the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR 1605.

This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondent sold children's sleepwear that failed to comply with the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X and Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14, 16 CFR Parts 1615 and 1616 ("the sleepwear standards").

## Respondent and the Staff Agree

- 1. The Consumer Product Safety Commission is an independent regulatory agency of the United States government. The Commission has jurisdiction over this matter under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.* (CPSA), the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.* (FFA) and the Federal Trade Commission Act (15 U.S.C. *et seq.* (FTCA).
- 2. Respondent General Nitewear is a corporation organized and existing under the laws of the State of New York with principle corporate offices at 1 West 34th Street, New York, New York 10001.
- 3. Respondent is now, and has been engaged in one or more of the following activities: 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 children's sleepwear subject to the sleepwear standards.
- 4. This Agreement is for the purpose of settling the allegations in the accompanying Complaint. Respondent denies it intentionally violated the sleepwear standard and does not admit that it knowingly violated the law. Moreover, this Agreement does not constitute an admission by Respondent that it is paying a civil penalty as it is Respondent's position that it is paying the amount referenced in the attached Order to settle the Commission's contention that a civil penalty is appropriate. The Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.
- 5. The parties agree this Consent Order Agreement resolves the allegations of the Complaint and the Commission shall not initiate any other criminal, civil or administrative action against the firm for those alleged violations based on the information currently known to the staff.
- 6. Respondent waives any rights to a formal hearing, and any findings of fact and conclusions of law regarding the allegations set forth in the Complaint. Respondent waives any right to seek judicial review or otherwise challenge or contest the validity of the Commission's Order and to any rights under the Equal Access to Justice Act, Pub. L. 96–481, 94 Stat. 2325, 5 U.S.C. 504.
- 7. Respondent denies the allegations of paragraphs 1 through 6 of the Complaint that it has knowingly violated the sleepwear standard provisions related to trim of the Flammable Fabrics Act, 15 U.S.C. 1194; and further denies that it intentionally shipped non-conforming children's sleepwear after notification from the Commission.

- 8. The Commission may disclose the terms of this Consent Order Agreement to the public consistent with section 6(b) of the CPSA.
- 9. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the Order. Agreements, understandings, representations or interpretations made outside of this Consent Order Agreement may not be used to vary or contradict its terms.

Upon acceptance of this Agreement, the Commission shall issue the following ORDER.

Dated: December 23, 1994.

Eric L. Stone,

Trial Attorney, Division of Administrative Litigation.

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement, Consumer Product Safety Commission.

For the Commission staff.

Harold Jetter,

President & CEO, General Nitewear Corp.

#### Complaint

The staff of the Consumer Product Safety Commission ("staff") contends that General Nitewear Corp., a corporation ("Respondent"), is subject to the provisions of the Consumer Product Safety Act, 15 U.S.C. §§ 2051 et seq. (CPSA); the Flammable Fabrics Act, 15 U.S.C. §§ 1191 et seq. (FFA); the Federal Trade Commission Act (15 U.S.C. §§ 41 et seq. (FTCA); the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14, 16 C.F.R. Parts 1615 and 1616 ("the sleepwear standards"). The staff further contends Respondent violated the sleepwear standards' provisions related to trim.

Based upon the information provided to the Commission by the staff, the Commission determined it is in the public interest to issue this Complaint. Therefore, by virtue of the authority vested in the Commission by section 30(b) of the CPSA, 15 U.S.C. § 2079(b); sections 3 and 5 of the FFA, 15 U.S.C. §§ 1192 and 1194; and section 5 of the FTCA, 15 U.S.C. § 45; and in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025, the Commission hereby issues this Complaint and states the staff's charges as follows:

- 1. Respondent General Nitewear Corp. is a corporation organized and existing under the laws of the State of New York with principal corporate offices at 1 West 34th Street, New York, New York 10001.
- 2. Respondent is and has been engaged in one or more of the following activities: 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 children's sleepwear subject to the sleepwear standards.
- 3. For a period of several years, Respondent manufactured and sold items of children's sleepwear that use a kind of trim known as "piping." Respondent used trim manufactured out of materials that do not

comply with the flammability requirements of the sleepwear standards.

- 4. Respondent failed to properly test the piping and other trim and consequently failed to maintain appropriate records of such testing as required by the sleepwear standards.
- 5. As the result of these failures to comply with the sleepwear standards, Respondent manufactured for sale, sold, or offered for sale, in commerce, or imported, delivered for introduction, transported in commerce, or sold or delivered after sale or shipment in commerce, a significant number of garments of several different styles and sizes of children's sleepwear garments that failed to comply with the sleepwear standards.
- 6. After being informed of the violations by the Commission staff, Respondent continued to ship sleepwear with trim that did not comply with the sleepwear requirements.

### Relief Sought

Wherefore, the staff requests the Commission to issue an order requiring Respondent to

(a) cease and desist from the manufacture for sale, and 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 children's sleepwear subject to the sleepwear standards that fails to comply with the sleepwear standards, and further,

(b) order Respondent to comply with the recordkeeping and testing requirements of the sleepwear standards.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the 1st day of February 1995.

By direction of the Commission. David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

# Order

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It is hereby ordered that Respondent, its successors and assigns, agents, representatives, and employees, 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 item of children's sleepwear with trim that fails to comply with the flammability requirements with respect to trim of the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X, 16 CFR Part 1615.4(d)(2)(ii); or the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14, 16 CFR Part 1616.4(c)(2)(ii).

#### II

It is further ordered that Respondent shall conduct all prototype testing, and maintain all records for sleepwear with trim required by the Standard for the Flammability of