

hormone concentrations, obtained from blood samples, with respect to reproductive status of male and female monk seals, and other pinnipeds.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: January 21, 1998.

Ann D. Terbush,

*Chief, Permits and Documentation Division,
Office of Protected Resources, National
Marine Fisheries Service.*

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CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 98-C0004]

In the Matter of COA, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR § 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with COA, Inc., a corporation, d/b/a Coaster Co. of America "containing a civil penalty of \$300,000."

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 11, 1998.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 98-C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Howard N. Tarnoff, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 20, 1998.

Sadye E. Dunn,

Secretary.

In the Matter of COA, INC., a Corporation d/b/a Coaster Co. of America

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between COA, Inc., d/b/a Coaster Co. of America, a corporation (hereinafter, "COA"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), pursuant to the procedures set forth in 16 CFR § 1118.20, is a compromised resolution of the matter described herein, without a hearing or determination of issues of law and fact.

The Parties

2. The staff is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent federal regulatory agency of the United States government, established by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, "CPSA"), as amended, 15 USC § 2053.

3. Respondent COA is a corporation organized and existing under the laws of the State of California with its principal corporate offices located at 1298 Sandoval St., Santa Fe Springs, CA 90670. COA is an importer and wholesaler of all types of home furnishings and furniture, including baby cribs.

Staff Allegations

4. Section 4(a) of the Federal Hazardous Substances Act (hereinafter, "FHSA"), 15 U.S.C. § 1263(a), prohibits the introduction into interstate commerce of any banned hazardous substance.

5. Section 15(b) of the CPSA, 15 U.S.C. § 2064(b), requires a manufacturer of a consumer product who, *inter alia*, obtains information that reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard or creates an unreasonable risk of serious injury or death, to immediately inform the Commission of the defect or risk.

6. From approximately January 1993 through December 1996, COA imported and introduced into interstate commerce approximately 940 full-size baby cribs, identified as model 2368.

7. From approximately June 1996 through April 1997, COA imported and introduced into interstate commerce approximately 900 full-size baby cribs, identified as model 2364.

8. The staff inspected and evaluated these 2 cribs and identified multiple

violations of the FHSA and its regulations, Requirements for Full-Size Baby Cribs, 16 CFR Part 1508 (crib regulations). Any one of the FHSA violations is sufficient to render each crib to be a "banned hazardous substance" under the FHSA and the applicable crib regulation.

9. Specifically, model 2368 violated the FHSA and its crib regulations at 16 CFR §§ 1508.4 (a) and (b) (spacing of crib components); 16 CFR § 1508.6(b) (requirements for hardware), and; 16 CFR §§ 1508.9(b)(2) and (d) (identifying marks, warning statement, and compliance declaration).

10. Specifically, model 2364 violated the FHSA and its crib regulations at 16 CFR § 1508.4(a); 16 CFR § 1508.7(c) (requirements for construction and finishing), and; 16 CFR §§ 1508.9(b) (1) and (2) and (c).

11. In addition, on or about August 21, 1996, COA received a test report on a sample of model #2364 crib performed by the Detroit Testing Laboratory, Inc. (DTL) on August 20, 1996. DTL had identified and listed substantially all of the violations which the Commission's evaluations subsequently identified. DTL also noted that the decorative "S" on the side rails may present a potential for entrapment and strangulation. COA knew or should have known of these violations of the FHSA on or about August 21, 1996, yet it failed to report this to the Commission, as required by section 15(b) of the CPSA. Further, it continued to sell these cribs until at least March 18, 1997.

12. Because these two cribs failed to meet the Requirements for Full-Size Baby Cribs, each of them is a "banned hazardous substance" within the meaning of section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261 (q)(1)(A). The introduction into interstate commerce of these banned hazardous substances by COA was a prohibited act pursuant to section 4(a) of the FHSA and was committed "knowingly", as that term is defined in section 5(c)(5) of the FHSA, 15 U.S.C. 1264(c)(5).

13. Although COA had obtained sufficient information to reasonably support the conclusion that these cribs contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to report such information to the Commission in a timely manner, as required by section 15(b) of the CPSA. This is a violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

14. Respondent's failure to report to the Commission, as required by section 15(b) of the CPSA, was committed "knowingly", as that term is defined in

Section 20(d) of the CPSA, 15 U.S.C. § 2069(d) and COA is subject to civil penalties under Section 20 of the CPSA.

Response of COA

15. COA denies each and all of the staff allegations with respect to these cribs.

Agreement of the Parties

16. The Commission had jurisdiction in this matter.

17. Upon final acceptance of the Settlement Agreement, COA, Inc. shall pay to the Order of the U.S. Treasury a civil penalty in the amount of three hundred thousand and 00/100 dollars (\$300,000.00) to be paid in three installments of \$100,000. The first \$100,000 payment will be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting this Settlement Agreement. Thereafter, COA, Inc. agrees to pay \$100,000 within one hundred and ten (110) days of the date of service of the Final Order, and \$100,000 within two hundred (200) days of the first payment. Payment of the total \$300,000 civil penalty shall settle fully the staff's allegations set forth in paragraphs 4 through 14 of the Settlement Agreement and Order. Upon the failure by COA, Inc. to make a payment or upon the making of a late payment (as determined by the postmark on the envelope) by CSA (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961 (a) and (b).

18. COA knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of the FHSA or section 15(b) of the CPSA, has occurred, (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty, and (5) to any claims under the Equal Access to Justice Act.

19. This Settlement Agreement and Order settles any allegations of violations of the FHSA or of section 15(b) of the CPSA regarding the products described above.

20. Nothing in this Settlement Agreement and Order shall be construed to preclude the CPSC from pursuing a

corrective action or other relief not described above.

21. This Settlement Agreement and Order becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

22. 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 CFR § 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR § 1118.20(f).

23. Upon final acceptance of this Settlement Agreement and Order, the Commission shall issue the attached Order, incorporated herein by reference.

24. The provisions of this Settlement Agreement and Order shall apply to COA and its successors and assigns.

25. For purposes of section 6(b) of the CPSA, 15 U.S.C. § 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order.

26. COA agrees to immediately inform the Commission if it learns of any incidents involving the products and alleged defects identified above.

27. This 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.

COA, Inc.

Dated: December 11, 1997.

Michael Yeh,

President of COA, Inc.

The Consumer Product Safety Commission.

Alan H. Scheom,

Assistant Executive Director, Office of Compliance.

Eric L. Stone,

Director, Division of Administrative Litigation, Office of Compliance.

Dated: December 17, 1997.

Melvin I. Kramer,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

In the Matter of COA, Inc., a Corporation d/b/a Coaster Company of America

Order

Upon consideration of the Settlement Agreement between Respondent COA,

Inc., a corporation, d/b/a Coaster Company of America and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over COA, Inc., and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, and it is

Further ordered, that upon final acceptance of the Settlement Agreement, COA, Inc. shall pay to the Order of the U.S. Treasury a civil penalty in the amount of three hundred thousand and 00/100 dollars (\$300,000.00) to be paid in three installments of \$100,000. The first \$100,000 payment will be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting this Settlement Agreement. Thereafter, COA, Inc. shall pay \$100,000 within one hundred and ten (110) days of the date of service of the Final Order, and \$100,000 within two hundred (200) days of the first payment. Payment of the total \$300,000 civil penalty shall settle fully the staff's allegations set forth in paragraphs 4 through 14 of the Settlement Agreement and Order. Upon the failure by COA, Inc. to make a payment or upon the making of a late payment (as determined by the postmark on the envelope) by CSA: (a) The entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961 (a) and (b).

Further ordered, COA, Inc. shall immediately inform the Commission if it learns of any incidents involving the products and alleged defects identified herein.

Provisionally accepted and Provisional Order issued on the 20th day of January, 1998.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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