

COMMODITY FUTURES TRADING COMMISSION**Sunshine Act Meetings**

TIME AND DATE: 11 a.m., Friday, November 30, 2007.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202-418-5084.

David A. Stawick,

Secretary of the Commission.

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CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08-C0001]

TAP Enterprises, Inc., d/b/a Cummins Industrial Tools, a Corporation; 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 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with TAP Enterprises, Inc., d/b/a Cummins Industrial Tools, a corporation, containing a civil penalty of \$100,000.

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 November 5, 2007.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08-C0001, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7587.

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

Dated: October 15, 2007.

Todd A. Stevenson,
Secretary.

I. Settlement Agreement and Order

1. This Settlement Agreement is made by and between the staff (“the staff”) of the U.S. Consumer Product Safety Commission (“the Commission”) and TAP Enterprises, Inc., d/b/a/ Cummins Industrial Tools. (“TAP”), a corporation, in accordance with the Commission’s Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (“CPSA”), 16 CFR 1118.20. This Settlement Agreement and the incorporated attached Order settle the staff’s allegations set forth below.

II. The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the CPSA, 15 U.S.C. 2051-2084.

3. TAP is a corporation organized and existing under the laws of the State of Kansas with its principal corporate office located at 650 North Lincoln, Spring Hill, KS 66083. TAP is an importer and retailer of consumer products.

III. Allegations of the Staff

4. Between June 2004 and March 2006, TAP imported and sold nationwide approximately 11,300 Mini 2-Gallon Pancake Compressors (“air compressor(s)”), Model Number 2112.

5. The air compressors are “consumer products” and at the times relevant herein, TAP was a “manufacturer” and a “retailer” of those consumer products, which were “distributed in commerce,” as those terms are defined in sections 3(a)(1), (4), (6), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(1), (4), (6), (11), and (12).

6. The air compressors are defective because they contain an undersized power cord which can overheat and pose a fire hazard. In addition, improper assembly of the power cord strain relief component and improper routing of internal conductors can cause a shock hazard to consumers.

7. On or about October 15, 2004, TAP learned from an insurance company of an October 12, 2004 incident, in which a consumer’s workshop/studio caught fire as a result of an allegedly defective air compressor. The fire caused \$30,000 in property damage.

8. On or about June 30, 2005, the Commission’s Clearinghouse sent TAP

the investigational report of the October 12, 2004 incident conducted by a Commission investigator.

9. In September 2005, TAP received an incident report in which a consumer alleged that smoke was coming out of his air compressor. Moreover, before September 2005, TAP became aware of a number of warranty claims involving the air compressors, which appear to relate to the defects described in paragraph 6.

10. Although TAP obtained sufficient information to reasonably support the conclusion that the air compressors contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, TAP failed to immediately inform the Commission of such defect or risk as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3).

11. By failing to furnish information as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), TAP 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).

12. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, TAP is subject to civil penalties for its failure to report under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

III. TAP’s Response

13. TAP denies the staff’s allegations that it violated the CPSA as set forth in paragraphs 4 through 12 above.

14. TAP asserts that for purposes of this Settlement Agreement and Order, it is a “manufacturer” as defined by section 3(a)(4) of the CPSA, 15 U.S.C. 2052(a)(4), solely because it is an importer of the subject air compressors. TAP asserts, however, that it did not manufacture the air compressors, nor has it manufactured other consumer products.

15. TAP specifically contests and denies the allegations that it became aware of a number of safety-related warranty claims involving the air compressor before September 2005. Rather, TAP asserts that prior to September 2005, it had received warranty claim requests from consumers that identified only performance-related problems with the compressor (e.g., “not working,” “motor froze,” “won’t build pressure,” “etc.”). These warranty claim requests identified typical performance issues associated with compressors, and they did not infer that there were any potential safety-related issues associated with the product.

16. TAP further asserts that the CPSC did not provide TAP with a copy of a March 28, 2005, CPSC investigational