

NSN: 8105-00-NIB-1286—Bag, Trash, Insect Repellent

NSN: 8105-00-NIB-1287—Bag, Trash, Insect Repellent

NSN: 8105-00-NIB-1288—Bag, Trash, Insect Repellent

NPA: Envision, Inc., Wichita, KS

Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products

COVERAGE: B-List for the broad Government requirement as aggregated by the General Services Administration.

#### Service

Service Type/Location: Custodial Services, Camp Bullis Gymnasium—Building 5031, 6929 Camp Bullis Rd, Camp Bullis, TX

NPA: Professional Contract Services, Inc., Austin, TX

Contracting Activity: DEPT OF THE ARMY, XR W6BB ACA SAM HOUSTON.

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. E9-9455 Filed 4-23-09; 8:45 am]

BILLING CODE 6353-01-P

## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09-C0018]

### Mega Brands America, Inc. f/k/a Rose Art Industries, Inc., 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 Mega Brands America, Inc. f/k/a Rose Art Industries, Inc., containing a civil penalty of \$1,100,000.00.

**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 May 11, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09-C0018, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814-4408.

**FOR FURTHER INFORMATION CONTACT:** Michelle Faust Gillice, Trial Attorney, Division of Compliance, Office of the

General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7667.

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

Dated: April 20, 2009.

**Todd A. Stevenson,**

*Secretary.*

### In the Matter of: Mega Brands America, Inc. f/k/a Rose Art Industries, Inc.; Settlement Agreement

1. This Settlement Agreement (“Agreement”) is made by and between the staff (the “staff”) of the U.S. Consumer Product Safety Commission (the “Commission”) and Mega Brands America, Inc., f/k/a Rose Art Industries, Inc., in accordance with 16 CFR 1118.20 of the Commission’s Procedures for Investigations, Inspections and Inquiries under the Consumer Product Safety Act (“CPSA”). This Agreement and the incorporated attached Order resolve the staff’s allegations set forth below.

#### The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the CPSA, 15 U.S.C. 2051–2089.

3. Mega Brands America, Inc. (“Mega Brands America”) f/k/a Rose Art Industries, Inc. (“Rose Art”) is a New Jersey corporation, with its principal office located in Livingston, NJ. Rose Art was wholly owned by Jeffrey Rosen, Lawrence Rosen, and Sydney Rosen until purchased by Mega Bloks, Inc. (a Canadian corporation) on July 26, 2005. Pursuant to the terms of the purchase agreement, Mega Bloks, Inc. could not assume operational control of Rose Art until December 31, 2005. Thereafter, Jeffrey Rosen and Lawrence Rosen remained in senior management positions at Rose Art until their respective departures on April 3, 2006 and May 9, 2006. On June 15, 2006, Rose Art was renamed “Mega Brands America”.

4. Mega Brands, Inc. f/k/a Mega Bloks, Inc. (“Mega Brands”) is a Canadian corporation located in Montreal, Quebec, Canada. Mega Brands is the parent company of Mega Brands America.

5. At all times relevant herein, Rose Art designed and manufactured the Magnetix magnet toys subject to this Settlement Agreement and Order.

#### Staff Allegations

6. Between January 2003 and December 2005, Rose Art manufactured and/or imported Magnetix magnetic

building sets (hereinafter “Magnetix set(s)” or “the set(s).”<sup>1</sup>)

7. Magnetix sets are “children’s product[s]” and “consumer product[s]” and, at the times relevant herein, Rose Art was a “manufacturer” of “children’s product[s]” and “consumer product[s]” which were “distributed in commerce” as those terms are defined in sections 3(a)(2), (5), (8), and (11) of the CPSA, 15 U.S.C. 2052(a)(2), (5), (8) and (11).

8. The Magnetix sets are defective because magnets embedded in small plastic pieces contained in the sets could come loose and fall out of the plastic casing.

9. This defect creates a substantial risk of injury to children under section 15(c) of the Federal Hazardous Substances Act, 15 U.S.C. 1274(c) because, if two or more magnets (or one magnet and one metallic ball) from a set are ingested by a child, they can attract each other through intestinal walls, causing perforations, twisting and/or blockage of the intestines, infection, blood poisoning and death.

10. On December 14, 2005, Rose Art filed an “initial report” pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b), concerning the death of a 22 month old child who died on November 24, 2005. The child had ingested multiple magnets from a Magnetix set on separate occasions which subsequently joined together in his small intestine, causing a blockage and sepsis, which led to his death. Rose Art’s report identified the product as a Magnetix “X-treme Combo Flashing Lights Castle.” The firm attributed the release of magnets from the plastic pieces to unusually abusive play by the decedent’s older siblings. The initial report essentially contained no other information.

11. At the time of its initial report, Rose Art was in possession of at least one report of a child suffering an unspecified injury from ingesting a magnet from a Magnetix set and over 1100 consumer complaints that magnets had come loose or fallen out of plastic pieces from dozens of different Magnetix models, but failed to include that information in its report as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

12. On January 13, 2006, CPSC staff sent Rose Art a letter requesting a Full Report pursuant to 16 CFR 1115.13(d). Requested information included copies of the following: Product liability suits and/or claims of personal injury;

<sup>1</sup> Magnetix sets continued to be manufactured after 2005, however due to manufacturing and design improvements instituted by Mega Brands America, these sets are not the subject of the allegations set forth in this Agreement.

consumer complaints, dealer complaints, warranty claims, an identification of the products, and the total number of products involved. In addition, the letter advised the firm that it had a continuing obligation to supplement or correct its full report if the firm learned of other incidents or injuries or information that affected the scope, prevalence or seriousness of the defect of hazard.

13. On February 1, 2006, Rose Art submitted an incomplete and inadequate Full Report. The firm provided limited information about the "X-treme Combo Flashing Lights Castle" despite relevant knowledge that the population of affected products included over 255 different Magnetix set models. In addition, the firm failed to provide any information regarding complaints involving magnets falling out of Magnetix pieces.

14. On March 28, 2006, Rose Art provided staff with a chart entitled "Consumer Calls/Warranty" claims in response to the staff's repeated requests for complaint and incident data. The chart lacked detail and critical information rendering it effectively useless. The CPSC staff requested all source documents used in the creation of the chart. The staff was told that the firm did not retain any source documents regarding complaint and incident data.

15. On March 31, 2006, CPSC and Rose Art announced a voluntary recall whereby the firm agreed to provide replacement products for consumers with children under the age of 6. The press release announced that CPSC was aware of one child who died and four children who were seriously injured as a result of ingesting or aspirating magnets that fell out of Magnetix pieces.

16. Following the recall, CPSC staff sought additional product information from the firm including complaint data. In September 2006, the staff came across information which indicated the firm did in fact retain records of consumer complaints with some level of detail.

17. On October 16, 2006, the Commission issued a Special Order and Subpoena to Mega Brands America compelling the firm to produce all injury and incident records pertaining to Magnetix.

18. On December 1, 2006, Mega Brands submitted a response for Mega Brands America. According to documents provided, between January 2004 and December 14, 2005 (the date on which Rose Art reported the death of the child), Rose Art had received over 1,100 complaints of magnets falling out or otherwise liberating from the plastic pieces in over 67 different models of

Magnetix. In addition, Rose Art had received notice of a child being injured from ingesting a magnet a few weeks prior to the child's death. According to the documents, by the time the recall was announced in March 2006, Rose Art had received over 1,500 complaints about magnets falling out of Magnetix pieces.

19. The information eventually obtained by the Subpoena was required by statute to be included in Rose Art's Full Report and supplemented on an ongoing basis thereafter. The firm's failure to provide full complaint and incident data directly and detrimentally affected the staff's ability to assess the hazard and implement an effective corrective action program commensurate with the risk created.

20. Pursuant to section 19(a)(3) of the CPSA, 15 U.S.C. 2068(a)(3), it is unlawful to " \* \* \* fail or refuse to \* \* \* provide information \* \* \* as required under this Act or rule there under." Under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), it is unlawful to fail to furnish information required by section 15(b) of the Act.

21. In failing to provide or furnish information as required under the CPSA and as set forth above, Mega Brands America "knowingly" violated sections 19(a)(3) and (4) of the CPSA, 15 U.S.C. 2068(a)(3) and (4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

22. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Mega Brands America is subject to civil penalties for failure to provide or furnish information in violation of section 19 of the CPSA, 15 U.S.C. 2068.

#### **Response of Mega Brands America**

23. Mega Brands America and its parent, Mega Brands, contend that Mega Brands did not know of the Magnetix defects at the time Mega Brands acquired Rose Art in June 2005. Documentary evidence establishes that Rose Art's prior owners knew, since at least late 2003 or early 2004, that there were design and manufacturing defects in Magnetix which caused magnets to detach. Rose Art's prior owners have admitted under oath, at no point in time did they ever advise anyone at Mega Brands of the Magnetix problems.

24. On May 24, 2005, when CPSC staff sent a letter requesting Rose Art to provide information concerning choking and near choking incidents involving Magnetix sets as well as "copies of all consumers or dealer complaints, including electronic records warranty claims and reports of injury related to the products being investigated [Magnetix]", Rose Art had the

opportunity to disclose hundreds of incidents involving magnets coming loose, but it failed to do so. Notably, at that point in time, Rose Art was negotiating a civil penalty with CPSC for a reporting violation concerning another of its products, and was fully cognizant of its reporting obligations under the law. Mega Brands believes that had Rose Art disclosed all Magnetix consumer complaints in its response to the May 24, 2005 letter, the defect of magnets coming loose would have come to light much earlier.

25. Mega Brands claims that once it learned these facts, it promptly agreed to a more comprehensive recall of the product, which occurred in April 2007.

26. Nevertheless, Mega Brands America understands that, regardless of the reason, Rose Art and Mega Brands America failed to provide and/or furnish information to the CPSC as required under the CPSA.

#### **Agreement of the Parties**

27. The Commission has jurisdiction over this matter and over Mega Brands America under the CPSA.

28. The parties enter this Agreement for settlement purposes only. The Agreement does not constitute an admission by Mega Brands America nor a determination by the Commission that Mega Brands America violated the CPSA's reporting requirements.

29. In settlement of the staff's allegations, Mega Brands America agrees to pay a civil penalty of \$1.1 million (\$1,100,000.00) in three installments. The first installment of \$400,000 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting this Agreement. The second installment of \$350,000 shall be paid within three (3) months of service of the Commission's final Order accepting this Agreement. The third and final installment of \$350,000 shall be paid within six (6) months of service of the Commission's final Order accepting this Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

30. The Commission agrees to take no further action involving Mega Brands America with respect to CPSC File Nos. CA080229 (Magtastik and Magnetix Jr. Pre-School Magnetic Toys) and CA070073 (MagnaMan-Magnetic Action Figures.)

31. Upon provisional acceptance of this Agreement by the Commission, the Commission shall place this Agreement on the public record and shall publish it in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR

1118.20(f), if the Commission does not receive any written requests not to accept the Agreement within 15 calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**.

32. Upon final acceptance of this Agreement by the Commission and issuance of the final Order, Mega Brands America knowingly, voluntarily and completely waives any rights it may have in this matter to the following: (i) An administrative or judicial hearing; (ii) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (iii) a determination by the Commission as to whether Mega Brands America 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.

33. The Commission may publicize the terms of the Agreement and Order.

34. The Agreement and Order shall apply to, and be binding upon Mega Brands America and each of its successors and assigns.

35. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject those referenced in paragraph 34 above to appropriate legal action.

36. This 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. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

37. If any provision of this Agreement and 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 Order shall remain in full force and effect, unless the Commission and Mega Brands America determine that severing the provision materially affects the purpose of the Agreement and Order.

MEGA BRANDS AMERICA, INC.

Dated: 3/19/09

By: \_\_\_\_\_

Vic Bertrand

President

Mega Brands America, Inc., 6 Regent Street,  
Livingston, NJ 07039

By: \_\_\_\_\_

Michael J. Gidding  
Counsel for Mega Brands America, Inc.  
Brown & Gidding, P.C., 3201 New Mexico  
Avenue, NW., Washington, DC 20016

U.S. Consumer Product Safety Commission

Cheryl Falvey  
General Counsel

Ronald G. Yelenik  
Assistant General Counsel

Dated: 3/24/09

By: \_\_\_\_\_

Michelle Faust Gillice

Trial Attorney

Division of Compliance, Office of the General  
Counsel

**In the Matter of: Mega Brands America, Inc. f/k/a Rose Art Industries, Inc.; Order**

Upon consideration of the Settlement Agreement entered into between Mega Brands America, Inc. ("Mega Brands America") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Mega Brands America, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that Mega Brands America shall pay a civil penalty in the amount of \$1.1 million (\$1,100,000.00) in three installments. The first installment of \$400,000 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting this Agreement. The second installment of \$350,000 shall be paid within three (3) months of service of the Commission's final Order accepting this Agreement. The third and final installment of \$350,000 shall be paid within six (6) months of service of the Commission's final Order accepting this Agreement. Each payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Mega Brands America to make any of the aforementioned payments when due, the total amount of the civil penalty shall become immediately due and payable, and interest on the unpaid amount shall accrue and be paid by Mega Brands America at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the \_\_\_ day of \_\_\_, 2009.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary  
U.S. Consumer Product Safety Commission

Finally accepted and final Order issued on the \_\_\_ day of \_\_\_, 2009.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson, Secretary  
U.S. Consumer Product Safety Commission

[FR Doc. E9-9452 Filed 4-23-09; 8:45 am]

BILLING CODE 6355-01-P

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Defense Health Board (DHB) Meeting**

**AGENCY:** Department of Defense.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150, and in accordance with section 10(a)(2) of Public Law, the following meeting of the Defense Health Board (DHB) is announced:

**DATES:** May 7-8, 2009.

May 7, 2009.

7 a.m.-12 p.m. (Open Session).

12 p.m.-2:15 p.m. (Administrative Working Meeting).

2:15 p.m.-5:15 p.m. (Open Session).

May 8, 2009.

8 a.m.-2 p.m. (Closed Session).

**ADDRESSES:** May 7, 2009, Ballroom, Sheraton Chrystal City Hotel, 1800 Jefferson Davis Highway Arlington, VA 22202.

May 8, 2009 Industrial College of the Armed Forces, Fort McNair, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Commander Edmond F. Feeks, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041-3206, (703) 681-8448, EXT. 1228, Fax: (703)-681-3317, [edmond.feeks@tma.osd.mil](mailto:edmond.feeks@tma.osd.mil). Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, <http://www.ha.osd.mil/dhb>. The public is encouraged to register for the meeting. If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681-8448 ext. 1280 by April 30, 2009. Written statements may be mailed to the above address, emailed to [dhb@ha.osd.mil](mailto:dhb@ha.osd.mil) or faxed to (703) 681-3317.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* The purpose of the meeting is to address and deliberate pending and new Board issues and provide briefings for Board members on topics related to ongoing Board business.

*Agenda:* On May 7, 2009, the Board will receive a briefing on Iraqi Health