falvey
General Counsel
Office of the General Counsel

Dated: 5/29/09

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

Dated: 5/29/09

By: 
M. Reza Malih
Trial Attorney
Division of Compliance
Office of the General Counsel