



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 14-C0002]

Cinmar, LLC, Inc., 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 Cinmar, LLC, containing a civil penalty of \$3,100,000.00, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

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 (insert date that is 15 calendar days from publication date).

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 14-C0002 Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Kelly M. Moore, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7447.

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

Dated: June 5, 2014.

Todd A. Stevenson,
Secretary.

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

In the Matter of:)	
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Cinmar, LLC)	CPSC Docket No.: <u>14-C0002</u>
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SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051–2089 and 16 CFR 1118.20, Cinmar, LLC (Cinmar), and the U.S. Consumer Product Safety Commission (Commission), through its staff (staff), hereby enter into this Settlement Agreement (Agreement). The Agreement and the incorporated attached Order (Order) resolve staff’s charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 CFR 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Cinmar (d/b/a Frontgate) is a limited liability company, organized and existing under the laws of the state of Delaware, with its principal corporate office located at 5566 West Chester Road, West Chester, OH 45069. Cinmar is a retailer of home furnishings and decorative household items.

STAFF CHARGES

4. Between November 2005 and July 2010, Cinmar sold approximately 38,000 Frontgate foldaway closet two- and three-step ladders made of mahogany wood and designed for use in walk-in closets (Subject Products, or Ladders). Cinmar sold the Ladders to consumers nationwide for between \$89.95 and \$149.50.

5. The Ladders are “consumer products,” and at all relevant times, Cinmar was a “retailer” of these consumer products, which were “distributed in commerce,” as those terms are defined or used in sections 3(a)(5), (7) and (13), of the CPSA, 15 U.S.C. 2052(a)(5), (7) and (13).

6. The Ladders are defective because the steps can break unexpectedly, posing a fall hazard to consumers.

7. CPSC staff charges that Cinmar received notice of the defect shortly after Ladder sales began in November 2005. Between 2005 and 2010, Cinmar received hundreds of reports of step breakage during first and early use, including reports of injuries to consumers. During that same time, Cinmar implemented design changes to eliminate the hazard posed by the Subject Products. Throughout this period, Cinmar also paid out claims filed by consumers who reported that they had been injured when the Ladders broke during use.

8. CPSC staff charges that (i) by September 28, 2007, Cinmar had sufficient information that reasonably supported the conclusion that the Ladders contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death and (ii) that Cinmar was required to inform the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). By that

date, Cinmar had received more than 600 Ladder returns due to breakage and had been notified of at least one personal injury lawsuit filed by a consumer alleging injury from a broken Ladder.

9. CPSC staff charges that, when consumers contacted Cinmar regarding their broken Ladders, Cinmar routinely provided the consumers with replacement Ladders which Cinmar knew were just as likely to break.

10. Despite having information regarding the Ladders' defect or risk, Cinmar failed to inform the Commission immediately, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4).

11. Cinmar did not file its Full Report with the Commission until July 29, 2010. By that time, more than 1,200 consumers had returned their Ladders to Cinmar, most citing breakage, and others citing cosmetic problems. Also by that time, Cinmar had received notice of at least two dozen injuries, one of which required surgery and another necessitated hospitalization.

12. In failing to inform the Commission about the Subject Products immediately, Cinmar 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, Cinmar is subject to civil penalties for its knowing failure to report, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

CINMAR'S RESPONSE

14. Cinmar neither admits nor denies the charges set forth in paragraphs 4 through 13, including, but not limited to, the charge that the Ladders contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, and the

contention that Cinmar failed to notify the Commission in a timely manner, in accordance with section 15(b) of the CPSA, 15 U.S.C. 2064(b).

AGREEMENT OF THE PARTIES

15. Under the CPSA, the Commission has jurisdiction over the matter involving the Ladders described herein and over Cinmar.

16. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Cinmar shall pay a civil penalty in the amount of three million one hundred thousand dollars (\$3,100,000.00), which shall be due and payable within twenty (20) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via: <http://www.pay.gov>.

17. The parties agree that this settlement figure is predicated, among other things, upon the accuracy of oral and written representations of, and statements by, Cinmar and Cinmar's representatives (including representations and warranties set forth in the Agreement).

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

19. Following staff's receipt of the Agreement executed on behalf of Cinmar, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 CFR 1118.20(e). If, within fifteen (15) calendar days, the Commission

does not receive any written request not to accept the Agreement, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 CFR 1118.20(f).

20. The Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and is subject to the provisions of 16 CFR 1118.20(h). Upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Cinmar, and (ii) the date of issuance of the final Order, the Agreement shall be in full force and effect and shall be binding upon the parties.

21. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Cinmar, and (ii) the date of issuance of the final Order, for good and valuable consideration, Cinmar hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in the Agreement: (a) an administrative or judicial hearing; (b) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (c) a determination by the Commission of whether Cinmar failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

22. Cinmar shall implement and maintain a formal compliance program designed to ensure compliance with the statutes and regulations enforced by the Commission that, at a minimum, contains the following elements: (i) written standards and policies; (ii) procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified (including procedures to prevent defective products from being introduced into commerce); (iii) a mechanism for

confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary; (iv) effective communication of company compliance-related policies and procedures to all employees, through training programs, or otherwise; (v) senior manager responsibility for compliance and accountability for violations of the statutes and regulations enforced by the Commission; (vi) oversight of compliance by Cinmar's governing body; and (vii) retention of all compliance-related records for at least five (5) years, and availability of such records to staff upon request.

23. Cinmar shall maintain and enforce a system of internal controls and procedures designed to ensure that: (i) information required to be disclosed by Cinmar to the Commission is recorded, processed, and reported in accordance with applicable law; (ii) all reporting made to the Commission is timely, truthful, complete, and accurate; and (iii) prompt disclosure is made to Cinmar management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to adversely affect in any material respect Cinmar's ability to record, process, and report to the Commission in accordance with applicable law.

24. Upon request of staff, Cinmar shall provide written documentation of such improvements, processes, and controls, including, but not limited to, the effective dates of such improvements, processes, and controls. Cinmar shall cooperate fully and truthfully with staff and shall make available all information, materials, and personnel deemed necessary by staff to evaluate Cinmar's compliance with the terms of the Agreement.

25. The parties acknowledge and agree that the Commission may make public disclosure of the terms of the Agreement and the Order.

26. Cinmar represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Cinmar, and each of its successors and/or assigns, enforceable against Cinmar in accordance with the Agreement's terms. The individuals signing the Agreement on behalf of Cinmar represent and warrant that they are duly authorized by Cinmar to execute the Agreement.

27. The Commission signatories represent that they are signing the Agreement in their official capacities and that they are authorized to execute the Agreement.

28. The Agreement is governed by the laws of the United States.

29. The Agreement and the Order shall apply to, and be binding upon, Cinmar and each of its subsidiaries, successors, transferees, and assigns, and a violation of the Agreement or Order may subject Cinmar and each of its successors, transferees, and assigns to appropriate legal action.

30. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained herein and therein.

31. 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. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties, and therefore, shall not be construed against any party for that reason in any subsequent dispute.

32. The Agreement shall not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 CFR 1118.20(h). The Agreement may be executed in counterparts.

33. If any provision of the Agreement or 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 Cinmar agree that severing the provision materially affects the purpose of the Agreement and Order.

CINMAR, LLC

Dated: 5/27/2014

By: _____
H. R. Harvey, President
Cinmar, LLC
5566 West Chester Road
West Chester, OH 45069

Dated: 5/28/2014

By: _____
Ivan J. Wasserman
Manatt, Phelps & Phillips, LLP
700 12th Street, NW
Suite 1100
Washington, DC 20005
Counsel for Cinmar, LLC

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Stephanie Tsacoumis
General Counsel

Mary B. Murphy
Assistant General Counsel

Dated: 5/28/2014

By: _____
Kelly Moore Trial Attorney
Division of Compliance
Attorney

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

In the Matter of:

Cinmar, LLC

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) CPSC Docket No.: 14-C0002
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ORDER

Upon consideration of the Settlement Agreement entered into between Cinmar, LLC (Cinmar), and the U.S. Consumer Product Safety Commission (Commission), and the Commission having jurisdiction over the subject matter and over Cinmar, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED, that Cinmar shall comply with the terms of the Settlement Agreement and shall pay a civil penalty of \$3,100,000.00, within twenty (20) calendar days after receiving service of the Commission's final Order accepting the Settlement Agreement. Upon failure of Cinmar to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Cinmar at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b). If Cinmar fails to make such a payment or to comply in full with any other provision as set forth in the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the 5th day of June, 2014.

By Order Of Ohe Commission.

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

[FR Doc. 2014-13483 Filed 06/09/2014 at 8:45 am;
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