



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 15-C0004]

Office Depot, 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 Office Depot, Inc., containing a civil penalty of \$3,400,000, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.¹

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).

¹ Chairman Elliot F. Kaye and Commissioners Robert S. Adler and Marietta S. Robinson voted to provisionally accept the Settlement Agreement and Order. Commissioners Joseph P. Mohorovic and Ann Marie Buerkle voted to reject the Settlement Agreement and Order. Commissioner Mohorovic submitted a statement regarding the matter. The statement will be available from the Office of the Secretariat and the CPSC website, www.cpsc.gov.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 15-C0004 Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Sean R. Ward, Trial Attorney, Office of the General Counsel, Division of Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7602.

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

Dated: May 28, 2015.

Todd A. Stevenson,
Secretary.

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

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In the Matter of:)	
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Office Depot, Inc.)	CPSC Docket No.: 15-C0004
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SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (“CPSA”) and 16 CFR 1118.20, Office Depot, Inc. (“Office Depot” or “Firm”), and the United States Consumer Product Safety Commission (“Commission”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement, and the incorporated attached 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, 15 U.S.C. 2051–2089. 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. Office Depot is a corporation, organized and existing under the laws of the state of Delaware, with its principal place of business in Boca Raton, Florida.

STAFF CHARGES

Quantum Chair

4. Between May 2006 and August 2009, Office Depot sold in the United States approximately 150,000 Quantum Realspace PRO™ 9000 Series Mid-Back Multifunction Mesh Chairs and Quantum Realspace PRO™ 9000 Series Mid-Back Multifunction Mesh Chairs with Headrest (“Quantum Chair”).

5. The Quantum Chair is a “consumer product” “distributed in commerce,” as those terms are defined or used in sections 3(a)(5), (8) of the CPSA, 15 U.S.C. 2052(a)(5), (8). Office Depot was a “retailer” of the Quantum Chair, as such term is defined in section 3(a)(13) of the CPSA, 15 U.S.C. 2052(a)(13).

6. The Quantum Chair is defective and creates an unreasonable risk of serious injury because the bolts attaching the seatback on the Quantum Chair can loosen and detach, posing a fall and injury hazard to consumers.

7. Office Depot first received notice of a Quantum Chair failure in 2007 when a consumer reported to Office Depot that the seatback loosened or detached on the Quantum Chair, causing the consumer to sustain injuries.

8. In 2008, Office Depot became aware that, in an effort to eliminate seatback detachment, the manufacturer of the Quantum Chair made two design changes to the Quantum Chair and a change to the accompanying instructions.

9. In 2008 and 2009, Office Depot received 13 additional reports of injury, some requiring medical attention, and 33 total reports of the seatback detaching.

10. Despite having information regarding the defect in and risk of injury relating to the Quantum Chair, Office Depot did not notify the Commission immediately of such defect or risk, as required by section 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). Office Depot never notified the Commission about the Quantum Chair as required by the CPSA.

Gibson Chair

11. Between 2003 and 2012, Office Depot imported into the United States and sold approximately 1.4 million Gibson Leather Task Chairs (“Gibson Chair”).

12. The Gibson Chair is a “consumer product” “distributed in commerce,” as those terms are defined or used in sections 3(a)(5), (8) of the CPSA, 15 U.S.C. 2052(a)(5), (8). Office Depot was a “manufacturer” of the Gibson Chair, as such term is defined in section 3(a)(11) of the CPSA, 15 U.S.C. 2052(a)(11). Office Depot also was a “retailer” of the Gibson Chair, as such term is defined in section 3(a)(13) of the CPSA, 15 U.S.C. 2052(a)(13).

13. The Gibson Chair is defective and creates an unreasonable risk of serious injury because the mounting weld can break and separate the seat from the base of the Gibson Chair, posing a fall hazard to consumers.

14. Office Depot first received notice of a Gibson Chair failure in 2005, when one consumer reported to Office Depot that the seat broke and separated from the base of the Gibson Chair, causing the consumer to sustain injuries.

15. Office Depot continued to receive reports of injuries and incidents involving breakage of the Gibson Chair mounting plate weld and the resulting separation of the seat from the base of the Gibson Chair, with some injuries requiring medical attention. Office Depot settled the claims of several consumers who reported injuries resulting from the Gibson Chair’s failure.

16. In all, Office Depot received 25 reports of injuries and 153 incident reports from consumers of the seat breaking and separating from the base of the Gibson Chair.

17. Despite having information regarding the defect in and risk of injury relating to the Gibson Chair, Office Depot did not notify the Commission immediately of such defect or risk, as required by section 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). Office Depot failed to notify the Commission about the Gibson Chair until December 14, 2012, after receiving staff's letter requesting a Full Report. Office Depot recalled the Gibson Chair on May 22, 2014.

Failure to Report

18. In failing to inform the Commission immediately about the Quantum Chair and the Gibson Chair (together, "Subject Products"), Office Depot 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).

19. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Office Depot is subject to civil penalties for its knowing failure to report, as required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

RESPONSE OF OFFICE DEPOT

20. This Agreement does not constitute an admission by Office Depot that the law has been violated. Office Depot neither admits nor denies the staff's charges set forth above, including but not limited to the contention that the Subject Products "contain[] a defect which could create a substantial product hazard . . . or create[] an unreasonable risk of serious injury or death," 15 U.S.C. 2064(b); that Office Depot did not notify the Commission in a timely manner,

in accordance with 15 U.S.C. 2064(b); and that there was any allegedly “knowing” violation of the CPSA as that term is defined in 15 U.S.C. 2069(d).

21. The Quantum recall notice states that Office Depot received 14 reports of injuries in connection with about 150,000 Quantum chairs sold. There were fewer reports of consumers seeking medical treatment in connection with any reported injuries. The Gibson recall notice states that Office Depot received 25 reports of injuries in connection with about 1.4 million Gibson chairs sold. There were fewer reports of consumers seeking medical treatment in connection with any reported injuries. Office Depot investigated the reports, including by contacting the manufacturers of the Subject Products and the consumers making the reports.

22. The Subject Products passed multiple safety tests administered by independent third party testing organizations.

23. Following discussions with Office Depot, the manufacturer of the Quantum Chair reported the Quantum Chair to the CPSC in April 2009. Therefore, Office Depot did not make its own report.

24. At all relevant times, Office Depot has had a product safety compliance program, including dedicated product safety personnel and appropriate product safety testing.

25. As a retailer, Office Depot sells thousands of products and relies on product testing, conducted pursuant to voluntary industry standards, in order to protect its consumers. Office Depot reviews and reacts to consumer complaints and parts requests associated with office chairs.

26. Office Depot enters into this Agreement to settle this matter without the delay and expense of litigation. Office Depot enters into this Agreement and agrees to pay the amount referenced below in compromise of staff’s charges.

AGREEMENT OF THE PARTIES

27. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products described herein and over Office Depot.

28. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Office Depot or a determination by the Commission that Office Depot violated the CPSA's reporting requirements.

29. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Office Depot shall pay a civil penalty in the amount of three million, four hundred thousand dollars (\$3,400,000) ("Settlement Payment") within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. The payment shall be made by electronic wire transfer to the Commission via: <http://www.pay.gov>.

30. After staff receives this Agreement executed on behalf of Office Depot, 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 the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 CFR 1118.20(f).

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

32. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Office Depot, and (ii) and the date of issuance of the final Order, for good and valuable consideration, Office Depot 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 this Agreement: (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 of whether Office Depot 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.

33. Office Depot has and shall maintain a compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed, or sold by Office Depot. Office Depot's compliance program shall contain the following elements: (i) written standards and policies, including those designed to convey effectively to personnel responsible for CPSA compliance information (whether in the form of complaints, parts requests, incident reports, or otherwise) that may relate to or impact CPSA compliance; (ii) 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; (iii) effective communication of company compliance-related policies and

procedures regarding the CPSA to the appropriate employees through training programs or otherwise; (iv) Office Depot senior management responsibility for, and general board oversight of, CPSA compliance; and (v) retention of all CPSA compliance-related records for at least five (5) years, and reasonable availability of such records, insofar as they are not protected by attorney-client, work product, or other privilege, to staff upon reasonable request.

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

35. Upon reasonable request of staff, Office Depot shall provide written documentation of its internal controls and procedures, including, but not limited to, the effective dates of the procedures and improvements thereto. Office Depot shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and personnel deemed necessary by staff to evaluate Office Depot's compliance with the terms of the Agreement.

36. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

37. Office Depot 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 Office Depot, enforceable against Office Depot in accordance with its terms. Office Depot will not directly or indirectly receive any reimbursement, indemnification, insurance-related payment, or other payment in connection with the civil penalty to be paid by Office Depot pursuant to the Agreement and Order. The individuals signing the Agreement on behalf of Office Depot represent and warrant that they are duly authorized by Office Depot to execute the Agreement.

38. The signatories represent that they are authorized to execute this Agreement.

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

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

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

42. 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 shall not, therefore, be construed against any party for that reason in any subsequent dispute.

43. The Agreement may 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.

44. 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 Office Depot agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

(continued on next page)

OFFICE DEPOT, INC.

Dated: May 11, 2015

By: _____
Heather Stern
Vice President, Associate General Counsel
Office Depot, Inc.
6600 North Military Trail
Boca Raton, FL 33496

Dated: May 11, 2015

By: _____
Daniel F. Katz
Luba Shur
Counsel to Office Depot, Inc.
Williams & Connolly LLP
725 Twelfth Street, NW
Washington, DC 20005

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Stephanie Tsacoumis
General Counsel

Mary T. Boyle
Deputy General Counsel

Mary B. Murphy
Assistant General Counsel

Dated: May 11, 2015

By: _____
Sean R. Ward
Trial Attorney
Division of Compliance
Office of the General Counsel

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

In the Matter of:)	
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Office Depot, Inc.)	CPSC Docket No.: 15-C0004
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ORDER

Upon consideration of the Settlement Agreement entered into between Office Depot, Inc. (“Office Depot”), and the U.S. Consumer Product Safety Commission (“Commission”), and the Commission having jurisdiction over the subject matter and over Office Depot, 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 Office Depot shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of three million, four hundred thousand dollars (\$3,400,000) within thirty (30) days after service of the Commission’s final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: <http://www.pay.gov>. Upon the failure of Office Depot to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Office Depot at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b). If Office Depot fails to make such payment or to comply in full with any other provision of the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

(continued on next page)

Provisionally accepted and provisional Order issued on the 28th day of May, 2015.

BY ORDER OF THE COMMISSION:

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

6355-01-M

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Publication Date: 6/3/2015]