



CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 17-C0005]

Home Depot U.S.A., 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 the Consumer Product Safety Commission's regulations. Published below is a provisionally-accepted Settlement Agreement with Home Depot U.S.A., Inc. containing a civil penalty in the amount of five million, seven hundred thousand dollars (\$5,700,000), 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-C0005, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Noah AnStraus, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East

West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-6963.

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

Dated: August 24, 2017.

Todd A. Stevenson,

Secretary.

¹ The Commission voted (4-1) to provisionally accept the Settlement Agreement and Order regarding Home Depot U.S.A., Inc. Commissioner Adler, Commissioner Robinson, Commissioner Kaye 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 Settlement Agreement and Order with an amendment so as to reduce the penalty amount to \$1.0 million.

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

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In the Matter of:)	
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Home Depot U.S.A., Inc.)	CPSC Docket No.: 17-C0005
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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, Home Depot U.S.A., Inc., and its subsidiaries (collectively, “Home Depot” or “the 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. 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. Home Depot is a corporation, organized and existing under the laws of the state of Delaware, with its principal place of business in Atlanta, GA.

STAFF CHARGES

4. Between August 2012 and November 2016, Home Depot knowingly sold, offered for sale, and distributed in commerce recalled consumer products in violation of Section 19(a)(2)(B) of the CPSA, 15 U.S.C. § 2068(a)(2)(B). Over the course of 4 years, Home Depot sold, offered for sale, and distributed in commerce products from 33 separate voluntary corrective actions (“Recalls”) announced by the Commission, totaling approximately 2,816 units of recalled products (the “Recalled Products”).

5. The Recalls and the Recalled Products are:

- HeathCo Motion-Activated Outdoor Lights, recalled on October 30, 2013;
- Soleil Portable Heaters, recalled on July 25, 2013;
- Kidde Smoke/Co Alarms, recalled on September 11, 2014;
- CE Tech Riser Cable, recalled on April 9, 2013;
- Lithonia Quantum® ELM and ELM2 Two-Light Emergency Light Fixtures, recalled on May 28, 2014;
- HDX/Powermate Two-Gallon Air Compressor, recalled on February 12, 2014;
- Gree Dehumidifiers, recalled on September 12, 2013, expanded in January 2014, and reannounced in May 2014;
- RSI Bathroom Medicine Cabinets, recalled on January 16, 2014;
- Homelite Blower Vacuum, recalled on April 16, 2015;
- Husky Vertical Bike Hook, recalled on April 15, 2015;
- Westinghouse Lighting Glass Shade Holder recalled on March 12, 2015;
- Mohawk Home Rugs, recalled on November 19, 2014;
- Vornado Air Electric Space Heaters, recalled on August 14, 2014;
- Fiskar Bypass Lopper, recalled on October 8, 2014;
- Harris Products Group Welding Torch, recalled on July 31, 2014;
- Legrand Under Cabinet Power and Light Strip, recalled on September 6, 2012, and expanded on May 15, 2014;
- Lota Touchless Single-Handle, Pull-Down Sprayer Faucet, recalled on September 10, 2015;
- Kidde Fire Extinguisher, recalled on February 12, 2015;
- Cordelia Shop Light, recalled on May 22, 2014;
- LG Electronics Electric Range, recalled on November 8, 2012;
- Genie Garage Door Opener, recalled on February 25, 2014;
- Honda Mini Tillers, recalled on May 25, 2016;
- Nourison Rugs, recalled on May 23, 2013;
- Wing Enterprises Stepladder, recalled on December 11, 2012;
- Gerber Cohort Folding Knife, recalled on May 26, 2015;

- Nest Labs Smoke/CO Alarms. recalled on May 21, 2014;
- LG Electronics, Inc., Top Loading Washer, recalled on December 18, 2012;
- HeathCo Motion Activated Outdoor Lights, recalled on July 26, 2012;
- Phillips Lighting Halogen Flood Lights, recalled on September 10, 2015;
- Bosch Slim Grinder, recalled on May 11, 2016;
- Technical Consumer Products LED Down Light Fixture, recalled on September 8, 2015;
- Pramac America LLC Powermate Portable Generator, recalled on November 13, 2012; and
- Dyson Bladeless Portable Heater, recalled on April 1, 2014.

6. The hazards posed by the Recalled Products include, but are not limited to, fire hazards, laceration hazards, and electrocution and shock hazards.

7. The Recalled Products were subject to voluntary corrective action taken by the manufacturers in consultation with the Commission of which action the Commission notified the public. Each Recall listed above in paragraph 5 was publicized by the manufacturer and by the Commission.

8. The Recalled Products are “consumer products,” and, at all relevant times, Home Depot was a “retailer” of these consumer products, which were “distributed in commerce,” as those terms are defined or used in sections 3(a)(5), (8), and (13) of the CPSA, 15 U.S.C. §§ 2052(a)(5), (8) and (13).

9. Under CPSA section 19(a)(2)(B), it is unlawful for any person to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States, any consumer product that is subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public, or if the seller, distributor, or manufacturer knew, or should have known, of such voluntary corrective action.

10. Pursuant to section 20(a)(1) of the CPSA, 15 U.S.C. § 2069(a)(1), any person who "knowingly" violates CPSA section 19 is subject to civil penalties. Under section 20(d) of the

CPSA, 15 U.S.C. § 2069(d), the term “knowingly” means: “(1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.”

11. Home Depot sold and distributed Recalled Products because Home Depot’s procedures failed to accurately identify, quarantine, and prevent the sale, offer for sale, and distribution of the Recalled Products. Home Depot sold and distributed Recalled Products through the Firm’s traditional register lanes, Special Services Desks, sales for salvage from its reverse logistic centers, Internet sales, and donations through the Framing Hope program.

12. On May 29, 2015, Home Depot notified Commission staff that Home Depot had sold or transferred to its reverse logistics centers for potential sale approximately 595 units of seven different Recalled Products. Staff conducted an investigation and, based on information provided by Home Depot, the Commission and Home Depot issued a joint press release on November 18, 2015, announcing that Home Depot had sold approximately 2,310 units of 28 different Recalled Products between 2012 and November 2015.

13. After the press release announcing Home Depot’s sale of the Recalled Products, Home Depot sold or distributed approximately 40 units of Recalled Products over the course of an additional year, with the last reported sale occurring in November 2016. Home Depot had also sold or distributed additional units of the Recalled Products that were listed in the November 2015 press release, as well as units of other Recalled Products that were either: (i) recalled after the November 2015 press release, or (ii) had not been discovered by the time the November 2015 press release was issued. In total, staff’s investigation revealed that Home Depot sold or distributed at least 2,816 units of 33 different Recalled Products.

14. Home Depot knew and/or should have known of the sales of Recalled Products.

15. Home Depot's sale and distribution of the Recalled Products was "knowing," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

16. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Home Depot is subject to civil penalties for its knowing sale and distribution of the Recalled Products, in violation of section 19(a)(2)(B) of the CPSA, 15 U.S.C. § 2068(a)(2)(B).

RESPONSE OF HOME DEPOT

17. Home Depot's settlement of this matter does not constitute an admission of staff's charges as set forth in paragraphs 4 to 16 above.

18. Home Depot prohibits the sale of recalled products and took reasonable measures to prevent recalled products from being sold or distributed for use by consumers through "stop sale" procedures and other internal controls.

19. Home Depot identified the post-recall sale and distribution of certain products through an internal review of its stop sale procedures. Home Depot voluntarily notified the Commission, and Home Depot then worked cooperatively with Commission staff to expand the scope of the review and address the identified issues.

20. Home Depot has enhanced its processes and systems to further reduce the risk of selling or distributing recalled products.

21. Home Depot enters into this Agreement to settle this matter without the delay and avoid the unnecessary expense of litigation.

AGREEMENT OF THE PARTIES

22. Under the CPSA, the Commission has jurisdiction over the matter involving the Recalled Products described in this Agreement and over Home Depot.

23. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Home Depot, or a determination by the Commission, that Home Depot knowingly violated the CPSA.

24. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Home Depot shall pay a civil penalty in the amount of \$5.7 million (five million, seven hundred thousand) 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: <https://www.pay.gov> for allocation to, and credit against, the payment obligations of Home Depot under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

25. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Home Depot to the United States, and interest shall accrue and be paid by Home Depot 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"). Home Depot 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 Home Depot 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. Home Depot shall pay

the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

26. After staff receives this Agreement executed on behalf of Home 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 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).

27. 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 Home 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.

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

29. Home Depot represents and agrees that it has and will maintain a compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by the Firm. The compliance program shall contain the following elements: written standards, policies, and procedures designed to ensure compliance with CPSA statutes and regulations; procedures to ensure that relevant information is conveyed effectively to appropriate personnel responsible for CPSA compliance; mechanisms to communicate to all applicable Home Depot employees through training programs or otherwise, company policies and procedures to prevent violations of CPSA § 19; a program for the appropriate disposition of recalled goods; management oversight of that program, including 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; senior management responsibility for, and general board oversight of, CPSA compliance; retention of all CPSA compliance-related records for at least five (5) years; and availability of such records to staff upon reasonable request.

30. Home Depot represents and agrees that it has and will maintain and enforce a system of internal controls and procedures designed to ensure that, with respect to all consumer products manufactured, imported, distributed, or sold by Home Depot: information required to be disclosed by Home Depot to the Commission is recorded, processed, and reported in accordance with applicable law; all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law; and prompt disclosure is made to Home 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, Home Depot's ability to record, process, and report to the Commission in accordance with applicable law.

31. Upon reasonable request of staff, Home 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. Home 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 Home Depot's compliance with the terms of the Agreement.

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

33. Home 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 Home Depot, and each of its successors, transferees, and assigns, enforceable against Home Depot in accordance with the Agreement's terms. The individuals signing the Agreement on behalf of Home Depot represent and warrant that they are duly authorized by Home Depot to execute the Agreement.

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

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

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

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

38. 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.

39. 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.

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

Dated: August 10, 2017

HOME DEPOT U.S.A., INC.

By: _____

Dated: August 10, 2017

By: _____

Eric Rubel, Esq.
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave., NW
Washington, DC 20001-3743
Counsel for Home Depot

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Mary T. Boyle
General Counsel

Mary B. Murphy
Assistant General Counsel

Dated: August 10, 2017

By: _____
Noah AnStraus
Trial Attorney
Division of Compliance
Office of the General Counsel

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

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In the Matter of:)	
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)	CPSC Docket No.: 17-C0005
Home Depot U.S.A., Inc.)	
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ORDER

Upon consideration of the Settlement Agreement entered into between Home Depot U.S.A., Inc. (“Home Depot” and “the Firm”), and the U.S. Consumer Product Safety Commission (“Commission”), and the Commission having jurisdiction over the subject matter and over Home 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 Home Depot shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of \$5.7 million (five million, seven hundred thousand) 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: <https://www.pay.gov>. Upon the failure of Home Depot to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Home Depot at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Home 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.

Provisionally accepted and provisional Order issued on the 24th day of August, 2017.

BY ORDER OF THE COMMISSION:

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

[FR Doc. 2017-18251 Filed: 8/28/2017 8:45 am; Publication Date: 8/29/2017]