

comply with the article of manufacture requirement.

a. If the disclosure as a whole does not suggest or describe the claimed subject matter as a computer-generated icon embodied in a computer screen, monitor, other display panel, or portion thereof, indicate that: (i) the claim is fatally defective under section 171; and (ii) amendments to the written description, drawings and/or claim attempting to overcome the rejection will not be entered because they would lack a written descriptive basis under 35 U.S.C. 112, first paragraph, and would constitute new matter under 35 U.S.C. 132.

b. If the disclosure as a whole suggests or describes the claimed subject matter as a computer-generated icon embodied in a computer screen, monitor, other display panel, or portion thereof, indicate that the drawing may be amended to overcome the rejection under section 171. Suggest amendments which would bring the claim into compliance with section 171.

3. Indicate all objections to the disclosure for failure to comply with the formal requirements of the Rules of Practice in Patent Cases. 37 CFR 1.71, 1.81-85, and 1.152-154. Suggest amendments which would bring the disclosure into compliance with the formal requirements of the Rules of Practice in Patent Cases.

4. Upon response by applicant:

a. Approve entry of any amendments which have support in the original disclosure; and

b. Review all arguments and the entire record, including any amendments, to determine whether the drawing, title, and specification clearly disclose a computer-generated icon embodied in a computer screen, monitor, other display panel, or portion thereof.

5. If, by a preponderance of the evidence,⁹ the applicant has established that the computer-generated icon is embodied in a computer screen, monitor, other display panel, or portion thereof, withdraw the rejection under section 171.

III. Effect of the Guidelines on Pending Design Applications Drawn to Computer-Generated Icons

PTO personnel shall follow the procedures set forth in this Notice when examining design patent applications for computer-generated icons pending in the PTO as of the effective date of these Guidelines.

IV. Treatment of Type Fonts

Traditionally, type fonts have been generated by solid blocks from which each letter or symbol was produced.

Consequently, the PTO has historically granted design patents drawn to type fonts. PTO personnel should not reject claims for type fonts under Section 171 for failure to comply with the "article of manufacture" requirement on the basis that more modern methods of typesetting, including computer-generation, do not require solid printing blocks.

V. Notes

1. Further procedures for search and examination of design patent applications to ensure compliance with all other conditions of patentability are found in the Manual of Patent Examining Procedure, Chapter 1500.

2. Computer-generated icons, such as full screen displays and individual icons, are two-dimensional images which alone are surface ornamentation. See, e.g., *Ex parte Strijland*, 26 USPQ2d 1259, 1262 (Bd. Pat. App. & Int. 1992) (computer-generated icon alone is merely surface ornamentation).

3. Since a patentable "design is inseparable from the object to which it is applied and cannot exist alone merely as a scheme of surface ornamentation," a computer-generated icon must be embodied in a computer screen, monitor, other display panel, or portion thereof, to satisfy section 171. MPEP 1502; 1504.01.A.

4. "We do not see that the dependence of the existence of a design on something outside itself is a reason for holding it is not a design 'for an article of manufacture.'" *In re Hruby*, 153 USPQ 61, 66 (CCPA 1967) (design of water fountain patentable design for an article of manufacture). The dependence of a computer-generated icon on a central processing unit and computer program for its existence itself is not a reason for holding that the design is not for an article of manufacture.

5. Since the claim must be in formal terms to the design "as shown, or as shown and described," the drawing provides the best description of the claim. 37 CFR 1.153.

6. Although a computer-generated icon may be embodied in only a portion of a computer screen, monitor, or other display panel, the drawing "must contain a sufficient number of views to constitute a complete disclosure of the appearance of the article." 37 CFR 1.152. In addition, the drawing must comply with 37 CFR 1.84.

7. The following titles do not adequately describe a design for an article of manufacture under section 171: "computer icon;" or "icon." On the other hand, the following titles do adequately describe a design for an article of manufacture under section 171: "computer screen with an icon;" "display panel with a computer icon;" "portion of a computer screen with an icon image;" "portion of a display panel with a computer icon image;" or "portion of a monitor displayed with a computer icon image."

8. See *McGrady v. Aspenglas Corp.*, 487 F. Supp. 859, 861, 208 USPQ 242, 244 (S.D.N.Y. 1980) (descriptive statement in design patent application narrows claim scope).

9. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992)

("After evidence or argument is submitted by the applicant in response, patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument.").

Dated: March 14, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks.
[FR Doc. 96-6655 Filed 3-19-96; 8:45 am]

BILLING CODE 3510-16-P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 96-C00014]

SKR Resources, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

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)-(h). Published below is a provisionally-accepted Settlement Agreement with SKR Resources, Inc., a corporation.

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 April 4, 1996.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 96-C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0626.

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

Dated: March 15, 1996.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. SKR Resources, Inc. (hereinafter, "SKR"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission,

and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staffs allegations that SKR knowingly introduced or caused the introduction in interstate commerce; received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise; and failed to comply or caused the failure to comply with the Commission's Procedures For Export Noncomplying Products, the "Ghost Blaster," a banned hazardous toy, in violation of sections 4(a), (c), and (i) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. §§ 1263(a), (c), and (i).

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

3. SKR is a corporation organized and existing under the laws of the State of New York, since 1989, with its principal corporate offices located at 307 Fifth Avenue, New York, NY 10016. SKR is a media buying service and barter company.

II. Allegations of the Staff

4. The Ghost Blaster toy is a small plastic box which is capable of making two unique electronic sounds when the user presses one of two buttons. The Ghost Blaster toy is available in white, black, red, and gray. Each unit makes its own unique sound. Each Ghost Blaster toy has an insignia ("logo") which represents the logo used in the motion picture "Ghost Busters." The insignia is of a ghost inside a red circle with a red line through it.

5. The Ghost Blaster toy identified in paragraph 4 above is intended for use by children under three years of age.

6. The Ghost Blaster, is subject to, but failed to comply with, the Commission's Small Parts Regulation, 16 C.F.R. Part 1501, in that when tested under the "use and abuse" test methods specified in 16 C.F.R. 1500.51 and 1500.52, (a) one or more parts of the toy separated and (b) one or more of the separated parts from the toy fit completely within the small parts cylinder when tested using the procedures set forth in 16 C.F.R. 1501.4.

7. Because the separated parts fit completely within the test cylinders as described in paragraph 6 above, the Ghost Blaster toy identified in paragraph 4 above presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15

U.S.C. § 1261(s) (choking, aspiration, and/or ingestion of small parts).

8. The Ghost Blaster toy identified in paragraph 4 above is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. § 1261(f)(1)(D).

9. The Ghost Blaster toy identified in paragraph 4 above is a "banned hazardous substance" pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. § 1261(q)(1)(A) and 16 C.F.R. 1500.18(a)(9) because it is intended for use by children under three years of age and bears or contains a hazardous substance and because it presents a mechanical hazard as described in paragraph 7 above.

10. On or about July 11, 1990, SKR learned that the Ghost Blaster toy failed to comply with the Commission's Small Parts Regulation at 16 C.F.R. Part 1501 and before a firm could export the product, it had to notify the Commission under the Commission's Procedures For Export of Noncomplying Products at section 14(d) of the FHSA, 15 U.S.C. § 1273(d) and 16 C.F.R. Part 1019.

11. On or about March 17, 1993, Premier Promotions and Marketing, Inc. (hereinafter, "Premier") and SKR entered into a contract whereby SKR agreed to purchase from Premier approximately 2.5 million Ghost Blaster toys identified in paragraph 4 above. The contract provided no restrictions on the resale of the Ghost Blaster toys by SKR "with the exception that the units shall only be offered for resale by SKR for export in accordance with the requirements of the Consumer Product Safety Commission (CPSC)."

12. In March, 1993, SKR asked Premier to deliver all the Ghost Blaster toys identified in paragraph 4 above to Brooklyn Closeout Corporation (hereinafter "Brooklyn Closeout"), 167 Clymer Street, Brooklyn, NY 12111.

13. On or about June 7, 1993, SKR sold 2.5 million Ghost Blaster toys identified in paragraph 4 above to The Biggest A, 899 Howard Street, San Francisco, CA 94103 on the condition The Biggest A export all the Ghost Blaster toys.

14. The Biggest A failed to purchase all of the Ghost Blaster toys. In August, 1993, SKR sold Brooklyn Closeout approximately 400,000 Ghost Blaster toys.

15. The Biggest A distributed the Ghost Blaster toys in interstate commerce and to U.S. firms who exported the product without filing the required notification informing the Commission of their intent to export the product and/or distributed the product in domestic commerce.

16. Brooklyn Closeout distributed the Ghost Blaster toys in interstate commerce and to U.S. firms who exported the product without filing the required notification informing the Commission of their intent to export the product and/or distributed the product in domestic commerce. Ultimately, some of these products were sold to American consumers because of these actions.

17. SKR knowingly introduced or caused the introduction in interstate commerce or delivery for introduction in interstate commerce; received in interstate commerce and delivery or proffered delivery thereof for pay or otherwise; and failed to comply or caused the failure to comply with the Commission's Procedures For Export of Noncomplying Products, the Ghost Blaster toy, a banned hazardous toy, in violation of sections 4(a), (c), and (i) of the FHSA, 15 U.S.C. §§ 1263(a), (c), and (i).

III. Response of SKR

18. SKR denies it knowingly introduced or caused the introduction in interstate commerce or delivery for introduction in interstate commerce; received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise; and failed to comply or caused the failure to comply with the Commission's Export of Noncomplying Products, the Ghost Blaster, a banned hazardous toy, identified in paragraph 4 above, in violation of sections 4(a), (c), and (i) of the FHSA, 15 U.S.C. §§ 1263(a), (c), and (i).

19. SKR maintains that Premier intentionally and/or recklessly and/or carelessly failed to disclose material matters to SKR before March 1993 agreement was entered into. SKR maintains that had there been appropriate disclosure, SKR would not have entered into the contract with Premier. SKR maintains that Premier breached the representation contained within the contract. SKR maintains that it was knowingly and willingly misled by Premier to believe that SKR's purchase of the Ghost Busters was lawful. Therefore, it is SKR's position that Premier was responsible for the products' introduction into commerce within the United States and that Premier was kept fully informed of all developments by SKR with third parties.

IV. Agreement of the Parties

20. The Consumer Product Safety Commission has jurisdiction over SKR and the subject matter of this Settlement Agreement and Order under the

following acts: Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. § 1261 *et seq.*

21. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by this reference.

22. The Commission does not make any determination that SKR knowingly violated the FHSA and/or the CPSA. This Agreement is entered into for the purposes of settlement only.

23. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, SKR knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether SKR failed to comply with the FHSA and/or the CPSA as aforesaid, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

24. SKR agrees to cooperate fully with the Commission and the U.S. Department of Justice in investigations of any other firms involving Ghost Blaster toys, including but not limited to testifying truthfully in any litigation arising from such investigations.

25. For purposes of section 6(b) of the CPSA, 15 U.S.C. § 2055(b), this matter shall be treated as if a complaint had issued; and the Commission may publicize the terms of this Settlement Agreement and Order.

26. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the Federal Register in accordance with the procedures set forth in 16 C.F.R. §§ 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the Federal Register.

27. The parties further agree that the Commission shall issue the attached Order; and that a violation of the Order shall subject SKR to appropriate legal action.

28. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

29. The provisions of the Settlement Agreement and Order shall apply to SKR and each of its successors and assigns.

Dated: January 30, 1996.

Robert J. Richards,
President, SKR Resources, Inc., 307 Fifth Avenue, New York, NY 10016.

Commission Staff:

David Schmeltzer,
Assistant Executive Director, Office of Compliance.

Eric L. Stone,
Acting Director, Division of Administrative Litigation, Office of Compliance.

Dated: February 7, 1996.

Dennis C. Kacoyanis,
Trial Attorney, Division of Administrative Litigation, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent SKR Resources, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and SKR Resources, Inc.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

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

Further ordered, that upon final acceptance of the Settlement Agreement and Order, SKR Resources, Inc. shall pay the Commission a civil penalty in the amount of forty thousand and 00/100 dollars (\$40,000.00) in two (2) payments. The first payment of twenty thousand and 00/100 dollars (\$20,000.00) shall be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting the Settlement Agreement. The second payment of twenty thousand and 00/100 dollars (\$20,000.00) shall be made within one year after service of the Final Order upon Respondent. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs 4 through 17 of the Settlement Agreement that SKR Resources, Inc. knowingly violated the FHSA. Upon the failure by SKR Resources, Inc. to make a payment or upon the making of a late payment by SKR Resources, Inc. the entire amount of the civil penalty shall be due and payable, and interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 15th day of March, 1996.

By Order of the Commission:

Sadye E. Dunn, Secretary,

Consumer Product Safety Commission.

[FR Doc. 96-6733 Filed 3-19-96; 8:45 am]

BILLING CODE 6355-01-M

[CPSC Docket No. 96-C0003]

Taito America Corporation, a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

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 C.F.R. Section 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Taito America Corporation, a corporation.

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 April 4, 1996.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 96-C0002, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0626.

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

Dated: March 14, 1996.

Sadye E. Dunn,
Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between Taito America Corporation, a corporation (hereinafter, "Taito"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), pursuant to the procedures set forth in 16 C.F.R. § 1118.20, is a compromise resolution of the matter described