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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,

Case No. _____

Plaintiff,

COMPLAINT FOR CIVIL PENALTIES
AND PERMANENT INJUNCTIVE RELIEF

v.

GERBER LEGENDARY BLADES, a
division of **FISKARS BRANDS, INC.**,
a Wisconsin corporation,

Defendant.

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

INTRODUCTION

1. This action is brought by the United States of America under the Consumer Product Safety Act (“CPSA”), 15 U.S.C. § 2051 *et seq.*

2. The United States of America seeks civil penalties against Gerber Legendary Blades, a division of Fiskars Brands, Inc., (“Fiskars”) pursuant to 15 U.S.C. §§ 2064(b), 2068(a)(4), and 2069, on the grounds that Fiskars knowingly failed to immediately report to the United States Consumer Product Safety Commission (“Commission” or “CPSC”) upon receiving information that reasonably supported the conclusion that Fiskars’ Gator Combo Axe (“Gator Combo Axe”) product:

- a. created an unreasonable risk of serious injury and death, or
- b. contained a defect that could create a substantial product hazard.

3. Specifically, the United States seeks penalties because Fiskars failed to report on a timely basis that the knife in the Gator Combo Axe handle could and did dislodge from the Gator Combo Axe’s handle when the Gator Combo Axe was in use, causing serious injuries to

consumers, including lacerations requiring stitches, permanent nerve damage, and surgery to repair severed tendons. Notwithstanding its actual and presumed knowledge of the nature and number of knife dislodging incidents and the seriousness of the resulting injuries, Fiskars never reported to the CPSC and provided no information about the Gator Combo Axe to the CPSC until October 20, 2010.

4. The United States also seeks injunctive relief pursuant to 15 U.S.C. §§ 2064(b), 2068(a)(4), and 2071(a), to restrain Fiskars from violating the CPSA reporting requirement.

JURISDICTION AND VENUE

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

6. Venue in the District of Oregon is proper under 28 U.S.C. §§ 1391(b), (c) and 1395(a).

DEFENDANT

7. Fiskars is a corporation located in Madison, Wisconsin, existing under the laws of the State of Wisconsin. Fiskars is registered with the State of Oregon as a foreign business corporation with its principal place of business at 14200 SW 72nd Avenue in Portland, Oregon.

8. Gerber Legendary Blades is a business division of Fiskars and is registered with the State of Oregon as an assumed business name with its principal place of business at 14200 SW 72nd Avenue in Portland, Oregon.

9. From at least March 2004 to and including October 20, 2010, Fiskars conducted business in Portland, Oregon, within this District, related to the importation, manufacture, and distribution of the Gator Combo Axes.

10. At all times relevant hereto, Fiskars was a “manufacturer” (the definition of which includes any person who imports a consumer product) of the Gator Combo Axe as defined in 15 U.S.C. § 2052(a)(11).

11. Fiskars manufactured and distributed the Gator Combo Axe under the Gerber Legendary Blades brand for sale to consumers for: (a) use in or around a permanent or temporary household or residence, in recreation; or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, in recreation, or otherwise. Each Gator Combo Axe is a “consumer product” as that term is defined in 15 U.S.C. § 2052(a)(5).

CONSUMER PRODUCT SAFETY ACT

12. This action is brought by the United States of America on behalf of the Commission. The Commission is an independent federal agency created to protect the public against unreasonable risks of injury from consumer products. The Commission enforces the CPSA. The principal offices of the Commission are at 4330 East West Highway, Bethesda, Maryland, 20814. 16 C.F.R. § 1000.4(a).

13. 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).

14. 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 such defect” unless the manufacturer “has actual knowledge that the Commission has been adequately informed of such defect” 15 U.S.C.

§ 2064(b)(3). The CPSA defines “substantial product hazard” at 15 U.S.C. § 2064(a)(2) as a product defect that “creates a substantial risk of injury to the public.”

15. 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 such . . . risk” unless the manufacturer “has actual knowledge that the Commission has been adequately informed . . . of such risk.” 15 U.S.C. § 2064(b)(4).

16. The CPSC 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).

17. Under the Commission’s regulations, “immediately” means “within 24 hours” after a company has obtained the requisite information regarding a defect or unreasonable risk. 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.*

18. 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).

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

FACTS

20. The Gator Combo Axes were designed by Fiskars in 2003 or 2004 and manufactured in Taiwan.

21. From about March 2005 to about March 2011, Fiskars imported approximately 103,000 Gator Combo Axes from Taiwan into the United States through its Gerber division in Portland, Oregon.

22. From about March 2005 to about March 2011, Fiskars also distributed approximately 103,000 Gator Combo Axes, to retail sporting good chains and stores throughout the United States.

23. The overall length of a Gator Combo Axe is approximately 8.75 inches long. A Gator Combo Axe's head measures approximately 4.75 inches x 2.7 inches. Each Gator Combo Axe's handle is hollow and contains a 7-inch long knife. A magnet is affixed to the inside of the end cap on the Gator Combo Axe's handle. The end cap magnet aligns with a magnet affixed to the outside of the knife's handle.

24. A Fiskars employee inspected the first shipment of 108 Gator Combo Axes in or about March of 2004 and prepared a report describing, in part, the bonding of the Gator Combo Axe's magnets to the Gator Combo Axe assembly and the fit and security of the knife within the Gator Combo Axe handle.

25. On or around December 2005, Fiskars received information from a consumer that the knife fell out of the Gator Combo Axe handle stabbing the consumer in the hand while the consumer used the Gator Combo Axe to hammer in tent stakes.

26. On or around December 30, 2005, Fiskars logged a warranty claim from a consumer indicating the Gator Combo Axe's magnets were very weak and the knife was lost.

27. In or around May 2006, Fiskars received a call from a consumer indicating that the knife dislodged from the Gator Combo Axe and injured him.

28. In or around June 2006, a Fiskars employee examined the magnets on an incoming lot of products. During the examination, this employee smacked a small number of Gator Combo Axes on a pallet and concluded, among other things, that the magnets and knives stayed in place.

29. In or around July 2006, Fiskars received information from another consumer that the consumer was injured by the knife when it dislodged from the Gator Combo Axe handle as the consumer was using the Gator Combo Axe to hammer tent stakes into the ground.

30. On or around January 7, 2008, Fiskars logged a warranty call from a consumer noting the product would not hold the knife and the knife was lost.

31. On or around December 18, 2008, Fiskars logged a warranty call from a consumer, noting that the knife was lost from the handle and the magnets were not that strong.

32. In or around April 2009, Fiskars was served with a lawsuit filed by a consumer alleging that the Gator Combo Axe caused the consumer to sustain “severe and permanent injuries” to his wrist, including nerve damage, because the knife released from the Gator Combo Axe when the consumer was using the Gator Combo Axe to pound in tent stakes.

33. In or around August 2009, Fiskars received a letter from a consumer informing Fiskars that she “had a serious accident with your Gator Combo Axe, which [she] feels was due to a flaw in its design.” This letter also contained an illustration of the incident depicting how the magnets failed to hold the knife in place when the Gator Combo Axe came into contact with a log; how the knife fell out of the handle towards the log on the upswing of the Gator Combo Axe as the consumer raised the Gator Combo Axe; and how the consumer’s arm was stabbed by

the knife on the downswing as the knife was caught between the log and her wrist causing a deep laceration requiring stitches. In this letter, the consumer wrote that she “strongly urges[s] you to recall and discontinue this product ASAP.”

34. The August 2009 consumer letter also advised Fiskars that the consumer read reviews of the Gator Combo Axe on the website of a national retailer that indicated other consumers appeared to have had the same problems with the Gator Combo Axe as she had. By August 2009, the retailer’s website referenced by the consumer contained at least nine separate incident reports from consumers who noted that the knife “easily” fell out of the handle. One consumer noted on the website that he received a “nice puncture wound” while setting tent stakes, due to the failure of the magnets to hold the knife in the handle.

35. In or around February 2010, Fiskars was notified by an attorney representing a consumer that the knife in the Gator Combo Axe “suddenly and spontaneously released from the handle of the axe and fell toward the ground, knife tip upward.” On the consumer’s downward swing, “his right hand, clenching the axe, slammed the knife . . . the impact stabbed his right hand with great force . . . and severed three (3) tendons in his right hand.” The consumer required surgery to repair his hand, and the injury left a permanent three-inch scar.

36. In or about June 2010, a consumer notified Fiskars that he injured himself while using the Gator Combo Axe to chop wood. He explained that the knife had fallen out of the Gator Combo Axe and severely lacerated his arm requiring him to seek treatment at a hospital emergency room and get sutures.

37. In or about July 2010, Fiskars received information that a consumer was injured while he was using the Gator Combo Axe, the knife came out of the bottom and fell to the

ground, and as he finished his swinging motion the knife went directly through his wrist. The consumer had severe nerve damage and had loss of some hand use due to this incident.

38. On October 20, 2010, Fiskars submitted a report pursuant to 15 U.S.C. § 2064(b) to the Commission. This was the first time Fiskars reported any information to the Commission about the injuries caused by the knife dislodging from the Gator Combo Axe.

39. Before October 20, 2010, the Commission had not been adequately informed that the Gator Combo Axe contained a defect or defects that could create a substantial product hazard or that the Gator Combo Axe created an unreasonable risk of serious injury or death.

40. On March 23, 2011, Fiskars and the Commission issued a joint press release announcing a recall of the Gator Combo Axe and telling purchasers of the Gator Combo Axe to contact Fiskars for information on receiving a handle cap.

41. Despite Fiskars knowledge of the information about the serious risk of the knife dislodging from Gator Combo Axe causing severe injuries, at no time before October 20, 2010, did Fiskars report information to the CPSC.

42. Fiskars has not implemented and maintained a reasonable and effective program or system for complying with the reporting requirements of the CPSA and related regulations.

43. There is a reasonable likelihood that Fiskars will continue to violate the CPSA reporting requirements.

COUNT I

44. Paragraphs 1-43 are incorporated by reference and realleged as if set forth fully herein.

45. Well before October 2010, Fiskars had obtained information about the Gator Combo Axe—in the form of warranty calls, internal testing and review, industry-wide standards,

and consumer reports of the knife dislodging and causing severe injuries, including lawsuits—that reasonably supported the conclusion that the Gator Combo Axe contained a defect or defects, including but not limited to, a defect or defects in design, manufacturing, testing, instructions, warnings, and/or hardware that could create a substantial product hazard, *i.e.*, a defect or defects that could create a substantial risk of injury to the public.

46. Thus, Fiskars was required by 15 U.S.C. § 2064(a)(2) and (b)(3) to immediately inform the CPSC of the information it had obtained about the Gator Combo Axe, as described in the preceding paragraphs herein, regarding a defect or defects that could create a substantial product hazard.

47. From the time it obtained the information regarding a defect or defects that could create a substantial product hazard, and continuing until at least October 20, 2010, when Fiskars finally relayed the information to the CPSC, Fiskars knowingly violated 15 U.S.C. § 2068(a)(4) separately as to each Gator Combo Axe distributed in commerce by failing to timely furnish the CPSC with the required information.

COUNT II

48. Paragraphs 1-43 are incorporated by reference and realleged as if set forth fully herein.

49. Well before October 20, 2010, Fiskars had obtained information about the Gator Combo Axe—in the form of warranty calls, internal testing and review, industry-wide standards, and consumer reports of the knife dislodging and causing severe injuries, including lawsuits—that reasonably supported the conclusion that the Gator Combo Axe created an unreasonable risk of serious injury or death.

50. Thus, Fiskars was required by 15 U.S.C. § 2064(b)(4) to immediately inform the CPSC of the information it had obtained about the Gator Combo Axe, as described in the preceding paragraphs herein, regarding the unreasonable risk of serious injury or death created by the Gator Combo Axe.

51. From the time it obtained the information regarding the unreasonable risk of serious injury or death and continuing until at least October 20, 2010, when Fiskars finally relayed the information to the CPSC, Fiskars knowingly violated 15 U.S.C. § 2068(a)(4) separately as to each Gator Combo Axe distributed in commerce by failing to timely furnish the CPSC with the required information.

COUNT III

52. Paragraphs 1-43 are incorporated by reference and realleged as if set forth fully herein.

53. There is a reasonable likelihood that Fiskars 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).

RELIEF REQUESTED

WHEREFORE, the United States respectfully requests that this Court:

I. Assess civil penalties against Fiskars, in accordance with 15 U.S.C. § 2069, for each separate violation and the related series of violations alleged in Counts I and II of this Complaint.

II. Award plaintiff injunctive relief against Fiskars as set forth in Count III, in accordance with 15 U.S.C. § 2071, that would: (1) require Fiskars to comply with the reporting requirements of the CPSA and its accompanying regulations; (2) assure such compliance by

requiring Fiskars to establish internal recordkeeping and monitoring systems designed to provide timely reports to the CPSC whenever Fiskars obtains information which reasonably supports the conclusion that any of its products contain a defect which could create a substantial product hazard or creates an unreasonable risk of serious injury or death to consumers; and (3) provide for liquidated damages in the event that Fiskars fails to maintain and enforce its internal recordkeeping and monitoring systems.

III. Award plaintiff judgment for its costs and for such other and further relief that this Court deems just and proper.

DATED: this 30th day of December, 2014.

Respectfully submitted,

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