



6355-01-M

## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 19-C0002]

### **EKO Development, Ltd. and EKO USA, 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 EKO Development, Ltd. and EKO USA, LLC, containing a civil penalty in the amount of one million dollars (\$1,000,000), subject to the terms and conditions of the Settlement Agreement.<sup>1</sup>

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<sup>1</sup> The Commission voted 3-2 to provisionally accept the proposed Settlement Agreement and Order regarding EKO Development, Ltd. and EKO USA, LLC. Acting Chairman Buerkle, Commissioner Baiocco and Commissioner Feldman voted to provisionally accept the Settlement Agreement and Order. Commissioner Adler and Commissioner Kaye voted to take other action. Commissioner Adler and Commissioner Kaye submitted a joint dissenting opinion regarding the matter. The dissenting opinion is available on the CPSC website, [www.cpsc.gov](http://www.cpsc.gov).

**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 December 13, 2018.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to Comment 19-C0002, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

**FOR FURTHER INFORMATION CONTACT:** Michele Melnick, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7592.

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

Dated: November 23, 2018.

**Alberta E. Mills,**

*Secretary.*

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

_____	)	
In the Matter of:	)	
	)	
EKO DEVELOPMENT, LTD.	)	
	)	CPSC Docket No.: 19-C0002
and	)	
	)	
EKO USA, 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, EKO Development, Ltd. and EKO USA, LLC (collectively, “EKO”) 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. EKO Development, Ltd. (“EKO Development”) is a corporation, organized and existing under the laws of China, with its principal place of business in China. EKO USA, LLC (“EKO USA”) is a corporation, organized and existing under the laws of the state of Nevada, with its principal place of business in Stuart, Florida.

### STAFF CHARGES

4. Between November 2013 and May 2015, EKO manufactured approximately 367,000 EKO Sensible Eco Living Trash Cans (“Subject Products” or “Trash Cans”). The Trash Cans are 80 liter stainless steel, metal-cylinder Trash Cans with a black plastic protective collar in the opening on the back of the Trash Can.
5. The Trash Cans were sold exclusively at Costco Wholesale Corporation at its warehouse stores throughout the United States from December 2013 through May 2015.
6. The Trash Cans 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). EKO is a “manufacturer” as such term is defined in section 3(a)(11) of the CPSA, 15 U.S.C. § 2052(a)(11).
7. The Trash Cans contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury because the black plastic protective collar in the opening on the back of the Trash Can can detach from the sharp metal handle, posing a laceration hazard to consumers.
8. Beginning in April 2014, EKO received complaints from consumers who received laceration injuries, including some serious injuries as defined in 16 C.F.R. § 1115.6(c), from the sharp metal handle of the Trash Cans.
9. In August 2014, EKO approved a design change to the Trash Cans to add a two-piece plastic handle cover to address the laceration hazard. The design change was implemented on the Trash Cans that were produced in August 2014 and shipped to Costco in September 2014.

10. Despite having information that reasonably supported the conclusion that the Trash Cans contained a defect or created an unreasonable risk of serious injury or death, EKO 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).
11. EKO and the CPSC jointly announced a recall of 367,000 Trash Cans on July 17, 2015, because the Trash Cans posed a laceration risk to consumers.
12. In failing to immediately inform the Commission about the defect or unreasonable risk associated with the Trash Cans, EKO 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, EKO 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 EKO

14. EKO’s settlement of this matter does not constitute an admission of staff’s charges as set forth in paragraphs 4 through 13 above.
15. EKO Development, Ltd. is a small Chinese company based in Guangzhou, China. EKO was completely unaware of the CPSC reporting requirements. EKO relied upon its third party insurance administrator to handle the claims received from consumers and was never advised of the potential obligation to report under sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4). Upon learning about the claims from the sharp edge, EKO immediately re-designed the Trash Can so that all new products would have a two-piece black plastic collar, permanently covering the sharp edge. Upon learning of the potential obligation to report from its retailer customer in May 2015, EKO immediately hired legal counsel in the U.S., reported the issue and conducted a recall of the Trash Can.

## AGREEMENT OF THE PARTIES

16. Under the CPSA, the Commission has jurisdiction over the matter involving the Trash Cans and over EKO.
17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by EKO or a determination by the Commission that EKO violated the CPSA's reporting requirements.
18. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation, EKO shall pay a civil penalty in the amount of one million dollars (US \$1,000,000). EKO shall pay the one million dollar (US \$1,000,000) civil penalty in installments, with \$250,000 to be paid within thirty (30) calendar days after the Firm receives service of the Commission's final Order accepting the Agreement ("Final Acceptance"); \$250,000 to be paid ninety (90) days after Final Acceptance; \$250,000 to be paid one hundred eighty (180) days after Final Acceptance; and \$250,000 to be paid one (1) year after Final Acceptance. EKO shall also provide a written affirmation to CPSC's Office of the General Counsel within sixty (60) days after Final Acceptance declaring that EKO has implemented and will enforce a written comprehensive compliance program pursuant to paragraph 27, below.
19. EKO, through its Principal or Chief Executive Officer, shall notify CPSC's General Counsel in writing at least ten (10) calendar days after any reorganization, consolidation, merger, acquisition, dissolution, assignment, sale, transfer, or similar transaction or series of transactions resulting in a successor entity to EKO, the transfer or disposition of substantially all of the assets of EKO, or any other changes in corporate structure that may affect EKO's obligations arising out of this Agreement.

20. 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 EKO under this Agreement.

21. This Agreement has been compromised by the Commission pursuant to its statutory authority under Section 20(c), which requires the Commission to consider, among other things, the appropriateness of the penalty to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses. EKO represents and warrants that the financial statements of the Firm provided to the Commission and written representations in connection with the matters addressed in this Agreement are complete, accurate, and current, have been prepared on a consistent basis throughout the periods indicated and fairly present the financial condition and results of operations and cash flow of the Firm as of the dates, and for the periods, indicated therein. EKO shall notify the Commission in writing if any information supplied in connection with this Agreement is discovered to be inaccurate or untrue, and shall provide the Commission with documents or information that contain information that accurately conveys such financial information.

22. The parties agree that immediately upon the occurrence of an "Event of Default," the entire penalty amount (\$1,000,000), plus any accrued and unpaid interest, minus any payments by EKO, shall become due and payable, and the Commission may take further action as warranted without notice or further action by any party. An "Event of Default" means:

- a. a failure of the Firm to pay the \$1,000,000 (or any portion thereof) when due and payable, as set forth in paragraph 18 above;

- b. a breach of any representation or warranty of the Firm made in this Agreement or in connection with this Agreement as it pertains to the Firm's financial status;
- c. a failure by the Firm to observe or perform any of its obligations or agreements as set forth in the Agreement, including the agreement to implement and enforce a compliance program designed to ensure compliance with the CPSA, including section 19(a), as set forth in paragraph 27 below; or
- d. a failure by the Firm to comply with CPSA sections 15(b) and 19(a) for three years after the effective date of this Agreement.

23. All unpaid amounts, if any, due and owing under the Agreement shall constitute a debt due and immediately owing by EKO to the United States, and interest shall accrue and be paid by EKO 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"). EKO 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 EKO 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. EKO shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

24. After staff receives this Agreement executed on behalf of EKO, 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 16<sup>th</sup> calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

25. 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) the Commission's final acceptance of this Agreement and service of the accepted Agreement upon EKO, and (ii) the date of the issuance of the final Order, this Agreement shall be in full force and effect and shall be binding upon the parties.
26. Effective upon the later of: (i) the Commission's final acceptance of this Agreement and service of the accepted Agreement upon EKO, and (ii) the date of the issuance of the final Order, for good and valuable consideration, EKO 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 EKO 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.
27. EKO shall create, maintain and enforce a compliance program designed to ensure compliance with the CPSA, including section 19(a), of the CPSA with respect to any consumer product imported, manufactured, distributed or sold by EKO, 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) EKO's senior management participation in a compliance committee responsible for the review and oversight of compliance matters related to the CPSA; (v) retention of all CPSA compliance-related records, and availability of such records to staff upon request; and (vi) procedures designed to ensure that: information required to be disclosed by EKO to the Commission is recorded, processed and reported in accordance with applicable law; that all reporting made to the Commission is timely, truthful, complete, accurate and in accordance with applicable law; and that prompt disclosure is made to EKO'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, EKO's ability to record, process and report to the Commission in accordance with applicable law.

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

29. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and Order including disclosing the name of the Subject Products in this or other public announcements.
30. EKO 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 EKO, enforceable against EKO in accordance with its terms. EKO 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 EKO pursuant to the Agreement and Order.
31. The signatories represent that they are duly authorized to execute this Agreement.
32. The Agreement is governed by the law of the United States.
33. The Agreement and Order shall apply to, and be binding upon, EKO and each of its parents, successors, subsidiaries, divisions, agents, foreign or domestic corporate affiliates, transferees, and assigns, and a violation of the Agreement or Order may subject EKO, and each of its parents, successors, subsidiaries, divisions, agents, foreign or domestic corporate affiliates, transferees, and assigns, to appropriate legal action.
34. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein. 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 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 EKO agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

EKO DEVELOPMENT LTD.

Dated: October 31, 2018

By: \_\_\_\_\_  
James Chen  
Principal, EKO Development Ltd.  
Flat 1013-1015, R & F Profit Plaza, No. 76  
Guangzhou Avenue West, Guangzhou, China

EKO USA, LLC

Dated: October 31, 2018

By: \_\_\_\_\_  
James Chen  
Principal, EKO USA LLC  
2672 SE Willoughby Blvd.  
Stuart, Florida 34994

Dated: October 31, 2018

By: \_\_\_\_\_  
David H. Baker  
1701 Pennsylvania Avenue, N.W., Suite 200  
Washington, D.C. 20006  
Counsel to EKO Development Ltd.

U.S. CONSUMER PRODUCT SAFETY  
COMMISSION  
4330 East West Highway  
Bethesda, Maryland 20814

Patricia M. Hanz  
General Counsel

Mary B. Murphy  
Assistant General Counsel

Dated: November 1, 2018

By: \_\_\_\_\_  
Michele Melnick  
Trial Attorney  
Division of Compliance  
Office of the General Counsel

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

In the Matter of:	)	
	)	
EKO DEVELOPMENT, LTD.	)	
	)	CPSC Docket No.: 19-C0002
and	)	
	)	
EKO USA, LLC	)	
	)	
	)	
	)	

**ORDER**

Upon consideration of the Settlement Agreement entered into between EKO Development, Ltd. and EKO USA, LLC (collectively, “EKO”) and the U.S. Consumer Product Safety Commission (“Commission”), and the Commission having jurisdiction over the subject matter and over EKO, 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 EKO shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of one million dollars (\$1,000,000), subject to the terms and conditions of the Settlement Agreement. Upon the occurrence of an Event of Default, as defined in the Settlement Agreement, the entire penalty amount of \$1,000,000, plus any accrued and unpaid interest, minus any penalty amounts paid by EKO, shall immediately become due and payable and the Commission may take further action as warranted.

Provisionally accepted and provisional Order issued on the 20<sup>th</sup> day of November, 2018.

**BY ORDER OF THE COMMISSION:**

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Alberta Mills, Secretary  
U.S. Consumer Product Safety Commission

[FR Doc. 2018-25928 Filed: 11/27/2018 8:45 am; Publication Date: 11/28/2018]