



6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 17-C0003]

The Middleby Corporation and Viking Range LLC, 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 the Consumer Product Safety Commission's regulations. Published below is a provisionally-accepted Settlement Agreement with The Middleby Corporation and Viking Range LLC, containing a civil penalty in the amount of four million, six hundred and fifty thousand dollars (\$4,650,000), within thirty (30) 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 15 CALENDAR DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 17-C0003, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Leah Wade, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7225.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.¹

Dated: April 11, 2017.

Todd A. Stevenson,

Secretary.

¹ The Commission voted (4-1) to provisionally accept the Settlement Agreement and Order regarding The Middleby Corporation and Viking Range, LLC. Commissioner Kaye, Commissioner Adler, Commissioner Robinson and Commissioner Mohorovic voted to provisionally accept the Settlement Agreement and Order. Acting Chairman Buerkle voted to take other action as follows: Provisionally accept the attached Settlement Agreement and Order with an amendment so as to reduce the penalty amount to \$2.0 million.

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

_____)	
In the Matter of:)	
)	
THE MIDDLEBY CORPORATION)	
and)	CPSC Docket No.: 17-C0003
VIKING RANGE, LLC)	
)	
)	

SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (“CPSA”) and 16 C.F.R. § 1118.20, The Middleby Corporation and Viking Range, LLC, 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 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Viking Range, LLC is a company, organized and existing under the laws of the state of Delaware, with its principal place of business in Greenwood, MS.

4. Viking Range, LLC is a wholly owned subsidiary of The Middleby Corporation, a corporation, organized and existing under the laws of the state of Delaware, with its principal place of business in Elgin, IL. The Middleby Corporation acquired Viking from its former shareholders on December 31, 2012. With respect to all conduct occurring after December 31, 2012, as well as all ongoing commitments, the term “Viking” used herein refers both to The Middleby Corporation and Viking Range, LLC.

STAFF CHARGES

5. Between July 2007 and July 2014, Viking manufactured and offered for sale in the United States approximately 52,000 freestanding 30”, 36”, 48” and 60” Gas Ranges under the model families VGIC, VGCC, VGSC (“Ranges”).

6. The Ranges are a “consumer product,” “distribut[ed] in commerce,” as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. § 2052(a)(5) and (8). Viking is a “manufacturer” of the Ranges, as such term is defined in section 3(a)(11) of the CPSA, 15 U.S.C. § 2052(a)(11).

7. The Ranges contain a defect which could create a substantial product hazard and create an unreasonable risk of serious injury because the Ranges can turn on spontaneously and

cannot be turned off using the control knobs, resulting in extreme surface temperatures that pose a burn hazard to consumers.

8. Between June 2008 and July 2014, Viking received 170 incident reports of Ranges turning on spontaneously, including reports from two consumers who were unable to turn off one of the Ranges using the controls and were then burned while attempting to disconnect the power source. Viking also received five reports that the Ranges had spontaneously turned on and caused property damage to the surrounding areas, such as the backsplash. Several consumers called 911 for assistance when they discovered that the Ranges had spontaneously turned on and could not be turned off or disconnected.

9. After receiving a number of reports related to the Ranges, Viking collected and tested Ranges, and developed a repair for the Ranges. Viking also issued numerous engineering change orders and technical bulletins identifying the defect and providing instructions on how to conduct the repair.

10. Despite having information reasonably supporting the conclusion that the Ranges contained a defect which could create a substantial product hazard and created an unreasonable risk of serious injury or death, Viking did not notify 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), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4). Instead, Viking waited until July 2, 2014 to file a Full Report with the Commission under 15 U.S.C. § 2064(b).

11. Viking and the Commission jointly announced a recall of the Ranges on May 21, 2015.

12. Because the information in Viking's possession constituted actual and presumed knowledge, Viking 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, Viking is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

RESPONSE OF VIKING

14. Viking's settlement of this matter does not constitute an admission of staff's charges set forth in paragraphs 5 through 13 above.

15. In July 2014, Viking notified the Commission pursuant to section 15(b) of the CPSA, 15 U.S.C. § 2064(b), concerning Viking's receipt of complaints and incident reports that the Ranges could self-start with the knobs in the off position if a significant amount of liquid from boil-overs, spills, or cleaning leaked inside the Ranges and pooled near the Ranges' electronic thermostats.

16. In May 2015, in conjunction with the CPSC, Viking voluntarily announced a recall of all models of the Ranges that contained the design defect, regardless of whether Viking had received any complaints or incident reports related to those models.

17. Viking recognizes that product safety is fundamental to sound and ethical business practice, to the integrity of the Viking brand, and to Viking's responsibility as a producer of quality consumer goods. Since The Middleby Corporation's acquisition of Viking Range, LLC, Viking has significantly increased its focus on consumer safety, including by implementing a robust Product Safety Compliance Program developed and overseen by The Middleby Corporation to establish, control and verify safe product design and prompt reporting of product safety defects to regulatory authorities.

AGREEMENT OF THE PARTIES

18. Under the CPSA, the Commission has jurisdiction over the matter involving the Ranges and over the parties.

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

20. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Viking shall pay a civil penalty in the amount of four million, six hundred and fifty thousand dollars (\$4,650,000) within thirty (30) 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>, for allocation to, and credit against, the payment obligations of Viking under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

21. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Viking to the United States; and interest shall accrue and be paid by Viking at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b), from the date of Default, until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). Viking shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance; and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such

matters for private collection; and Viking agrees not to contest, and hereby waives and discharges, any defenses to any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Viking shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

22. After staff receives this Agreement executed on behalf of Viking, 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 C.F.R. § 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 C.F.R. § 1118.20(f).

23. 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 C.F.R. § 1118.20(h). Upon the later of: (i) Commission's final acceptance of this Agreement and service of the accepted Agreement upon Viking, 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.

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

25. Viking shall maintain a compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by Viking, and which shall contain the following elements: (i) written standards, policies and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance (including information obtained by quality control personnel) is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury is referenced; (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 all applicable employees through training programs or otherwise; (iv) Viking's senior management responsibility for, and general board oversight of, CPSA compliance; (v) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to staff upon request; and (vi) a written standard, policy or procedure designed to ensure that the Firm shall seek to include a provision in any private protective order or settlement that specifically allows for disclosure of relevant consumer product safety information to the Commission and other applicable authorities.

26. Viking 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 Viking: (i) information required to be disclosed by Viking 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 Viking'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, Viking's ability to record, process and report to the Commission in accordance with applicable law.

27. Upon reasonable request of staff, Viking shall provide written documentation of its internal controls and procedures, including, but not limited to, the effective dates of the procedures and improvements thereto. Viking 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 Viking's compliance with the terms of the Agreement.

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

29. Viking 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 Viking, enforceable against Viking in accordance with its terms. Viking will not directly or indirectly receive any reimbursement, indemnification, insurance-related payment, or other payment for the civil penalty to be paid pursuant to the Agreement and Order, except as ordered in *Middleby Marshall Inc. v. Carl.*, No. N15C-10-249 (Del. Super. Ct.), or as memorialized in a written settlement agreement signed by the parties to that case. The individuals signing the Agreement on behalf of Viking represent and warrant that they are duly authorized by Viking to execute the Agreement.

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

31. The Agreement is governed by the laws of the United States.
32. The Agreement and the Order shall apply to, and be binding upon, Viking and each of its successors, transferees, and assigns; and a violation of the Agreement or Order may subject Viking, and each of its successors, transferees, and assigns, to appropriate legal action.
33. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.
34. 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.
35. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.
36. 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 Viking agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

(continued on next page)

THE MIDDLEBY CORPORATION and VIKING RANGE,
LLC

Dated: March 29, 2017

By: _____

The Middleby Corporation and Viking Range, LLC

Dated: March 29, 2017

By: _____

Counsel to The Middleby Corporation
and Viking Range, LLC

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Mary T. Boyle

General Counsel

Mary B. Murphy

Assistant General Counsel

Dated: March 29, 2017

By: _____

Leah Wade

Trial Attorney

Division of Compliance

Office of the General Counsel

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

_____)
In the Matter of:)
)
THE MIDDLEBY CORPORATION)
and)
VIKING RANGE, LLC)
)
)
_____)

CPSC Docket No.: 17-C0003

ORDER

Upon consideration of the Settlement Agreement entered into between The Middleby Corporation and Viking Range, LLC (collectively “Viking”), and the U.S. Consumer Product Safety Commission (“Commission”), and the Commission having jurisdiction over the subject matter and over the parties, 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 Viking shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of four million, six hundred and fifty thousand dollars (\$4,650,000), 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 Viking to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Viking at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Viking 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.

Provisionally accepted and provisional Order issued on the 11th day of April, 2017.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary

U.S. Consumer Product Safety Commission

[FR Doc. 2017-07557 Filed: 4/13/2017 8:45 am; Publication Date: 4/14/2017]