

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04-21148 Filed 9-16-04; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 04-C0006]

Battat Incorporated, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

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 Battat Incorporated, containing a civil penalty of \$125,000.

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 October 5, 2004.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 04-C0006, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Michelle Faust Gillice, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-7667.

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

Dated: September 13, 2004.

Todd A. Stevenson,
Secretary.

Settlement Agreement and Order

1. Battat Incorporated (hereinafter "Battat" or "Respondent") enters into this Settlement Agreement and Order (hereinafter, "Settlement Agreement" or "Agreement") with the staff of the Consumer Product Safety Commission (the "Commission"), and agrees to the entry of the attached Order incorporated by reference herein. The Settlement Agreement resolves the Commission staff's allegations set forth below.

I. The Parties

2. The Commission is an independent federal regulatory commission responsible for the enforcement of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051-2084.

3. Respondent was incorporated on December 30, 1981. It is organized and existing under the laws of the State of Delaware. Its principal office is located at 44 Martina Circle, Plattsburgh, NY 12901. Respondent manufactures games, toys and children's vehicles.

II. Staff Allegations

4. Between November 2001 and January 2003 (one month prior to the Commission's request for a full report under section 15(b) of the CPSA, 15 U.S.C. 2064(b)), Respondent manufactured and distributed approximately 300,000 toys called the "Bee Bop Band Drum Set" ("drum sets"). The drum sets are intended and labeled for children eighteen months and up. The drum sets contain several musical objects including a pair of ten inch long drumsticks shaped like centipedes. The drumsticks are the subject of this Settlement Agreement and Order.

5. The drum sets were produced and distributed for sale to consumers for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and are therefore, "consumer products" as defined in section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1). Respondent was a "manufacturer" of the drum sets which were "distributed in commerce" as those terms are defined in sections 3(a)(4), (11) and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (11) and (12).

6. The drumsticks contained in the Bee Bop Band Drum Set are defective because the rubber end cap, the screw affixing some end caps and the ball tip could break off or detach during use. These pieces are of a size that present choking and aspiration hazards and fit into the "small parts" test cylinder specified in 16 CFR 1501.4.

7. The drumsticks are defective and could create a substantial product hazard under the CPSA, 15 U.S.C. 2064(b)(2) because the parts may present choking and aspiration hazards to small children. Further, the drumsticks created an unreasonable risk of serious injury or death under the CPSA, 15 U.S.C. 2064(b)(3).

8. While the drum sets when subjected to "use and abuse" tests of 16 CFR 1500(51) & (52) (conducted on behalf of Respondent, Respondent's retail customers, and the Commission) did not produce small parts, the

drumsticks produced small parts in actual use by young children.

9. Between November 2001 and January 2003, Respondent received over 330 complaints from consumers that either the end cap, the screw, or the tip detached from the drumstick. There were no injuries reported.

10. Respondent modified the product six times between the aforementioned dates in an attempt to eliminate the end cap, screw, and ball tip failures.

11. By the time Respondent modified the drumsticks by adding screws to affix the rubber end caps on May 24, 2002, it had received at least 45 consumer complaints concerning the small parts problem. Certainly by this point in time, Respondent had obtained information which reasonably supported the conclusion that the drumsticks were defective and could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2), (3).

12. On February 6, 2003, after receiving notice of 25 incidents, the Commission requested that Respondent submit a full report pursuant to section 15(b) of the CPSA. Respondent did so on February 25, 2003.

13. By failing to furnish information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Respondent violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

14. Respondent committed this failure to report to the Commission "knowingly" as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), thus, subjecting Respondent to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

III. Response of Battat Incorporated

15. Respondent denies the staff's allegations that the drumsticks are defective and that it violated the CPSA as set forth in paragraphs 4 through 14.

16. The drum set, manufactured by Respondent's subcontractor, was tested by third party testing facilities for the presence of small parts under the testing requirements set forth in the Commission's regulations at 16 CFR 1501 in each of the subcontractor's 167 individual shipments for the years 2002 through April 2004. A single failure of the test for small parts would have resulted in the rejection of the entire lot. At no time did the testing of the drumsticks produce small parts.

17. The Commission staff tested 12 drum sets in April 2002 and tested another 12 drum sets in October 2002, pursuant to 16 CFR 1501, and on neither occasion did the drumsticks produce small parts.

18. Outside laboratories employed by various customers of Respondent tested the drum sets pursuant to 16 CFR 1501 and none of the drumsticks produced small parts.

19. Because testing results always evidenced compliance with the Commission's small parts regulations, Respondent believes the drumsticks can not be considered defective under 15 U.S.C. 2064.

20. Respondent further alleges that at no time did its products injure or choke a child or present a risk of a choking, aspiration or ingestion hazard to children.

IV. Agreement of The Parties

21. The Consumer Product Safety Commission has jurisdiction over this matter and over Respondent under the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

22. Respondent agrees to be bound by, and comply with, this Settlement Agreement and Order.

23. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent, or a determination by the Commission, that Respondent knowingly violated the CPSA's reporting requirement.

24. In settlement of the staff's allegations, Respondent agrees to pay in three installments a civil penalty of one hundred and twenty-five thousand 00/100 dollars (\$125,000.00) in full settlement of this matter. The first payment of \$41,000.00 shall be paid within twenty (20) calendar days of service of the final Settlement Agreement and Order. The second payment of \$41,000.00 shall be paid within 110 days of such service. The third and final payment of \$43,000.00 shall be paid within 200 days of such service.

25. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written objections within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

26. Upon final acceptance of this Agreement by the Commission, and issuance of the Final Order, Respondent knowingly, voluntarily, and completely

waives any rights it may have in this matter (1) To an administrative hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with CPSA and the underlying regulations, (4) to a statement of findings of fact and conclusion of law, and (5) to any claims under the Equal Access to Justice Act.

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

28. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051–2084. Violation of this Order may subject Respondent to appropriate legal action.

29. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

30. 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 Respondent determine that severing the provision materially affects the purpose of the Settlement Agreement and Order.

31. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced and approved by the Commission.

32. The provisions of this Settlement Agreement and Order shall apply to Respondent and each of its successors and assigns.

Dated: July 22, 2004.

Battat Incorporated

Joseph Battat,

President.

Aaron Locker,

Respondent's Attorney.

The U.S. Consumer Product Safety Commission

Alan H. Schoem,

Director, Office of Compliance.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: July 30, 2004.

Michelle Faust Gillice,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement between Respondent Battat Incorporated and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Battat Incorporated, and it appearing that the Settlement Agreement and Order is in the public interest, it is *Ordered* that the Settlement Agreement be, and hereby is, accepted, and it is *Further ordered* that Battat Incorporated shall pay the United States Treasury in three installments a civil penalty in the amount of one hundred and twenty-five thousand and 00/100 dollars, (\$125,000.00). The first payment of \$41,000.00 shall be paid within twenty (20) calendar days of service of the final Settlement Agreement and Order. The second payment of \$41,000.00 shall be paid within 110 days of such service. The third and final payment of \$43,000.00 shall be paid within 200 days of such service. Upon the failure of Respondent Battat Incorporated to make a payment or upon the making of a late payment by Respondent Battat Incorporated (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).

Provisionally accepted and Provisional Order issued on the 13th day of September, 2004.

By Order of the Commission:
Todd A. Stevenson,
Secretary Consumer Product Safety Commission.

[FR Doc. 04–21025 Filed 9–17–04; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled AmeriCorps Alumni Profile Card to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. Chapter 35). Copies of this