

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe and Beautiful (“**KASB**”) and Trademark Global, LLC (“**Trademark**”) with KASB and Trademark referred to, individually, as a “**Party**” and, collectively, as the “**Parties**”. KASB is a California nonprofit corporation, proceeding in the public interest, pursuant to California Health & Safety Code § 25249.7(d), to promote awareness of the health hazards posed by exposure to toxic chemicals and to ensure chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are either disclosed on or eliminated from products sold in California. KASB alleges that Trademark employs ten or more persons and is a “person in the course of doing business”, as defined by California Health & Safety Code § 25249.11(b), for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”).

1.2 General Allegations & Consumer Product Description

KASB alleges Trademark manufactures, imports, sells and/or distributes for sale in California faux leather pet beds containing di(2-ethylhexyl)phthalate (“**DEHP**”) and that it does so without providing the health hazard warning KASB alleges is required by Proposition 65. Trademark Global denies these allegations. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

The consumer products covered by this Settlement Agreement are faux leather pet beds containing DEHP and manufactured, imported, distributed, sold or offered for sale, in California, by Trademark, including, but not limited to, the *PETMAKER Collapsible Pet Bed, Cushion-Top Footrest and Interior Pillow; ASIN B07FHF3KW6; Model No. 80-PET6109*, (collectively referred to hereinafter, as the “**Products**”).

1.3 Notice of Violation

On May 27, 2022, KASB served Trademark, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging

Trademark violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to DEHP. To the best of the Parties' knowledge, no public enforcer commenced or is diligently prosecuting an action to enforce the allegations in the Notice. To the best of the Parties' knowledge, there is no other 60-Day Notices of Violation of Proposition 65 served by KASB naming Trademark as of the Effective Date, and this Settlement Agreement represents settlement of all allegations in the current Notice.

1.4 No Admission

Trademark denies the material factual and legal allegations contained in the Notice and maintains all products it manufactured, imported, sold and distributed for sale, in or into California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Trademark of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Trademark of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties under this Agreement. Notwithstanding the allegations in the Notice, Trademark maintains that it has not knowingly manufactured, sold, or distributed, or caused to be manufactured, sold or distributed, the Products for sale in California in violation of Proposition 65.

1.5 Effective Date

For purposes of this Settlement Agreement, the term "**Effective Date**" shall mean the date this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Provide Warnings

Commencing on the Effective Date, and continuing thereafter, Trademark agrees all Products it manufactures, import, sells or distributes for sale in or into California shall be either: (1) Reformulated Products, in accordance with and as defined by Section 2.2, below; or (2) Products bearing a clear and reasonable Proposition 65 warning, pursuant to the following Sections 2.3 through 2.5.

2.2 Reformulated Products & Reformulation Standard Defined

For purposes of this Agreement, “**Reformulated Products**” are defined as Products containing di(2-ethylhexyl)phthalate (“**DEHP**”) in a maximum concentration of less than 0.1 percent (1,000 parts per million) in each and every accessible component (i.e. a component that may be touched or utilized during a reasonably foreseeable use) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. (“**Reformulation Standard.**”). For purposes of compliance with this Reformulation Standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (“**CPSC**”) methodology CPSC-CH-C1001.09.4 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other accepted methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings


As of the Effective Date, and continuing thereafter, Trademark shall provide clear and reasonable Proposition 65 warnings for all Products Trademark manufactures, imports, distributes, sells or offers for sale in California that do not meet the Reformulation Standard. For purposes of this Agreement, a warning shall be deemed clear and reasonable, if it meets the criteria set forth in California Health & Safety Code § 25249.5 *et seq.* and title 27 California Code of Regulations (“**Cal. Code Regs.**”) § 25600 *et seq.*, as may be amended from time to time.

Each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices, as to render it likely to be read and understood by an ordinary individual under customary conditions prior to purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Warning. The Warning shall consist of the following statement:

⚠ WARNING: This product can expose you to DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Trademark may, but is not required to, use the following short-form warning (“**Short-Form Warning**”), subject to the additional requirements in Sections 2.4 and 2.5, as follows:

 **WARNING:** Cancer and Reproductive Harm: www.P65Warnings.ca.gov.

The warning requirements set forth herein are recognized by the Parties as not being the exclusive manner of providing a warning for the Products. Warnings may be provided as specified in the Proposition 65 regulations (Title 27, California Code of Regulations, section 25601, *et seq.*) in effect as of the Effective Date, or as such regulations may be amended in the future, and may include warnings for chemicals in addition to DEHP where appropriate. In addition, if and where appropriate, Trademark may follow the procedure set out in Title 27, California Code of Regulations, section 25600.2 or a similar procedure to provide warnings for the Products consistent with this Agreement.

(b) Foreign Language Requirement

Where a consumer product sign, label or tag used to provide a warning includes “consumer information”, as the term is defined in Title 27 California Code of Regulations § 25600.1(c) (“**Consumer Information**”), in languages other than English, then the accompanying warnings must also be provided in those languages.

2.4 Product Warnings

If the Products are not Reformulated Products, then Trademark shall provide a warning for each Product that is manufactured, imported, distributed, sold or otherwise provided for sale to consumers in California, by affixing a warning to the product label. “Product Label” is defined as a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in at least 6-point type, and in no event shall it be smaller than the largest type size used for other consumer information on the Product.

Warnings provided pursuant to Section 2.3 must print the word “WARNING:” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “WARNING:” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol

may be in black and white. The symbol must be in a size no smaller than the height of the word “WARNING:”. The warning must be in at least 6-point type and may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Products and shall be at least the same size as those other safety warnings.

2.5 Internet Product Warnings

If the Products are not Reformulated Products as defined herein, if Trademark Global distributes, sells, or otherwise offers for sale such Products via its internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning or a clearly marked hyperlink to the warning is prominently displayed to customers, prior to purchase and in a manner such that the consumer does not have to seek out the information being provided, using the word “WARNING” and appearing on: (a) the same web page on which the Product is displayed; (b) the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description or price of the Product for which it is given in the same type size or larger than other consumer information provided for the Product.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalties

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notices or referred to in this Settlement Agreement, Trademark agrees to pay \$2,000 in civil penalties. Penalty payments shall be allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“**OEHHA**”) and the remaining 25% of the penalty amount paid to KASB.

Within ten (10) business days of the Effective Date, Trademark agrees to pay the civil penalty in two separate checks, made payable as follows: (1) “**OEHHA**” in the amount of \$1,500; and “**Seven Hills LLP in Trust for KASB**” in the amount of \$500, and mailed or

delivered to the addresses in Section 3.3., below.

3.2 Reimbursement of Attorneys' Fees and Costs

KASB and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the Parties settled the material terms of this Agreement. The Parties thereafter negotiated and reached an accord on the attorneys' fees and costs compensation due to KASB and its counsel under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this Settlement Agreement.

Under these legal principles, within ten (10) days of the Effective Date, Trademark agrees to pay \$17,500 to KASB and its counsel in full settlement of all fees and costs incurred in investigating, bringing this matter to the attention of Trademark's management, and negotiating a settlement in the public interest. Trademark's payment shall be in the form of a check made payable to "Seven Hills LLP" and delivered to the address appearing in the following Section 3.3.

3.3 Payment Address

All payments due to KASB, its counsel and OEHHA required by this Settlement Agreement shall either be mailed via USPS first-class, return receipt requested mail or delivered using another delivery method with accompanying tracking information to the following address:

Seven Hills LLP
c/o Kimberly Gates Johnson
4 Embarcadero Suite 1400
San Francisco, CA 94111

At the time this Settlement Agreement is fully executed by the Parties, counsel for KASB shall provide to counsel for Trademark Federal Form W9s for all payees named in this Section 3. The Parties agree all payments contemplated under this Section 3 shall not be due and payable, until W9s are so provided. W9s may be provided via electronic mail, and the date of the email will act as the initiation date of financial terms under this Section. Trademark shall be responsible for ensuring it promptly provides tracking information for payments remitted, and counsel for KASB shall alert counsel for Trademark when funds are received and remitted. KASB shall send to Trademark a contemporaneous copy of the transmittal letter and check

payable to OEHHA, as well as any confirmation of receipt by OEHHA. The agreement to provide a tracking number and notice of receipt shall not otherwise materially alter any duty to perform under this Settlement Agreement.

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Trademark

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Trademark, of any violation of Proposition 65 that was or could have been asserted by KASB on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, against Trademark and its parents, subsidiaries, affiliated entities under common ownership, shareholders, directors, officers, employees, agents, attorneys, and each entity to whom Trademark directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees including, without limitation Amazon.com and Amazon, Inc. (collectively, Releasees), based on alleged exposures to DEHP, or the failure to provide a warning under Proposition 65 about exposure to DEHP, regarding Products that were manufactured, distributed, sold or offered for sale by Trademark prior to the Effective Date.

In further consideration of the promises and agreements herein contained, KASB, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives and releases all of KASB's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that KASB may have, against Trademark and Releasees, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in the Products that were manufactured, distributed, sold and/or offered for sale by Trademark prior to the Effective Date.

The Parties further understand and agree this Section 4.1 release shall not extend upstream to any entities who manufactured the Products or any component parts thereof or any distributors or suppliers who sold the Products or any component parts to Trademark. Nor shall this Section 4.1 release apply to any downstream, third-party websites that fail to communicate Product warnings, as set forth in Section 2, after the Effective Date. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee not involving Trademark's Products.

KASB, acting on its own behalf and in the public interest, releases Releasees from all claims for violations of Proposition 65 up through the Effective Date based upon exposure to DEHP from the Products. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products as set forth in the Notice of Violations.

4.2 Trademark's Release of KASB

Trademark, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against KASB and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by KASB and its attorneys and other representatives in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

4.3 Mutual Waiver of California Civil Code § 1542.

The Parties each acknowledge familiarity with Section 1542 of the Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties, each on their own behalf, and each on behalf of their past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which it/they may have under, or which may be conferred upon it/them by the provisions of Civil Code Section 1542, as well as under any other state or federal statute or

common law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by Sections 4.2 and 4.3, above. Nothing in this section shall affect KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Agreement shall be governed by and apply within the laws of the State of California. In the event Proposition 65 is repealed or is otherwise rendered inapplicable, by reason of law generally, or no longer required as to the Products specifically, then Trademark shall provide written notice to KASB of any asserted change in the law and shall have no further injunctive obligations pursuant to this Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Agreement shall be interpreted to relieve Trademark from its obligation to comply with pertinent state or federal toxics control laws.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided by this Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Trademark:
Jason Dietz
Chief Financial Officer
Trademark Global, LLC.
7951 West Erie Avenue | Lorain, Ohio 44053

With a copy to:
Michael R. Leslie, Esq.
King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

For KASB:
Kimberly Gates Johnson, Esq.

Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall be deemed to constitute one and the same document.

9. REPORTING PURSUANT TO HEALTH & SAFETY CODE § 25249.7(f)

KASB agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f), and shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the date this agreement is fully executed by the Parties.

10. MODIFICATION

This Settlement Agreement may only be modified by the written agreement of the Parties.

11. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

12. AUTHORIZATION


The undersigned represent they have the full authority to enter into and legally bind the entities that are the subject of this Settlement Agreement. The undersigned further represent they are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 03/15/2023

Date: 3/15/2023

By: 

My Nguyen, CFO
Keep America Safe and Beautiful

By: 

Jason Dietz, Chief Financial Officer
Trademark Global, LLC