

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

08-5501D

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff,

MATTEL, INC. and FISHER PRICE, INC.,
Defendants.

12/15/08 This Final
Judgment by Consent
shall issue -

[Signature]
Justice

FINAL JUDGMENT BY CONSENT

It appearing to the Court that Plaintiff, the Commonwealth of Massachusetts, by and through its Attorney General, Martha Coakley ("the Commonwealth"), and Defendants Mattel, Inc. ("Mattel") and Fisher Price, Inc. ("Fisher Price") (collectively the "Parties"), have resolved the matters in controversy between them and have consented to the terms of this Judgment, and good cause having been shown, the Court hereby enters this Final Judgment by Consent ("Consent Judgment.")

1.0 INTRODUCTION

1.1 On December 15, 2008, the Commonwealth filed a Complaint in the above-captioned matter alleging, inter alia, violations of the Commonwealth's Consumer Protection Act, G.L. c. 93A, by virtue of the alleged sale of toys by Mattel, portions of which may have contained lead paint in excess of Applicable Standards, i.e., the "Recalled Toys," defined below. Mattel disputes the allegations of the Complaint.

Notice
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12/15/08
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JUDGMENT ENTERED ON DOCKET Dec. 15 2008
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(a)
AND NOTICE SENT TO PARTIES PURSUANT TO THE PRO-
VISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

1.2 Following Mattel's announcement of voluntary recalls of the Recalled Toys, the Commonwealth, acting by and through its Attorney General, in cooperation with a number of other states and with the cooperation of Mattel, conducted an investigation into the events that led to Mattel's voluntary recalls and withdrawal from sale of the Recalled Toys, Mattel's conduct related to the Recalled Toys, its quality assurance testing and procedures, and Mattel's recall procedures. Mattel has a quality assurance system that is designed to identify and segregate Covered Products containing Impermissible Lead during and subsequent to the manufacturing process in order to prevent distributing, donating, offering for sale or selling Covered Products containing Impermissible Lead. The quality assurance system includes protocols designed to ensure that finished Covered Products do not contain Impermissible Lead. Mattel's quality assurance system also includes protocols designed to ensure that Surface Coatings and Substrates of Accessible parts of Covered Products do not contain Impermissible Lead. Mattel's quality assurance system has been and will be reviewed and revised periodically by Mattel to meet its changing needs and circumstances, including Mattel's quality and manufacturing goals.

1.3 The Parties agree to entry of the Consent Judgment pursuant to a settlement of the disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding prolonged and costly litigation, and to further the goal of enhancing toy safety in the public interest.

1.4 By agreeing to entry of the Consent Judgment, Mattel does not admit any fact, conclusion of law, or violation of law. Neither the Consent Judgment, nor Mattel's compliance with the Consent Judgment, shall be construed as an admission by Mattel of any fact, conclusion of law, issue of law or violation of law. Except as explicitly set forth herein, nothing in the Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other pending or future legal proceedings; nor shall anything in the Consent Judgment preclude the Commonwealth or Mattel from opposing any such defense, argument or claim.

2.0 DEFINITIONS

2.1 “Accessible” shall mean material that is or will become physically exposed to a child through normal and reasonably foreseeable use and abuse of a Children’s Product as determined pursuant to ASTM F 963-07, and as and only to the extent use and abuse is specified by ASTM F 963-07. Any material that is not or does not become physically exposed to a child through normal and reasonably foreseeable use and abuse of a children’s product, as use and abuse is specified by ASTM F 963-07, solely by reason of paint, electroplating, or other surface coating, shall be deemed “Accessible.” The Parties further agree that, in the event that the Consumer Product Safety Commission (“CPSC”) by final rule, exclusion, or exception pursuant to Section 101(b) of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”) exempts any product, component or material, such rule, exclusion or exception shall apply for purposes of the Consent Judgment. The Parties also agree that in the event the CPSC by final rule determines that the Federal Lead Standards apply to any material that is not “Accessible” under the definition in the preceding sentences, then such material shall also be deemed “Accessible” under the Consent Judgment. The foregoing definition of “Accessible” was adopted solely for purposes of the Consent Judgment. It shall not affect the ability of the Attorney General to argue in any other context that materials that are not “Accessible” under the Consent Judgment nonetheless are or ought to be subject to the Federal Lead Standards or to lead standards prescribed by any law of the Commonwealth. This Consent Judgment shall not apply to electronic components and accessories that are not “small objects” as described in ASTM F 963-07 § 4.6.1, but the Commonwealth retains all other state and federal law enforcement authority.

2.2 “ASTM” shall mean American Society for Testing and Materials which issues Consumer Safety Specifications for Toy Safety. ASTM F 963-07 is entitled “Standard Consumer Safety Specification for Toy Safety.”

2.3 “Attorney General” shall mean the Attorney General of the Commonwealth of Massachusetts.

2.4 “Children’s Products” shall have the meaning those terms are given in Section 3(a) of the Consumer Product Safety Act (“CPSA”), 15 U.S.C. § 2052(a), as amended by Section 235 of the CPSIA.

2.2 “Covered Product” shall mean a finished Children’s Product that is manufactured by Mattel or for Mattel by a Vendor on or after the Effective Date and is sold or offered for sale to consumers in the Commonwealth, including parts and components provided by Suppliers and Subcontractors that are packaged and sold by Mattel with or as part of any such Covered Product.

2.3 “Effective Date” shall mean November 30, 2008.

2.4 “Federal Lead Standards” shall mean any standards set by statute, or promulgated in a final rulemaking, before or after the Effective Date, under the CPSIA or by the CPSC relating to the maximum permissible levels of lead in Substrates and Surface Coatings, including the products or components to which the standards apply and any exemptions from the application of those standards.

2.5 “Government Disclosure Restrictions” shall mean all U.S. federal and foreign government laws, regulations or requirements existing before or after the Effective Date, including but not limited to CPSC reporting, disclosure and publication obligations, instructions or practices, that prohibit or restrict the publication or disclosure or the timing of the publication or disclosure of information by Mattel. Nothing in the Consent Judgment shall be construed as preventing Mattel from arguing that the company is prohibited from disclosing information, and nothing in the Consent Judgment shall be construed to restrict any power of the Commonwealth or Mattel to seek, through court or administrative process, any information from the other Party, subject to whatever defenses that other Party may otherwise have.

2.6 “Impermissible Lead” shall mean lead in excess of the Lead Standards.

2.7 “Lead Standards” shall mean the standards contained in subsection 3.1 of the Consent Judgment that set the maximum permissible levels of lead in Substrates and Surface Coatings used on or in an Accessible part of a finished Covered Product.

2.8 “Mattel” shall mean Mattel, Inc., and Fisher Price, Inc., and all of their United States and foreign subsidiaries, predecessors, successors, parents, and assigns that manufacture, distribute, market, offer for sale, and/or sell Covered Products.

2.9 “Participating States” shall mean Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Florida, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming

2.10 “Participating Attorney(s) General” shall mean: the Attorney General or his or her designee, of the Commonwealth or State of Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Florida, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.¹

2.11 “Parties” shall mean Mattel and the Attorney General of the Commonwealth.

2.12 “Recalled Toys” shall mean those products made by or for Mattel that Mattel withdrew from sale or recalled in the United States due to the potential presence of lead, on or

¹ Hawaii is being represented on this matter by its Office of Consumer Protection, an agency which is not part of the state Attorney General’s Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii. For simplicity, the entire group will be referred to as the “Participating Attorneys General” and such designation, as it pertains to Hawaii, refers to the Executive Director of the State of Hawaii Office of Consumer Protection.

after August 1, 2007, and prior to the Effective Date, as specifically identified in the attached Exhibit 1.

2.13 “Subcontractor” shall mean a third party, other than a Supplier or Vendor, that manufactures components or parts that are unique to Mattel products for a Vendor or Mattel.

2.14 “Substrates” shall mean any Accessible materials used in finished Covered Products that are not Surface Coatings.

2.15 “Supplier” shall mean a third party that provides bulk, generic and/or commodity materials and components not uniquely used by Mattel in the manufacture of its toys (including but not limited to plugs, cords, bolts, screws, or other parts commonly used by manufacturers of toys).

2.16 “Surface Coatings” shall mean those Accessible paints and other similar surface coating materials used on finished Covered Products as defined and limited by 16 C.F.R. § 1303.2(b)(1).

2.17 “Vendor” shall mean a third party that manufactures for Mattel finished Covered Products sold at wholesale by Mattel.

3.0 COMPLIANCE PROVISION / PERMANENT INJUNCTIONS

3.1 COMPLIANCE WITH LEAD STANDARDS: COVERED PRODUCTS

Mattel shall not manufacture, distribute, donate, offer for sale or sell Covered Products with a concentration of lead in or on Accessible parts in excess of the following standards.

3.1.1 For each Accessible Surface Coating on a finished Covered Product, 90 parts per million (ppm) total lead for finished Covered Products manufactured after the Effective Date.

3.1.2 For each Accessible Substrate in or on a finished product:

3.1.2.1 300 ppm total lead for finished Covered Products manufactured after the Effective Date but before August 14, 2011; and

3.1.2.2 100 ppm total lead for finished Covered Products manufactured on or after August 14, 2011, unless the CPSC determines that a standard of 100 ppm total lead for finished Covered Products is not technologically feasible, in which case Mattel shall be obligated to comply with the standard established by the CPSC.

3.1.3 Nothing in the Consent Judgment shall prevent the Commonwealth from enforcing more stringent applicable lead standards in state or federal law.

3.2 RECORD KEEPING

With respect to any Mattel finished Covered Product, Mattel shall keep or shall contractually require each of its Vendors to keep for at least four (4) years from the time the record was created: (a) records that identify each Subcontractor that manufactures parts or components with Accessible Surface Coatings or Substrates used on or in finished Covered Products; and (b) records of the protocols used and the results obtained from screening and testing performed.

3.3 REPORTING VIOLATIONS OF LEAD STANDARDS

If Mattel has reason to believe that it may have distributed, sold or otherwise introduced into the stream of commerce in or into the Commonwealth a Covered Product that contains Impermissible Lead, then Mattel shall immediately investigate, and upon confirmation, which shall take place as soon as reasonably possible, shall notify the Attorney General promptly, but in no event more than three (3) business days after Mattel's confirmation that the Covered Product contains Impermissible Lead. At that time, or as soon thereafter as practicable, Mattel shall supplement the initial notification with any test results and information it has about the source of the Covered Product, including the names and contact information of each facility owned by Mattel, a Vendor, Supplier, or Subcontractor, where the Covered Product or its parts were manufactured, decorated or assembled. The timing and content of any disclosures of information required under this section shall be subject to any Government Disclosure Restrictions.

3.4 RECALLS

3.4.1 Mattel shall provide to the Participating Attorneys General (or their designee) the information it provides in any written reports to the CPSC concerning any recall of Covered Products because of lead content, as soon as possible, once any such recall is approved and announced by the CPSC, as permitted by and consistent with Government Disclosure Restrictions, and any and all follow-up reports, including information contained in its progress reports on the efficacy of product recalls, subject to confidentiality as permitted by law.

3.4.2 Mattel shall provide direct notice of a recall because of lead content involving Covered Products to all consumers of the affected Covered Product for whom Mattel possesses address or e-mail information. The notice shall include, at a minimum, information that is equivalent to the information in the recall notice approved by the CPSC.

3.4.3 Upon request, Mattel shall, as permitted by and consistent with Government Disclosure Restrictions, provide to the affected State Attorney General information concerning the scope and effectiveness of any recall of Covered Products because of lead content in his or her State, including information concerning the retailers doing business within the State to which such product was provided, and the identity of distributors of the product doing business within the affected State.

3.5 CHILDREN'S PRODUCTS THAT ARE NOT COVERED PRODUCTS

If Mattel has reason to believe that a Children's Product sold in the Commonwealth prior to February 10, 2009, and manufactured before the Effective Date by Mattel or for Mattel by a Vendor may contain more than 600 ppm lead in or on an Accessible Surface Coating or otherwise violates the applicable Commonwealth's lead standard, then Mattel shall immediately investigate, and upon confirmation, which shall take place as soon as reasonably possible, shall promptly (i) stop distributing the Children's Products for sale in the Commonwealth, (ii) notify customers of the non-conforming Children's Products, and (iii) inform the Attorney General of the issue and describe what action or actions it has taken to prevent the Children's Products from

being sold by Mattel in the Commonwealth. In no event shall Mattel first inform the Attorney General of the issue more than three (3) business days after Mattel's confirmation that a Children's Product manufactured before the Effective Date by Mattel or by a Vendor for Mattel contains more than 600 ppm lead in or on an Accessible Surface Coating. If Mattel or the Commonwealth has reason to believe that a Children's Product sold in the Commonwealth prior to February 10, 2009, and manufactured before the Effective Date by Mattel or for Mattel by a Vendor contains lead in an Accessible Substrate that poses a health hazard to children, Mattel shall work together with the Attorney General to resolve the matter as expeditiously as possible and in the interests of the consuming public. This section does not apply to electronic components and accessories that are not "small objects" as described in ASTM F 963-07 § 4.6.1. In the event Mattel undertakes a recall of a Children's Product manufactured before the Effective Date pursuant to CPSC regulations, it shall be deemed to satisfy Mattel's obligations hereunder, except that Mattel shall provide notice to the Attorney General in accordance with Section 3.4. Nothing in the Consent Judgment shall limit the authority of the Attorney General to take legal action under State or federal law with respect to a Children's Product manufactured prior to the Effective Date, except for the Recalled Toys, listed in Exhibit 1.

4.0 PAYMENT

Mattel shall pay, on or before January 30, 2009, by wire transfer or as otherwise directed, the sum of twelve million dollars (\$12,000,000) to the Participating Attorneys General. The payment shall be made to the Commonwealth of Massachusetts, Office of the Attorney General, to be distributed to the Participating Attorneys General as agreed upon by them for reimbursement for reasonable attorneys' fees, investigation costs, expert witness fees, and other expenses related to the investigation and resolution of this matter; for their consumer education, unfair competition, litigation or local consumer aid funds; for public protection or consumer protection purposes; and/or for use to educate the public about issues related to toy safety, as

allowed by each Participating State's law at the sole discretion of each Participating State's Attorney General.

In the event that payment in full is not made by January 30, 2009, Mattel shall pay an additional penal sum of fifty thousand dollars (\$50,000) for each calendar day beyond January 30, 2009 for which payment is delayed. In the event that full payment of twelve million dollars (\$12,000,000) and accrued penalties is not received by February 27, 2009, this shall constitute a default of the payment provisions of this Consent Judgment, which may be pursued as Contempt by one designated State representing the Participating States.

5.0 RELEASE

5.1 Released claims. By execution of the Consent Judgment and any documents necessary to render the Consent Judgment effective and enforceable in the Commonwealth, and conditioned upon entry of the Consent Judgment in the Commonwealth and full and final payment by Mattel of the amounts provided in Paragraph 4, "Payment," the Attorney General releases Mattel and all of its U.S. and foreign past and present parents, subsidiaries, affiliates, officers, directors, employees, shareholders, insurers, attorneys, predecessors, successors, retailers, distributors, licensors, licensees, customers and wholesalers (collectively, the "Released Parties") from all civil claims or causes of action of whatever kind or nature (including but not limited to all claims for compensatory and punitive damages, restitution, fines, costs, attorney's fees, injunctive relief and penalties) that have been or could have been asserted by the Attorney General against the Released Parties under the common law, and under the federal and state laws listed in Exhibit 2 for the manufacture, distribution, donation, marketing, offer for sale, or sale of Recalled Toys (listed in Exhibit 1), prior to the Effective Date, based on the presence of lead.

5.2 Claims reserved and excluded from the release. Notwithstanding any term of the Consent Judgment, any and all of the following are specifically reserved and excluded from the released claims as to any entity or person, including the Released Parties:

5.2.1 Private rights of action belonging to any individual and asserted in an individual capacity or on behalf of a class of individuals. The Consent Judgment does not create or give rise to any such private right of action of any kind.

5.2.2 Any criminal liability that any person or entity, including the Released Parties, has or may have except under the state laws listed in Exhibit 2.

5.2.3 Any civil or administrative liability that any person or entity, including the Released Parties, has or may have to the Commonwealth under any statute, regulation or rule not expressly covered by the release in Section 5.1 above, including, but not limited to, any and all state and federal anti-trust and tax claims.

5.2.4 Any civil or administrative liability that any person or entity, including the Released Parties, has or may have to the Commonwealth under any statute, regulation or rule for the manufacture, distribution, sale and/or offering for sale of any Children's Product that contains heavy metals, elements, substances, chemicals and/or materials other than lead.

5.2.5 Any claims against a distributor, retailer, authorized seller, licensor, licensee, customer or wholesaler who offered for sale or sells Recalled Toys after the Effective Date, or knowingly sold or offered for sale any of the Recalled Toys prior to the Effective Date and after the recall or withdrawal from the market of the particular Recalled Toy.

5.2.6 Claims to enforce the terms and conditions of the Consent Judgment.

6.0 GOVERNMENT DISCLOSURE RESTRICTIONS

Mattel shall immediately notify the Attorney General if, due to a Government Disclosure Restriction, Mattel is unable to publish or disclose any information otherwise required under the Consent Judgment, and at that time Mattel shall specify the Government, Government entity and/or Disclosure Restriction(s) that Mattel believes prevents the disclosure.

7.0 REPRESENTATIONS AND WARRANTIES

7.1 The Parties represent that they are the proper Parties to the Consent Judgment. Mattel warrants and represents that the individuals signing the Consent on its behalf do so in their official capacities and are fully authorized by Mattel to agree to entry of the Consent Judgment and to legally bind Mattel to all of the terms and conditions of the Consent Judgment.

7.2 The Assistant Attorney General signing the Joint Motion to Enter the Consent Judgment warrants and represents that he or she is signing the Joint Motion to Enter the Consent Judgment in his or her official capacity, and that he or she is fully authorized by his or her Attorney General to enter into the Consent Judgment.

7.3 The Consent Judgment contains the complete set of agreements between the Parties. No promises, representations, or warranties other than those set forth in the Consent Judgment have been made by any Party.

8.0 MISCELLANEOUS PROVISIONS

8.1 The terms of the Consent Judgment shall be governed by the law of the Commonwealth of Massachusetts.

8.2 Any headings or subheadings used herein are for reference purposes only and do not affect the substantive provisions of the Consent Judgment.

8.3 The failure of any Party to exercise any rights under the Consent Judgment shall not be deemed a waiver of any right or future rights. If any part of the Consent Judgment shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of the Consent Judgment, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

8.4 The Court may modify the Consent Judgment pursuant to the agreement of the Parties or for good cause shown. After making a good faith effort to obtain the concurrence of the other Party for the requested relief, which concurrence shall not be unreasonably withheld, the Party seeking modification may petition the Court for modification of the terms and

conditions of the Consent Judgment. The Consent Judgment shall terminate on the fifth anniversary of the Effective Date, or one year after a violation of the Lead Standards, whichever is later, unless terminated earlier by a court of competent jurisdiction.

8.5 This Judgment is entered pursuant to G.L. c.93A, §4. Any failure to comply is punishable under that section or by civil or criminal contempt sanctions.

9.0 SERVICE OF NOTICE AND PROCESS

Service of notices and process required by the Consent Judgment or its enforcement shall be served on the following persons, or any person subsequently designated by the Parties:

For the Commonwealth:

Diane Lawton
April English
Assistant Attorneys General
Consumer Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200 phone
(617) 727-5765 fax

For Mattel:

Antonio F. Dias, Esq.
Jones Day
500 Grant Street, Suite 3100
Pittsburgh, PA 15219-2502
(412)-391-3939 phone
(412) 394-7959 fax

SO ORDERED:

Dated:

Justice of the Superior Court

CONSENT BY DEFENDANT
MATTEL, INC.

Mattel, Inc., through its Senior Vice President, General Counsel & Secretary, Robert Normile, admits to the continuing jurisdiction and venue of the Suffolk County Superior Court over it and over the subject matter of this action, and hereby consents to the entry of Final Judgment in the form attached hereto. In so consenting, Mattel, Inc. states that it is represented by legal counsel, and that its Senior Vice President, General Counsel & Secretary has personally read and understands each of the sections, paragraphs and subparagraphs in the Final Judgment.

Mattel, Inc. waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

Defendant understands the restrictions set forth in the Final Judgment apply to it and to its general partners, principals, directors, officers, agents, attorneys, employees, servants, subsidiaries, affiliates, successors and assigns, and all persons in active concert or participation with him, directly or indirectly, acting individually or through any corporate or other device. Mattel, Inc. further understands that any violation of this Final Judgment may result in sanctions against it under G.L. c.93A, §4, and/or a finding of either civil or criminal contempt of court.

ASSENTED TO, WAIVING ALL RIGHTS OF APPEAL,

Mattel, Inc.

By: _____

Robert Normile

Senior Vice President, General Counsel & Secretary

and signed this 9th day of December, 2008.