

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Rod J. Rosenstein, United States Attorney, Rebecca A. Koch, Assistant
United States Attorney, 36 S. Charles Street, 4th Fl.,
Baltimore, MD 21201

DEFENDANTS

BLACK & DECKER (U.S.) INC.

County of Residence of First Listed Defendant Baltimore

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §§ 2051 et seq

Brief description of cause:

Violations of Consumer Product Safety Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/29/2015

SIGNATURE OF ATTORNEY OF RECORD

Rebecca A. Koch

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

2015 APR 29 AM 11:00

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
BALTIMORE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BLACK & DECKER (U.S.) INC.,
A Maryland Corporation

Defendant.

Case

**COMPLAINT FOR
CIVIL PENALTIES AND
PERMANENT INJUNCTION**

Plaintiff, United States of America, by its undersigned attorneys, alleges:

1. This Court has jurisdiction over this action pursuant to 15 U.S.C. § 2071(a) and 28 U.S.C. §§ 1331, 1345, and 1355(a).
2. This Court has venue in this matter pursuant to 28 U.S.C. §§ 1391(b), (c), and 1395(a).

NATURE OF THE CLAIM

3. Plaintiff, United States of America, seeks civil penalties and injunctive relief against the defendant, Black & Decker (U.S.) Inc. ("Black & Decker" or "Defendant") for failing to immediately report to the U.S. Consumer Product Safety Commission ("Commission" or "CPSC") as required by law upon receiving information reasonably supporting the conclusion that certain cordless electric lawnmowers manufactured and sold under the Black & Decker and Craftsman brand names failed to comply with an applicable consumer product safety rule, contained a defect or defects that could create a substantial product hazard and/or created an unreasonable risk of serious injury or death. The United States alleges Defendant knowingly failed to immediately report to the CPSC that the cordless electric

lawnmowers could and/or did exhibit spontaneous restarting. This occurs when the consumer releases the lawnmower's handle, removes the safety key, and the lawnmower momentarily shuts off, and then unexpectedly restarts (Double-Component Failure). Additionally, the United States alleges Defendant knowingly failed to immediately report to the CPSC that the cordless electric lawnmowers could and/or did continue running when the consumer releases the lawnmower's handle and removes the lawnmower's key (Continuous Run Defect). Finally, the United States alleges Defendant knowingly failed to immediately report to the CPSC that the cordless electric lawnmowers violate the mandatory requirements contained in CPSC's Safety Standard for Walk-Behind Power Lawn Mowers, 16 C.F.R. § 1205.5, because the lawnmowers were able to operate absent direct operator actions. Beginning on or around November 27, 1998, consumers and others notified Defendant of this danger and resulting injuries. Notwithstanding its actual and presumed knowledge of the nature and number of incidents, the seriousness of the injuries, the violation of the mandatory standard, and the design defect of the product, Defendant provided no notice and no information about these issues with the cordless electric lawnmowers to the CPSC until an initial report filed with the CPSC on or about December 23, 2008 indicating that Defendant was investigating the possibility of the mower starting unintentionally. A subsequent report was submitted to the CPSC on or about February 6, 2009.

DEFENDANT

4. Black & Decker is a corporation, organized and existing under the laws of the State of Maryland, with its principal corporate offices located at 701 East Joppa Road in Towson, MD. At all times material to this Complaint, Black & Decker was a wholly-owned subsidiary of The Black & Decker Corporation, a Maryland corporation. Currently, Black & Decker is a wholly-owned subsidiary of Stanley Black & Decker, Inc., a corporation organized and existing under the laws of the State of

Connecticut, with its principal corporate offices at 1000 Stanley Drive, New Britain, CT.

5. At all times material to this Complaint, Black & Decker was a “manufacturer” of the cordless electric lawnmowers as defined in 15 U.S.C. § 2052(a)(11)

CONSUMER PRODUCT SAFETY ACT

6. The CPSC is an independent federal regulatory agency that enforces the Consumer Product Safety Act (“CPSA”), 15 U.S.C. §§ 2051 et seq. One of the purposes of the CPSA is to protect the public against unreasonable risks of injury associated with consumer products. The principal offices of the Commission are at 4330 East-West Highway, Bethesda, Maryland, 20814. 16 C.F.R. § 1000.4.

7. Under the CPSA, every manufacturer of a consumer product distributed in commerce is required to “immediately inform the Commission” of certain information. 15 U.S.C. § 2064(b)(1), (b)(3) and (b)(4).

8. Under the CPSA, “[e]very manufacturer of a consumer product...distributed in commerce...who obtains information which reasonably supports the conclusion that such product...fails to comply with an applicable consumer product safety rule ...shall immediately inform the Commission of such failure to comply...unless the manufacturer...has actual knowledge that the Commission has been adequately informed of such . . . failure to comply.” 15 U.S.C. § 2064(b)(1).

9. Under the CPSA, “[e]very manufacturer of a consumer product...distributed in commerce . . . who obtains information which reasonably supports the conclusion that such product . . . contains a defect which could create a substantial product hazard . . . shall immediately inform the Commission” of the defect unless the manufacturer “has actual knowledge that the Commission has been adequately informed of such defect.” 15 U.S.C. § 2064(b)(3).

10. The CPSA defines “substantial product hazard” as a product that “creates a substantial

risk of injury to the public.” 15 U.S.C. § 2064(a)(2).

11. The CPSA also requires that “[e]very manufacturer of a consumer product...distributed in commerce . . . who obtains information which reasonably supports the conclusion that such product . . . creates an unreasonable risk of serious injury or death, shall immediately inform the Commission” of the risk unless the manufacturer “has actual knowledge that the Commission has been adequately informed of such . . . risk.” 15 U.S.C. § 2064(b)(4).

12. The Commission has defined “serious injury or death” to include any significant injury, including injuries necessitating medical or surgical treatment and lacerations requiring sutures. 16 C.F.R. § 1115.6(c).

13. Under the Commission’s regulations, “immediately” means “within 24 hours” after a company has obtained the requisite information regarding (i) a product that fails to comply with an applicable consumer product safety rule, (ii) a product potentially creating an unreasonable risk of serious injury or death or (iii) a defect that could create a substantial product hazard. 16 C.F.R. § 1115.14(e). The regulations permit initial reports to be made by telephone to the CPSC’s headquarters in Bethesda, Maryland. 16 C.F.R. § 1115.13(b), (c). Reports may also be made in writing and sent to the agency’s Office of Compliance and Enforcement. *Id.*

14. The failure to furnish information required by 15 U.S.C. § 2064(b) is a prohibited act under the CPSA. 15 U.S.C. § 2068(a)(4).

15. Any person who knowingly violates 15 U.S.C. § 2068 is subject to civil penalties. 15 U.S.C. § 2069(a)(1). The CPSA defines “knowingly” as “(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 the

representations.” 15 U.S.C. § 2069(d).

FACTS

16. Beginning in or around September 1995 through September 2006, Black & Decker manufactured approximately 177,871 cordless electric lawnmowers under the Black & Decker and Craftsman brand names. The Black & Decker brand cordless electric lawnmowers contained model numbers CMM1000 or CMM1000R; the Craftsman brand lawnmowers had model number 900.370520.

17. The cordless electric lawnmowers were manufactured for sale to consumers for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. Each of the cordless electric lawnmowers is therefore a “consumer product” as that term is defined in 15 U.S.C. § 2052(a)(5).

18. To activate the electric cordless lawnmower, a user pulled the handle and turned the on/off lever, located near the handle, to the “on” position.

19. To deactivate the electric cordless lawnmower, a user released the handle, which automatically turned the on/off lever to the “off” position. Releasing the handle caused the lawnmower to stop running.

20. Each electric cordless lawnmower also featured a safety key which provided an additional level of protection to consumers. According to each lawnmower’s instruction manual, the lawnmower “will be completely disabled when the safety key has been removed from the mower.”

21. The lawnmowers were subject to CPSC’s Safety Standard for Walk-Behind Power Lawn Mowers, 16 C.F.R. §1205.5, which required that all walk-behind lawnmowers have systems to prevent the blade from operating unless the consumer actuates the controls. The lawnmowers violated the mandatory standard because the lawnmowers were able to operate absent any actions by consumers.

22. Between November 1998 and February 2009, Black & Decker received at least 112 complaints regarding the Continuous Run defect and/or Double-Component Failure of its cordless electric lawnmowers. At least twenty-nine of these complaints specifically reported that the lawnmower continued to run or exhibited spontaneous restarting after the lawnmower's handle was released and the safety key was removed.

23. Beginning in or around 2002, consumers contacted Black & Decker to complain that their cordless electric lawnmowers were continuing to run despite removal of the safety key. Black & Decker investigated more than seventeen consumer complaints and, when possible, obtained lawnmowers for inspection.

24. In or around February 2004, Black & Decker consulted an outside expert regarding its cordless electric lawnmowers who identified the Continuous Run defect, and knew that the lawnmowers could continue to run, even if a consumer released the handle and removed the safety key.

25. Black & Decker was aware of at least two consumer complaints in which the Double Component Failure of the cordless electric lawnmower resulted in injury. On or around August 5, 2003, a consumer was cleaning the blades of a lawnmower with the safety key removed. The lawnmower started unexpectedly and the consumer suffered injuries to his right hand. On or around June 22, 2006, Black & Decker was notified that a consumer was cleaning his lawnmower with the safety key removed. The lawnmower started unexpectedly and the consumer suffered injuries to his right hand. The lawnmower continued to run while the consumer was in an emergency room, between two and five hours, and continued to run even after fire department personnel removed the blade.

26. On or about December 23, 2008, Black & Decker filed an initial report and on or about February 6, 2009 Black & Decker filed a full report pursuant to 15 U.S.C. § 2064(b), that described the

Double-Component Failure in which the lawnmower spontaneously restarted after the user released the lawnmower's handle and removed the safety key.

27. On or about March 11, 2010, CPSC staff advised Black & Decker that the staff had made a preliminary determination that the lawnmowers presented a substantial product hazard.

28. On or about April 7, 2010, Black & Decker agreed to conduct a corrective action plan and to provide consumers with a repair, or, alternatively, a credit that could be applied to a new lawnmower.

29. On or about September 29, 2010, the CPSC announced a recall of the lawnmowers.

COUNT I

30. Paragraphs 1-29 are incorporated by reference and realleged herein.

31. Separately as to each individual lawnmower distributed in commerce, Defendant knowingly failed to immediately inform the CPSC upon obtaining information that reasonably supported the conclusion the lawnmowers contained a defect or defects (including, but not limited to, defect or defects in design, manufacturing, instructions, warnings, and/or hardware) which could create a substantial product hazard (i.e., a defect or defects that could create a substantial risk of injury to the public) in violation of 15 U.S.C. §§ 2064(a)(2), 2064(b)(3) and 2068(a)(4). These violations continued from the time Defendant obtained the information regarding the defect(s) until it finally furnished the required information to the CPSC regarding the defect or defects that could create a substantial product hazard.

COUNT II

32. Paragraphs 1-29 are incorporated by reference and realleged as if set forth fully herein.

33. Separately as to each individual lawnmower distributed in commerce, Defendant

knowingly failed to immediately inform the CPSC upon obtaining information that reasonably supported the conclusion the lawnmowers created an unreasonable risk of serious injury or death, in violation of 15 U.S.C. §§ 2064(b)(4) and 2068(a)(4). These violations continued from the time Defendant obtained the information regarding the failure to comply until it finally furnished the required information to the CPSC regarding the unreasonable risk of serious injury or death.

COUNT III

34. Paragraphs 1-29 are incorporated by reference and realleged as if set forth fully herein.

35. Separately as to each individual lawnmower distributed in commerce, Defendant knowingly failed to immediately inform the CPSC upon obtaining information that reasonably supported the conclusion the lawnmowers failed to comply with an applicable consumer product safety rule, in violation of 15 U.S.C. §§ 2064(b)(1) and 2068(a)(4). These violations continued from the time Defendant obtained the information regarding the failure to comply until it finally furnished the required information to the CPSC regarding the failure to comply.

COUNT IV

36. Paragraphs 1-29 are incorporated by reference and realleged as if set forth fully herein.

37. There is a reasonable likelihood that Defendant will continue to violate the CPSA reporting requirement, warranting injunctive relief pursuant to 15 U.S.C. §§ 2064(b), 2068(a)(4), and 2071(a).

JURY DEMAND

38. The United States demands a trial by jury on all Counts so triable.

RELIEF REQUESTED

WHEREFORE, the United States respectfully requests that this Court:

I. Assess civil penalties of up to \$1,825,000 against Defendant in accordance with 15 U.S.C. § 2069, for each separate violation and the related series of violations alleged in Counts I, II, and III of this Complaint.

II. Award plaintiff injunctive relief against Defendant as set forth in Count IV that would: (1) require Black & Decker to comply with the reporting requirements of the CPSA and its accompanying regulations; and (2) assure such compliance by requiring Defendant to establish internal recordkeeping and compliance monitoring systems designed to provide timely reports to the CPSC whenever Defendant obtains information which reasonably supports the conclusion that any of its products fail to comply with an applicable consumer product safety rule or contain a defect which could create a substantial product hazard or creates an unreasonable risk of serious injury or death; and

III. Award plaintiff, the United States of America, judgment for its costs and for such other and further relief that this Court deems just and proper.

DATED: April 29, 2015

OF COUNSEL:

STEPHANIE TSACOUMIS
General Counsel
U.S. Consumer Product Safety Commission

MELISSA V. HAMPSHIRE
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Respectfully Submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
BALTIMORE DIVISION

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

2015 APR 29 AM 11:00

CLERK OF COURT
AT BALTIMORE

BY _____ DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

BLACK & DECKER (U.S.) INC.,
A Maryland Corporation

Defendant.

Case

CONSENT DECREE OF CIVIL
PENALTY AND PERMANENT
INJUNCTION

Plaintiff, the United States of America, has commenced this action by filing a Complaint for Civil Penalties and Permanent Injunctive Relief pursuant to 15 U.S.C. §§ 2068(a)(4), 2069, and 2071(a), against Black & Decker (U.S.) Inc. ("Black & Decker"). Black & Decker has waived service of the summons and the complaint,

The parties, represented by the counsel identified below, have agreed to this settlement of the action without adjudication of any issue of fact or law and consent to the entry of this Consent Decree of Civil Penalty and Permanent Injunction ("Decree"). Therefore, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. In its Complaint, the United States alleges that Black & Decker knowingly violated the requirement contained in the Consumer Product Safety Act ("CPSA"), to immediately furnish to the Consumer Product Safety Commission ("CPSC" or "Commission") the information required by 15 U.S.C. § 2064(b). The Complaint alleges that Black & Decker obtained information which reasonably supported the conclusion that the cordless electric lawnmowers that Black & Decker manufactured and distributed (1) contained a defect that could

create a substantial product hazard, and (2) created an unreasonable risk of serious injury or death.

2. In its Complaint, the United States asserts that Black & Decker previously paid civil penalties for violations of the same statutory requirements referenced in this action, and further alleges that there is a reasonable likelihood that Black & Decker will violate the CPSA reporting requirement in the future.

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355(a) and 15 U.S.C. § 2071(a).

4. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b), (c), and 1395(a).

5. The Complaint states a claim upon which relief may be granted against Black & Decker under the CPSA. 15 U.S.C. §§ 2068(a), 2069(a), 2071(a).

6. At all relevant times, Black & Decker was a “manufacturer,” as defined in 15 U.S.C. § 2052(a)(11), of the cordless electric lawnmowers described in the Complaint.

7. Black & Decker enters into this Decree freely and without coercion. Black & Decker further acknowledges that it has read the provisions of this Decree and is prepared and able to abide by them.

8. The United States believes settlement of this case on the terms described below is in the public interest and that injunctive relief is necessary to prevent future violations of the CPSA.

9. Black & Decker does not admit that the law has been or is likely to be violated, but believes settlement is appropriate to avoid the time and expense of litigation.

10. Black & Decker waives any claim that it may hold under the Equal Access to

Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date this Decree is entered by the Court. All parties agree to bear their own fees, costs, and attorneys' fees.

I. CIVIL PENALTY

A. Black & Decker shall pay one million five hundred seventy-five thousand dollars (\$1,575,000.00) to the United States as a civil penalty, pursuant to 15 U.S.C. § 2069. Within fourteen calendar days after entry of this Decree, Black & Decker shall transfer the civil penalty payment in the form of an electronic fund transfer in accordance with the procedures specified by the Consumer Protection Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530.

B. In the event of any default in payment required in Paragraph A, the entire unpaid amount shall constitute a debt due and immediately owing by Black & Decker to the United States, and interest shall accrue and be paid by Black & Decker at the federal legal rate of interest set forth at 28 U.S.C. § 1961 from the date of default until the payment has been paid in full.

C. Black & Decker relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Black & Decker shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

D. The judgment amount set forth in this Section represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, therefore, is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

E. Black & Decker agrees that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof, in any subsequent civil litigation filed by or

on behalf of the United States to enforce its rights to payment under this Section.

II. INJUNCTIVE RELIEF

A. Black & Decker shall ensure that its existing, compliance program is designed to ensure compliance with the safety statutes and regulations enforced by the Commission and shall continue to implement and shall maintain a compliance program that, at a minimum, contains the following elements:

- i. written standards and policies;
- 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. procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;
- iv. effective communication of company compliance-related policies and procedures to all employees through training programs or otherwise;
- v. senior manager responsibility for compliance and accountability for violations of the statutes and regulations enforced by the Commission;
- vi. oversight of compliance by a Black & Decker governing body; and
- vii. retention of all records reasonably related to compliance with the safety statutes enforced by the CPSC for at least five (5) years and availability of such records to CPSC staff upon request.

B. Black & Decker shall maintain, enforce, and ensure that its existing controls include, a system of internal controls and procedures designed to ensure that:

- i. information required by law to be disclosed by Black & Decker to the CPSC is recorded, processed and reported in accordance with applicable law;
- ii. all reporting made to the CPSC is timely, truthful, complete, and accurate; and
- iii. prompt disclosure is made to Black & Decker's management of any material deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to adversely affect in any material respect Black & Decker's ability to record, process, and report to the CPSC in accordance with applicable law.

C. Black & Decker shall provide to the CPSC written documentation of such improvements, processes, and controls, including, but not limited to, the effective dates of such improvements, processes, and controls, upon request by the CPSC staff. Black & Decker shall cooperate fully and truthfully with CPSC staff and shall make available all information, materials, and personnel reasonably necessary for CPSC staff to evaluate Black & Decker's compliance with the terms of the Decree, subject to applicable privileges, and with provision for maintaining the confidentiality of confidential information in accordance with 15 U.S.C. § 2055.

III. MISCELLANEOUS PROVISIONS

A. This Decree shall be binding on the successors and assigns of Black & Decker, and any such successors and assigns shall be subject to the terms of this Decree.

B. For a period of five years from the entry of this Decree by the Court, Black & Decker shall notify the CPSC General Counsel in writing within thirty (30) calendar days after any reorganization, consolidation, merger, acquisition, dissolution, assignment, sale, transfer or

similar transaction or series of transactions resulting in a successor entity, the transfer or disposition of substantially all of the assets of Black & Decker or any other changes in corporate structure that may affect compliance obligations arising out of this Decree.

C. Black & Decker shall notify the CPSC General Counsel in writing within fourteen (14) calendar days after any change in the person to which communications from the CPSC should be addressed.

D. If, at any time after entry of this Decree, Black & Decker fails to comply with any provisions of this Decree, Black & Decker shall pay to the United States liquidated damages in the sum of one thousand dollars (\$1,000) for each day that Black & Decker fails to comply with the Decree. Black & Decker understands and agrees that the liquidated damages specified in this paragraph are not punitive in nature and that they do not in any way limit the ability of the United States to seek, and the Court to impose, additional criminal or civil contempt penalties based on conduct that may also be the basis for the payment of liquidated damages.

E. The provisions of this Decree are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

F. This Court retains jurisdiction of this matter for the purpose of enabling any of the parties to this Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the enforcement of compliance therewith, or for the punishment of violations thereof.

G. The United States may seek reasonable costs and attorneys' fees upon succeeding in a suit to enforce this Decree.

H. The parties, by their respective counsel, hereby consent to entry of the foregoing

Decree, which shall constitute a final judgment and Order in this matter. The parties further stipulate and agree that the entry of the foregoing Decree shall constitute full, complete, and final settlement of this action.

SO ORDERED, this _____ day of _____, 2015.

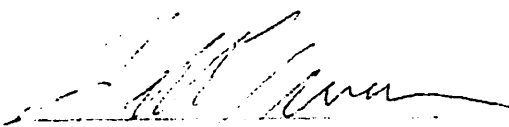
U.S. DISTRICT COURT JUDGE

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