

5. Respondent is subject to, and has failed to comply with, the Mattress Standard in that:

(a) Respondent failed to do prototype testing of the ticking substitution procedure required by § 1632.3 or 1632.6 of the Mattress Standard, 16 CFR 1632.3 or 1632.6.

(b) Respondent failed to maintain the manufacturing or test specifications or test records, ticking substitution specifications or test records, or other records required by § 1632.31 (c)(1) or (c)(5) and (c)(6), 16 CFR 1632.31 (c)(1) or (c)(5) and (c)(6).

6. The acts by Respondent set forth in paragraph 5 of the complaint are unlawful and constitute an unfair method of competition and an unfair and deceptive practice in commerce under the FTCA, in violation of section 3(a) of the FFA, 15 U.S.C. 1192(a), for which a cease and desist order may be issued against Respondent pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 5 of the FTCA, 15 U.S.C. 45.

#### Relief Sought

7. The staff seeks issuance of a cease and desist order against Respondent pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 5 of the FTCA, 15 U.S.C. 45.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the \_\_\_\_\_ day of \_\_\_\_\_, 1995.

By direction of the Commission:

Dated: \_\_\_\_\_

**David Schmeltzer,**

*Assistant Executive Director, Office of Compliance and Enforcement.*

In the matter of Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation.

#### [CPSC Docket No. 95-C0014]

#### Consent Order Agreement

Terri Treat, individually, and as the sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation (hereinafter, "Respondent"), enters into this Consent Order Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission (hereinafter, "Commission") pursuant to the procedures for Consent Order Agreements contained in § 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR 1605.13.

This Agreement and Order are for the sole purpose of settling allegations of the staff (1) that Respondent violated section 3(a) of the Flammable Fabrics Act (FFA), as amended, 15 U.S.C. 1192(a) and the Standard for the Flammability of Mattresses and Mattress Pads, as amended, 16 CFR part 1632 (FF 4-72) (hereinafter, the "Mattress Standard"), as more fully set forth in the Complaint accompanying this Agreement; and (2) that Respondent knowingly violated section 3(a) of the FFA, as amended, 15 U.S.C. 1192(a) and the Mattress Standard.

#### Respondent and the Staff Agree

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following Acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*),

*Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).*

2. Respondent Terri Treat is the sole proprietor of Clouds DBA, Cotton Cloud Futon Corporation, 1916 N.E. Broadway, Portland, OR 97005; and in that capacity is responsible for the acts, practices, and policies of Clouds DBA, Cotton Cloud Futon Corporation.

3. Respondent is now and has been engaged in one or more of the following: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act, as amended, 15 U.S.C. 1191 *et seq.*, and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), as amended, 16 CFR part 1632.

4. Respondent denies the allegations of paragraphs 1 through 6 of the Complaint that Respondent violated section 3(a) of the FFA, as amended, 15 U.S.C. 1192(a); and the Mattress Standard.

5. Respondent denies that she knowingly violated section 3(a) of the FFA, as amended, 15 U.S.C. 1192(a); and the Mattress Standard.

6. This Agreement is entered into for the purposes of settlement only and does not constitute a determination by the Commission that Respondent (a) violated or (b) knowingly violated the FFA and the Mattress Standard.

7. Respondent agrees to pay in settlement of the staff's allegations a civil penalty as set forth in the incorporated Order.

8. This Agreement does not constitute an admission by Respondent that a civil penalty is appropriate.

9. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

10. Upon final acceptance of this Consent Order Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights she 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 Respondent failed to comply with the Flammable Fabrics Act 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.

11. Violation of the provisions of the Order may subject Respondent to a civil and/or criminal penalty for each such violation, as prescribed by law.

12. 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 the Consent Order Agreement.

13. Agreements, understandings, representations, or interpretations made outside the Consent Order Agreement may not be used to vary or to contradict its terms.

14. Upon acceptance of this Agreement, the Commission shall issue the following Order incorporated herein by reference.

Dated: June 26, 1995.

Respondent Terri Treat

Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation

Commission Staff

**David Schmeltzer,**

*Assistant Executive Director, Office of Compliance.*

**Eric L. Stone,**

*Acting Director, Division of Administrative Litigation, Office of Compliance.*

Dated: July 5, 1995.

**Dennis C. Kacoyanis,**

*Trial Attorney, Division of Administrative Litigation, Office of Compliance.*

#### [CPSC Docket No. 95-C0014]

In the matter of Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation.

#### Order

Upon consideration of the Consent Order Agreement entered into between Respondent Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Respondent Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation; and it appearing that the Consent Order Agreement is in the public interest,

#### I

It is ordered that the Consent Order Agreement be and hereby is accepted.

#### II

It is further ordered that Respondent, and her successors and assigns, agents, representatives, and employees of the Respondent, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material which is subject to and fails to conform to the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), as amended, 16 CFR part 1632.

#### III

It is further ordered that Respondent conduct prototype testing for each mattress design, prior to production, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), as amended, 16 CFR part 1632.

#### IV

It is further ordered that Respondent prepare and maintain written records of the prototype testing specified in paragraph III of