



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

NOV 22 2006

REPLY TO THE ATTENTION OF:

(AE-17J)

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

Mr. William E. May  
Tween Brands, Inc.  
8323 Walton Parkway  
New Albany, Ohio 43054-9522

Dear Mr. May:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves violations at Tween Brands, Inc.'s, New Albany, Ohio facility, CAA Docket No. CAA-05-2007-0001. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on NOV 22 2006.

Pursuant to paragraph 37 of the CAFO, Tween Brands, Inc. must pay the civil penalty within 30 days of NOV 22 2006. Your check must display the case docket number, CAA-05-2007-0001 and the billing document number, 2750703 Acc 1.

Please direct any questions regarding this case to Cynthia King, Associate Regional Counsel, (312) 886-6831.

Sincerely yours,

Bonnie Bush, Chief  
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region V

IN THE MATTER OF: )  
)  
TWEEN BRANDS, INC. )  
(formerly known as Too, Inc.) )  
)  
)  
Respondent. )  
\_\_\_\_\_ )

DOCKET NO. CAA-05-2007-0001 #4  
CONSENT AGREEMENT and  
FINAL ORDER

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U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION V  
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CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTIONAL AUTHORITY

1. This is a civil administrative action instituted and settled pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brings this administrative action seeking a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

3. The Respondent is Tween Brands, Inc. (formerly known as Too, Inc.) (Respondent), a corporation doing business in Ohio.

This Consent Agreement and Final Order resolves the liability for violations of Title VI of the Clean Air Act, Stratospheric Ozone Protection, and more particularly 40 C.F.R. Part 82, Subpart C, relating to the ban on non-essential products containing ozone depleting substances.

## **II. REGULATORY BACKGROUND**

4. Under Section 610 of the Act, 42 U.S.C. § 7671i, the Administrator of U.S. EPA promulgated regulations at 40 C.F.R. Part 82, Subpart C regarding the selling or distribution of nonessential products that contain class I substances or that contain or are manufactured with class II substances (Stratospheric Ozone Standards).

5. As set forth at 40 C.F.R. § 82.64(a), "no person may sell or distribute, or offer to sell or distribute, in interstate commerce any of the products identified as being nonessential in § 82.66(a)."

6. 40 C.F.R. § 82.66(a) provides that "the following products which release a class I substance (as defined in 40 C.F.R. Part 82, Appendix A to Subpart A) are identified as being nonessential, and subject to the prohibitions in § 82.64 - (a) [a]ny plastic party streamer . . . which is propelled by a chlorofluorocarbon, including, but not limited to - (1) string confetti. . . ."

7. As set forth at 40 C.F.R. § 82.64 (d), "no person may sell or distribute, or offer to sell or distribute, in interstate commerce any of the products identified as being nonessential in § 82.70(a) or (c)."

8. 40 C.F.R. § 82.70 provides that the following products which release a class II substance (as designated as class II in 40 C.F.R. Part 82, Appendix B to Subpart A) are identified as being nonessential and the sale or distribution of such products is prohibited under § 82.64(d), (e), or (f) - (a) [a]ny aerosol product or other pressurized dispenser which contains a class II substance . . . (c) [a]ny plastic foam product which contains, or is manufactured with, a class II substance."

9. Class I substance means any substance designated as class I in 40 C.F.R. Part 82, Appendix A to Subpart A, including but not limited to chlorofluorocarbons.

10. Class II substance means any substance designated as class II in 40 C.F.R. Part 82, Appendix B to Subpart A, including but not limited to chlorofluorocarbons.

11. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred between January 31, 1997 and March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under

Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004).

12. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

13. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

### **III. FACTUAL ALLEGATIONS**

14. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

15. Respondent is the owner or operator of approximately 700 stores located throughout the United States and Puerto Rico.

16. Between November 3, 2003 and February 24, 2005, Respondent purchased, for re-sale, cans of confetti string product known as Party String.

17. Upon learning that the cans might contain a class I or class II substance as a propellant, Respondent initiated its own internal recall of all cans of the product, even before laboratory testing confirmed that a banned substance was used as propellant in the product. At all times, Respondent worked cooperatively with the U.S. EPA and removed the Party String from its shelves and ceased selling the product. An inventory count showed that as a result of the removal and subsequent recall, Respondent had 1,588 Party String cans returned to its distribution center (the "Too Party String Inventory").

18. U.S. EPA agrees to consider Respondent's cooperation in the event of any future enforcement action by U.S. EPA against Respondent, including with respect to any penalty assessment proceedings.

19. On April 18, 2006, all 1,588 cans in the Too Party String Inventory were transported for destruction. As of June 26, 2006, Respondent had ensured that all 1,588 cans were properly destroyed.

#### **IV. VIOLATIONS**

20. Respondent sold or distributed, or offered to sell or distribute, in interstate commerce, Party String, a nonessential product, in violation of 40 C.F.R. § 82.64(a) and 42 U.S.C. § 7671i.

21. Respondent sold or distributed, or offered to sell or distribute, in interstate commerce, Party String, a nonessential product, in violation of 40 C.F.R. § 82.64(d) and 42 U.S.C. § 7571i.

**V. TERMS OF SETTLEMENT**

22. The parties agree that settling this action is in the public interest, that the entry of this Consent Agreement and Final Order (CAFO) without the filing of a Complaint or engaging in further litigation is the most appropriate means of resolving this matter, and that the purpose of this CAFO is to ensure compliance with Section 610 of the Act, 42 U.S.C. § 7671i, and the terms of this CAFO;

NOW, THEREFORE, before the taking of any testimony, upon the alleged violations, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

23. This settlement is pursuant to, and in accordance with, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

24. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations.

25. Respondent consents to the issuance of this CAFO and the assessment of a civil penalty.

26. Respondent consents to all of the conditions in this CAFO.

27. Respondent waives its right to a hearing as provided at 40 C.F.R. § 22.15(c).

28. Respondent waives its right to contest the allegations in this CAFO, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

29. In an Administrative Consent Order issued on May 26, 2006, Respondent agreed that it would destroy the Party String and that it will implement procedures to ensure that it will not import or offer for sale any product containing class I or class II substances that are not legal for sale, distribution or use in the United States.

30. Respondent certifies that the Too Party String Inventory has been destroyed.

31. Respondent certifies that it is complying fully with the Stratospheric Ozone Standards.

32. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Section 610 and 113 of the Act, 42 U.S.C. §§ 7671i and 7413, for the violations alleged in Section IV of this CAFO. Although U.S. EPA does not now plan any criminal action against Respondent, nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent arising from the violations alleged in this CAFO or liability related to other violations of the Act. Compliance with this CAFO shall not be a



defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by U.S. EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

33. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

34. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

35. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

36. "Parties" shall mean U.S. EPA and Respondent.

#### **IV. CIVIL PENALTY**

37. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors as justice may require), the size of Respondent's business, the economic impact of the penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations, payments by Respondent of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations. Based on an analysis of the above factors,

including, Respondent's cooperation and prompt return to compliance, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$109,849.70.

38. Respondent must pay the \$109,849.70 civil penalty by check payable to the "Treasurer, United States of America," in accordance with paragraphs 39 and 40 below, within thirty days (30) of the effective date of this CAFO.

39. Respondent must send the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251-7531

40. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Cynthia A. King, (C-14J)  
Office of the Regional Counsel

U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3509

41. This civil penalty is not deductible for federal tax purposes.

42. If Respondent does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

43. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Respondent will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

### VIII. General Provisions

44. This CAFO settles U.S. EPA's claims for civil penalties for the facts and violations alleged in Sections III and IV of this CAFO.

45. Together with the Parties' May 26, 2006 Administrative Compliance Order, this represents all of the terms of the full and final settlement and agreement between Respondent and U.S. EPA arising out of the facts and violations alleged in Sections III and IV of this CAFO.

46. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

47. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws and regulations.

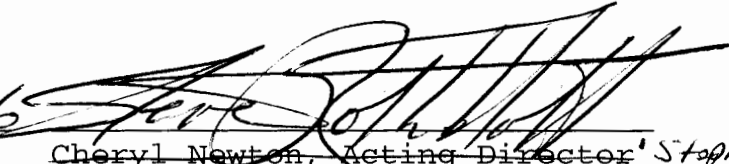
48. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Stationary Source Civil Penalty Policy" to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

49. The terms of this CAFO bind Respondent, its successors, and assigns.

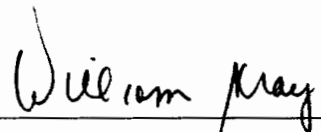
50. This CAFO constitutes the entire agreement between the parties.

51. This CAFO shall terminate following Respondent's full payment of the penalty due under this CAFO.

**U.S. Environmental Protection Agency,  
Complainant**

Date: 11/14/2006   
Cheryl Newton, Acting Director' Stephen Rotblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5 (A-18J)

**Tween Brands, Inc. (formerly known as  
Too, Inc.), Respondent**

Date: 11/2/2006   
William E. May, Executive  
Vice President and Chief Operating  
Officer  
Tween Brands, Inc.

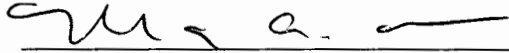
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CONSENT AGREEMENT AND FINAL ORDER  
Tween Brands, Inc. New Albany, Ohio  
Docket No. CAA-05-2007-0001 ~~11~~

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Dated: 11/20/06



Mary A. Gade  
Regional Administrator  
U.S. Environmental Protection Agency,  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

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CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2007-0001 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed a correct copy by first-class, postage prepaid, certified mail, return receipt requested, to Tween Brands, Inc. by placing it in the custody of the United States Postal Service addressed as follows:

Mr. William E. May  
Tween Brands, Inc.  
8323 Walton Parkway  
New Albany, Ohio 43054-9522

Deanne Ottaviano, Counsel  
Arent Fox, PLLC  
1050 Connecticut Avenue, NW  
Washington, DC 20036

on this 22 day of NOVember, 2006

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*Shanee Rucker*  
Shanee Rucker  
AECAS (MI/WI)

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