

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

"CONFORMED COPY"

REC'D
JUL 15 2005
FILING WINDOW

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a CALIFORNIA non-profit
corporation,

Plaintiff,

v.

HUCK SPAULDING ENTERPRISES, INC., a
NEW YORK corporation; et al.

Defendants.

Case No. BC 319440

[Hon. Irving S. Feffer]

**[PROPOSED] CONSENT JUDGMENT
ONLY AS TO DEFENDANT
PAPILLON STUDIO SUPPLY AND
MFG., INC.**

Complaint Filed: August 2, 2004

This Consent Judgment is entered into by and between the AMERICAN ENVIRONMENTAL SAFETY INSTITUTE, plaintiff in this matter (hereinafter "Plaintiff" or "the Institute"), and defendant PAPILLON STUDIO SUPPLY AND MFG., INC. (hereinafter "Defendant" or "Papillon").

1. **Definitions.** As used in this Consent Judgment, the following definitions shall apply:

1.1 "Products" includes all tattoo inks and/or pigment products sold by Papillon, including but not limited to: Starbrite Colors and drawing and outline inks, Talens drawing and outline inks, Kuro Sumi drawing and outline inks, and Pelikan drawing and outline inks.

1.2 "Products" shall also include any future tattoo inks and/or pigment products that are sold by Papillon to California consumers after June 30, 2005 under any product name or brand, whether a current or new name and/or brand.

1 **1.3** “Antimony” means the chemicals Antimony oxide and Antimony trioxide
2 (collectively referred to herein as “Antimony”), listed as subject to Proposition 65 regulation in
3 Title 22, California Code of Regulations, section 12000.

4 **1.4** “Arsenic” means the chemical Arsenic (inorganic arsenic compounds/inorganic
5 oxides), listed as subject to Proposition 65 regulation in Title 22, California Code of
6 Regulations, section 12000.

7 **1.5** “Beryllium” means the chemicals Beryllium and Beryllium compounds
8 (collectively referred to herein as “Beryllium”), listed as subject to Proposition 65 regulations in
9 Title 22, California Code of Regulations, section 12000.

10 **1.6** “Chromium” means the chemical Chromium (hexavalent compounds), listed as
11 subject to Proposition 65 regulations in Title 22, California Code of Regulations, section 12000.

12 **1.7** “Cobalt” means the chemicals Cobalt metal powder and Cobalt (II) oxide
13 (collectively referred to herein as “Cobalt”), listed as subject to Proposition 65 regulations in
14 Title 22, California Code of Regulations, section 12000.

15 **1.8** “Lead” means the chemicals lead and lead compounds listed as subject to
16 Proposition 65 regulation in Title 22, California Code of Regulations, section 12000.

17 **1.9** “Nickel” means the chemicals Nickel (Metallic), Nickel acetate, Nickel carbonate,
18 Nickel carbonyl, Nickel hydroxide, Nickelocene, Nickel oxide, and Nickel subsulfide
19 (collectively referred to herein as “Nickel”), listed as subject to Proposition 65 regulations in
20 Title 22, California Code of Regulations, section 12000.

21 **1.10** “Selenium” means the chemical Selenium sulfide (“Selenium”), listed as subject
22 to Proposition 65 regulations in Title 22, California Code of Regulations, section 12000.

23 **1.11** “Heavy Metals” means Antimony, Arsenic, Beryllium, Chromium, Cobalt, Lead,
24 Nickel, and Selenium.

25 **1.12** “ppm” means parts-per-million in concentration.

26 **1.13** Plaintiff and Defendant will be referred to collectively as the “Parties” or
27 individually as a “Party.”
28

1 **2. Background.**

2 **2.1** Plaintiff American Environmental Safety Institute (“Institute”) is a non-profit
3 California corporation dedicated to investigating environmental and public health hazards
4 affecting children and adults in their regular daily lives. The Institute is based in Palo Alto,
5 California, and was incorporated under the laws of the State of California in 1998. The Institute
6 is a “person” within the meaning of Health & Safety Code (“H&S Code”) §25249.11(a), and
7 brought this enforcement action in the public interest pursuant to H&S Code §25249.7(d).

8 **2.2** On or about July 24, 2003, the Institute served a 60-Day “Notice of Violation of
9 Proposition 65” (the “Notice”) on the California Attorney General, the District Attorneys of
10 every county in California, the City Attorneys of every California city with a population greater
11 than 750,000, and on the Defendant, alleging that Defendant was in violation of the Safe
12 Drinking Water and Toxic Enforcement Act of 1986, H&S Code §§ 25249.5 et seq.
13 (“Proposition 65”) for failing to warn purchasers of Papillon’s Products sold in California that
14 use of these Products expose users to Antimony, Arsenic, Beryllium, Cobalt, Lead and Lead
15 compounds, Nickel and Selenium (collectively “Heavy Metals”). No public prosecutor has
16 commenced an action regarding the matters raised in the Notice.

17 **2.3** On August 2, 2004, the Institute filed its complaint entitled *American*
18 *Environmental Safety Institute v. Huck Spaulding Enterprises, Inc., et al*, in the Los Angeles
19 County Superior Court, No. BC 319440 (the “Complaint”).

20 **2.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court
21 has jurisdiction over the allegations of the violations contained in the Notice and the Complaint,
22 and personal jurisdiction over Defendant as to the acts or omissions alleged in the Complaint;
23 that venue is proper in the County of Los Angeles; and that this Court has jurisdiction to enter
24 this Consent Judgment.

25 **2.5** Defendant denies that the Products have been or are in violation of Proposition 65
26 or any other law, and further contends that all Products have been and are safe for use as
27 directed. Defendant also denies that it is a ‘person in the course of doing business’ under Health
28

1 & Safety Code §25249.11. However, Defendant wishes to resolve this matter without further
2 litigation or cost.

3 **2.6** The Parties enter into this Consent Judgment to settle certain disputed claims as
4 alleged in the Notice and the Complaint, to avoid prolonged and costly litigation, and to promote
5 the public interest. By executing and complying with this Consent Judgment, no Party admits
6 any facts or conclusions of law including, but not limited to, any facts or conclusions of law
7 regarding any violations of Proposition 65, the Unfair Competition Law or any other statutory,
8 common law or equitable claim or requirement relating to or arising from Defendant's Products.
9 This Consent Judgment shall not be construed as an admission by Defendant as to any of the
10 allegations in the Notice or the Complaint.

11 **3. Injunctive Relief.**

12 **3.1 Warning Label Required on All Products Sold to or in California.** Effective
13 June 30, 2005, and pursuant to section 12601(b)(1)(A) of Title 22 of the California Code of
14 Regulations, Papillon shall place the following warning prominently on the label of each of its
15 Products shipped for sale by any means into California:

16 “**WARNING:** Tattoo inks and pigments contain toxic metals,
17 including Arsenic, Lead, Nickel and others, all of which are known
18 to the State of California to cause cancer or birth defects and other
19 reproductive harm.”

20 **3.2 Warning Letter Required to All Papillon Customers.** Effective June 30, 2005,
21 Papillon shall send a letter on its business letterhead containing the text as set forth in Exhibit A
22 of this Consent Judgment to each of its customers when they purchase a Product. After sending
23 the initial letter pursuant to this requirement, repeat letters to the same customer are not required.

24 **4. Settlement Payments.** In keeping with the concept of, but in lieu of, the statutory
25 penalties and/or restitution required under the statutes set forth in the Complaint, Defendant shall
26 pay to the Trust Account of the Carrick Law Group P.C., by wire transfer in immediately
27 available funds, the sum of \$2,500.00. This settlement amount shall be due and payable within
28

1 five calendar days after the date of entry of this Consent Judgment. This sum of \$2,500.00 shall
2 be disbursed by the Carrick Law Group P.C. as follows:

3 **4.1 To The Institute:** \$2,500.00, to be used by the Institute for its on-going
4 compliance monitoring costs of this Consent Judgment, and to reimburse the Institute for the
5 Institute's enforcement efforts on behalf of the public interest and the general public in
6 conformity with Health and Safety Code §25192(a)(2).

7 **5. Termination of All Claims.**

8 **5.1 Claims Covered and Release.** This Consent Judgment includes the resolution of
9 actual and potential claims that were considered or could have been brought by the Institute on
10 behalf of the public interest and the general public regarding Heavy Metals in Defendant's
11 Products. This Consent Judgment is a final and binding resolution between the Institute, on
12 behalf of the public interest and the general public, and Defendant, of any and all alleged
13 violations of Proposition 65 that was or could have been asserted in the Notice or Complaint by
14 the Institute on behalf of the public interest and the general public against Defendant or
15 purchasers or sellers of Defendant's Products arising from or related to Defendant's Products up
16 through the date of entry of this Consent Judgment, including, but not limited to, any claims for
17 attorneys' fees and costs. The Institute, on behalf of the public interest and the general public,
18 hereby releases Defendant from and against the claims described in this paragraph to the extent
19 such claims do, did, or could arise from or relate to Defendant's Products; however, the Institute
20 cannot and does not release any claims, including specifically any personal injury or directly
21 related claims, that could be brought by any individual or organization. Defendant hereby
22 releases the Institute from and against any claims arising out of the Institute's filing or
23 prosecution of this action. Each Party respectively waives any right to appeal or other review of
24 this Consent Judgment, except as expressly provided in this Consent Judgment.

25 **5.2 Waiver and Release of Unknown Claims.** To the extent that California Civil
26 Code section 1542 or similar provisions of law are deemed to apply to the releases by the
27 Institute and Papillon set forth above, both the Institute and Papillon each acknowledges and
28 agrees that the release set forth above applies to all claims for injuries, damages, restitution,

1 penalties or losses related to or arising from Defendants' Products, whether those for injuries,
2 damages, restitution, penalties or losses are known or unknown, foreseen or unforeseen, or
3 patent or latent. The Institute and Papillon each certifies that it has read California Civil Code
4 section 1542. The Institute hereby knowingly and expressly waives its rights, on behalf itself,
5 the public interest and the general public, and Papillon hereby knowingly and expressly waives
6 its rights, respectively, under California Civil Code Section 1542, which provides as follows:

7 A general release does not extend to claims which the creditor does
8 not know or suspect to exist in his favor at the time of executing the
9 release which, if known by him must have materially affected his
10 settlement with the debtor.

11 To the extent that California Civil Code § 1542 or similar provisions of law are deemed
12 to apply to the release by Defendant set forth above, Defendant separately acknowledges and
13 agrees that the release set forth above applies to any claim for malicious prosecution, abuse of
14 process, damages, or other similar claim related to or arising out of the Institute's filing or
15 prosecution of this action. Defendant hereby knowingly and expressly waives any rights under
16 California Civil Code § 1542, the text of which is set forth above.

17 **6. Covenant Not To Sue.** The Institute and Defendant covenant and agree that with regard
18 to those matters that the Institute has herein released and that are described above, neither the
19 Institute nor Defendant will ever institute a lawsuit or administrative proceedings against another
20 Party, nor shall any Party assert any claim of any nature against any person or entity hereby
21 released with regard to any such matters which have been released. However, nothing in this
22 paragraph shall be interpreted to preclude enforcement of this Consent Judgment pursuant to
23 Section 7 below.

24 **7. Enforcement of Consent Judgment.** Any Party may, by noticed motion or order to
25 show cause before the Superior Court of Los Angeles, enforce this Consent Judgment. To
26 enforce this Consent Judgment, any Party must first give written notice of any violation of this
27 Consent Judgment alleged to have occurred to the Party alleged to be in violation. The Parties
28 shall meet and confer in good faith and attempt to resolve the alleged violation. If a resolution is
not reached within thirty (30) days of the date of the notice, the aggrieved Party may move the

1 Court to hear and resolve the dispute. The prevailing Party in any proceeding brought to enforce
2 this Consent Judgment shall be entitled to recover from the other Party the prevailing Party's
3 reasonable attorneys' fees and costs incurred in the investigation and prosecution of such an
4 enforcement proceeding.

5 **8. Application of Consent Judgment.** Sections 5 and 6 of this Consent Judgment shall
6 apply to, be binding upon and inure to the benefit of, the Parties, their divisions, subdivisions,
7 subsidiaries, affiliates, successors, predecessors and assigns, and the directors, officers,
8 employees, legal counsel, and agents of each of them, as applicable, and will inure to the benefit
9 of the Parties' parent companies, all suppliers, distributors, wholesalers, retailers and contract
10 manufacturers, and all of their respective directors, officers, employees, legal counsel, and
11 agents.

12 **9. Modification/Termination of Consent Judgment.** This Consent Judgment may be
13 modified upon written agreement of Defendant and the Institute, as to Defendant, with approval
14 of the Court, or upon noticed motion for good cause shown. Such "good cause" shall include,
15 but not be limited to, any change in applicable law relating to Proposition 65 within the State of
16 California that, should its terms be applicable to Products similar to Defendant's Products or to
17 ingredients of Defendant's Products, would materially alter the obligations of Defendant
18 hereunder. If any of the statutes at issue in this action are individually or collectively amended
19 by the California Legislature in the future, or if regulations implementing these statutes are
20 lawfully adopted and/or amended by the appropriate administrative agency, Defendant shall
21 comply with that provision of law or regulation as then-amended.

22 **10. Governing Law.** This Consent Judgment shall be governed by, and construed in
23 accordance with, the laws of the State of California.

24 **11. Entire Agreement.** The Parties declare and represent that no promise, inducement or
25 other agreement has been made conferring any benefit upon any party except those contained
26 herein and that this Consent Judgment contains the entire agreement pertaining to the subject
27 matter hereof. This Consent Judgment supersedes any prior or contemporaneous negotiations,
28 representations, agreements and understandings of the Parties with respect to such matters,

1 whether written or oral. Parol evidence shall be inadmissible to show agreement by, between or
2 among the Parties to any term or condition contrary to or in addition to the terms and conditions
3 contained in this Consent Judgment. The Parties acknowledge that each has not relied on any
4 promise, representation or warranty, expressed or implied, not contained in this Consent
5 Judgment except for those contained in the Confidentiality Undertaking except with regard to
6 that certain declaration executed under penalty of perjury by Papillon providing information that
7 induced Plaintiff to enter into the financial terms of this Consent Judgment, which declaration
8 may be used solely as evidence in any future enforcement proceeding brought pursuant to
9 Section 7 above.

10 **12. Challenges.** Subject to their rights to apply for a modification of this Consent Judgment
11 for good cause shown under Section 9 hereof, the Parties agree that they, individually or
12 collectively, will not seek to challenge or to have determined invalid, void or unenforceable any
13 provision of this Consent Judgment or this Consent Judgment itself. The Parties understand that
14 this Consent Judgment contains the relinquishment of legal rights and each Party has, as each
15 has deemed appropriate, sought the advice of legal counsel, which each of the Parties has
16 encouraged the other to seek. Further, no Party has reposed trust or confidence in any other
17 Party so as to create a fiduciary, agency or confidential relationship.

18 **13. Construction.** This Consent Judgment has been jointly negotiated and drafted. The
19 language of this Consent Judgment shall be construed as a whole according to its fair meaning
20 and not strictly for or against any Party.

21 **14. Authority to Stipulate to Consent Judgment.** Each signatory to this Consent Judgment
22 represents and warrants that each signatory has all requisite power, authority and legal right
23 necessary to execute and deliver this Consent Judgment and to perform and carry out the
24 transactions contemplated by this Consent Judgment. Each signatory to this Consent Judgment
25 represents that each has been duly authorized to execute this Consent Judgment. No other or
26 further authorization or approval from any person will be required for the validity and
27 enforceability of the provisions of this Consent Judgment.

1 **15. Cooperation and Further Assurances.** The Parties hereby will execute such other
2 documents and take such other actions as may be necessary to further the purposes and fulfill the
3 terms of this Consent Judgment.

4 **16. Counterparts.** This Consent Judgment may be executed in counterparts and has the
5 same force and effect as if all the signatures were obtained in one document.

6 **17. Notices.**

7 **17.1** All correspondence and notices required by this Consent Judgment to Plaintiff the
8 Institute shall be sent to:

9 Roger Lane Carrick
10 The Carrick Law Group, P.C.
11 350 S. Grand Avenue, Suite 2930
12 Los Angeles, CA 90071-3406
Tel: (213) 346-7930
Fax: (213) 346-7931
E-mail: roger@carricklawgroup.com

13 **17.2** All correspondence and notices required by this Consent Judgment to Defendant
14 Papillon shall be sent to Defendant as follows:

15 PAPILLON STUDIO SUPPLY AND MFG., INC.

16 Meredith Nicholson
17 President
18 Papillon Studio Supply and Mfg., Inc.
19 118 Pearl Street
20 Enfield, CT 06082
Tel.: (860) 745-9720
Fax: (860) 741-8720
E-mail: papillon@papillonsupply.com

With a copy to:

15 Jonathon Kaplan, Esq.
16 Paul Y. Lee, Esq.
17 KAPLAN LEE LLP
18 725 S. Figueroa Street, Suite 3230
19 Los Angeles, CA 90017
20 Tel.: (213) 553-4550
Fax: (213) 553-4590
E-mail: lee@kaplan-lee.com

21 **18. Entry of Stipulation For Entry of Consent Judgment Required.** This Consent
22 Judgment shall be null and void, and without any force or effect, unless fully approved as
23 required by law and entered by the Court. If the Court does not enter this Consent Judgment, the
24 execution thereof by Defendant or the Institute shall not be construed as an admission by
25 Defendant or the Institute of any fact, issue of law or violation of law.

26 **19. Jurisdiction.** This Court shall retain jurisdiction of this matter to implement this Consent
27 Judgment.
28

1 **20. Compliance with Reporting Requirements.** The Institute shall comply with the
 2 reporting form requirements referenced in Health and Safety Code section 25249.7(f) and
 3 established in 11 California Code of Regulations §§ 3000-3008. Copies of all such reports shall
 4 be supplied to Papillon as provided in Section 17.2.

5 **21. Non-Interference in Settlement Approval Process.** The Parties will cooperate, as well
 6 as use their best efforts, to secure the Attorney General's approval of this Consent Judgment, and
 7 not to seek his disapproval of any portion of this Consent Judgment.

8
 9 **IT IS SO STIPULATED.**

10 Date: May 31, 2005

PAPILLON STUDIO SUPPLY AND MFG., INC.

11
 12 By: Meredith Nicholson
 13 Meredith Nicholson
 14 President

15 Date: May ____, 2005

16 AMERICAN ENVIRONMENTAL SAFETY
 17 INSTITUTE, a non-profit California corporation

18 By: _____
 19 Deborah A. Sivas
 20 President and CEO

21
 22
 23
 24
 25
 26
 27
 28

1 **20. Compliance with Reporting Requirements.** The Institute shall comply with the
2 reporting form requirements referenced in Health and Safety Code section 25249.7(f) and
3 established in 11 California Code of Regulations §§ 3000-3008. Copies of all such reports shall
4 be supplied to Papillon as provided in Section 17.2.

5 **21. Non-Interference in Settlement Approval Process.** The Parties will cooperate, as well
6 as use their best efforts, to secure the Attorney General's approval of this Consent Judgment, and
7 not to seek his disapproval of any portion of this Consent Judgment.

8

9 **IT IS SO STIPULATED.**

10 Date: May __, 2005

PAPILLON STUDIO SUPPLY AND MFG., INC.

11

12

By: _____
Meredith Nicholson
President

13

14

15 Date: May 24, 2005

AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a non-profit California corporation

16

17

By:  _____
Deborah A. Sivas
President and CEO

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

PAPILLON STUDIO SUPPLY AND MFG., INC. LETTERHEAD

Dear Customer:

I am writing to alert you to the new warning language you will see on our tattoo ink and/or pigment products. This warning language results from a California lawsuit we recently settled. In the summer of 2004, the American Environmental Safety Institute sued a wide array of tattoo ink and/or pigment manufacturers, alleging violations of California's unique public health and consumer protection law, Proposition 65. This law requires that individuals be provided with a clear and reasonable warning before being exposed to chemicals listed by the State of California as causing cancer or birth defects and other reproductive harm.

The lawsuit alleged that tattoo inks and/or pigment products contain Antimony, Arsenic, Beryllium, Cobalt, Lead and Lead compounds, Nickel and Selenium (collectively "Toxic Metals"), each of which is a dangerous toxic chemical that is known to the State of California to cause cancer and/or reproductive harm. The lawsuit alleged that individuals in California are exposed to these Toxic Metals when tattoo artists use tattoo inks and/or pigment products in the application of tattoos on or under a person's skin.

In settling this lawsuit, the manufacturers of tattoo inks and/or pigments did not admit any violation of law, but did agree to put the new warning language on their products to avoid further litigation. This warning information must be passed on to your retail customers who are tattooed with this tattoo ink and/or pigment product. Papillon recommends that you post in a prominent place the following warning for your customers:

WARNING: Tattoo inks and pigments contain many heavy metals, including Lead, Arsenic and others. All of these heavy metals have been scientifically determined by the State of California to cause cancer or birth defects and other reproductive harm. Pregnant women and women of childbearing age in particular should consult with their doctor before getting any tattoo. A person is exposed to tattoo inks and/or pigments when they get a tattoo because they are injected with tattoo ink under their skin or the tattoo ink is applied on their skin.

Thank you for your attention to this new legal requirement.

THE COURT HEREBY FINDS:

1
2 1. The warning required by the foregoing stipulated Consent Judgment complies
3 with the provisions of Health & Safety Code §§ 25249.5-25249.13.

4 2. The Parties' agreement that no civil penalties are warranted is in accord with the
5 criteria set forth in Health & Safety Code § 25249.7(b)(2), in that payments totaling \$2,500.00 in
6 lieu of such penalties to American Environmental Safety Institute furthers the remedial purposes
7 established under the statutes as set forth in the Complaint by providing funds for its compliance
8 monitoring of this Consent Judgment, as well as for its future investigational and enforcement
9 activities regarding toxic chemicals and Proposition 65, in a manner that is consistent with the
10 private enforcement mechanism and funds allocation scheme established by Health & Safety
11 Code § 25192 and § 25249.7 *et. seq.*

12 4. This Consent Judgment is hereby adopted as the ORDER and JUDGMENT of this
13 Court.

14 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

15
16 DATED: _____

17
18
19 _____
20 IRVING S. FEFFER
21 JUDGE OF THE SUPERIOR COURT
22
23
24
25
26
27
28