

**Before the
U.S. Department of Energy
Washington, D.C. 20554**

In the Matter of:)	
)	
Watermark Designs Holdings, Ltd.)	Case Number: 2010-CW-1404
d/b/a Watermark Designs, Ltd.,)	
Respondent)	
)	

ORDER

By the General Counsel, U.S. Department of Energy:

1. In this Order, I adopt the attached Compromise Agreement entered into between the U.S. Department of Energy (“DOE”) and Watermark Designs, Ltd. (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for violations of the compliance certification requirements at 10 C.F.R. § 430.62.

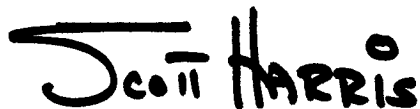
2. The DOE and Respondent have negotiated the terms of the Compromise Agreement that resolve this matter. A copy of the Compromise Agreement is attached hereto and incorporated by reference.

3. After reviewing the terms of the Compromise Agreement and evaluating the facts before me, I find that the public interest would be served by adopting the Compromise Agreement which completes the adjudication of the case.

4. Based on the information in the case file and the facts before me, I find that Respondent committed Prohibited Acts¹ by failing to comply with 10 C.F.R. § 430.62 and 42 U.S.C. § 6296(d) and assess a civil penalty of \$135,104.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 333 of the Energy Policy and Conservation Act, of 1975, as amended,² the Compromise Agreement attached to this Order **IS ADOPTED**.

U.S. DEPARTMENT OF ENERGY



Scott Blake Harris

¹ 42 U.S.C. § 6302 lays out the specific acts prohibited by the Energy Policy and Conservation Act, of 1975, as amended, 42 U.S.C. § 6291, *et seq.*

² 42 U.S.C. § 6303.

**Before the
U.S. Department of Energy
Washington, D.C. 20585**

In the Matter of:)
)
Watermark Designs Holdings, Ltd.)
d/b/a Watermark Designs, Ltd.,) Case Number: 2010-CW-1404
Respondent)

COMPROMISE AGREEMENT

The U.S. Department of Energy Office of the General Counsel initiated this action against Watermark Designs Holdings, Ltd. d/b/a Watermark Designs, Ltd., pursuant to 49 C.F.R. § 430.74 by Notice of Proposed Civil Penalty on January 25, 2010, alleging that Respondent had failed to submit a certification report for each basic model of covered product and had submitted a compliance statement for showerheads that failed to meet the applicable requirements. Respondent on behalf of itself and any parent, subsidiary, division or other related entity and the DOE, by their authorized representatives, hereby enter into this Compromise Agreement for the purpose of settling this civil penalty action.

I. DEFINITIONS

For the purposes of this Compromise Agreement, the following definitions shall apply:

- (a) "Act" means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. § 6291, *et seq.*
- (b) "Adopting Order" means an Order of the General Counsel adopting the terms of this Compromise Agreement without change, addition, deletion, or modification.
- (c) "DOE" means the U.S. Department of Energy.
- (d) "DOE Rules" means DOE's energy conservation regulations found in Title 10, Part 430, of the Code of Federal Regulations.
- (e) "Notice" means the Notice of Proposed Civil Penalty issued by the DOE to Respondent on January 25, 2010, and captioned as DOE case number 2010-CW-1404.
- (f) "Parties" means the DOE and Respondent.
- (g) "Respondent" means Watermark Designs Holdings, Ltd. and any parent, subsidiary, division or other related entity.

II. RECITALS

WHEREAS, the DOE, pursuant to 42 U.S.C. §§ 6291, *et seq.*, is responsible for the promulgation and enforcement of the energy conservation requirements set forth in the DOE Rules; and

WHEREAS, the DOE has promulgated energy conservation standards for showerheads at 10 C.F.R. § 430.32 and requires manufacturers to submit information and reports to insure compliance with those standards at 10 C.F.R. § 430.62; and

WHEREAS, the DOE, pursuant to 42 U.S.C. §§ 6296, 6302, & 6303 and 10 C.F.R. § 430.61, is authorized to assess civil monetary penalties for actions prohibited by the Act, including failing to make reports or provide other required information; and

WHEREAS, the DOE, on January 25, 2010, initiated an action to assess a civil penalty for failing to submit a certification report to the DOE for each basic model of covered product(s) as required by 10 C.F.R. § 430.62 and for submitting a compliance statement to the DOE that failed to meet the requirements of 10 C.F.R. § 430.62; and

WHEREAS, Respondent:

1. Manufactures and distributes showerheads, including basic model(s) SH-403, SH-503, SH-603, SH-DLX, SH-FAL50, SH-FAL70, SH-FAL90, SH-FRS20, SH-FRS30, SH-FRS50, SH-LFT30, SH-LFT50, SH-OCT50, SH-POR50, SH-POR70, SH-PRE50, SH-PRE75, SH-RH070, SH-RMN30, SH-RMN50, SH-S1000, SH-S140, SH-S150, SH-S525, SH-SQ050, SH-SQ075, SH-TIT30, SH-TIT50, SH-URB30, SH-URB50, SS-RH075, SS-RH080, SS-RH400, SS-RH500, SS-RH600, and SS-RH700.
2. Has distributed these products in the United States at least since January 25, 2009.
3. Submitted, a compliance statement on April 4, 2006, to DOE, which failed to meet the requirements of 10 C.F.R. § 430.62, in the belief that this statement met the requirements of 10 C.F.R. § 430.62;
4. As of January 25, 2010, had not submitted a certification report to the DOE for each basic model of showerhead.
5. On January 25, 2010, was informed by the DOE that its compliance statement submitted in 2006 did not meet the requirements of 10 C.F.R. § 430.62.

WHEREAS, Respondent has now submitted a certification report to the DOE for each basic model of showerhead it distributes in commerce in the U.S. and has submitted a compliance statement that meets the requirements of 10 C.F.R. § 430.62; and

WHEREAS, Respondent has demonstrated it is a small business as defined by the Small Business Administration (see 13 C.F.R. Part 121); and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that, in light of the circumstances, this

Compromise Agreement properly balances the policies recognized in the Energy Policy and Conservation Act and is the appropriate way to resolve this matter;

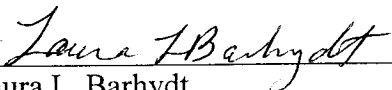
NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

III. Terms of the Agreement

1. **Adopting Order.** The Parties agree that the provisions of this Compromise Agreement shall be subject to final approval by the General Counsel by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.
2. **Obligations of Respondent.**
 - a. Respondent agrees to pay the sum of \$135,104 as full satisfaction of the civil penalty proposed in the Notice, within 30 days of the issuance of an adopting order.
 - b. Respondent will properly certify all basic models in the future in accordance with applicable DOE Rules.
 - c. Respondent attests that all models currently warehoused in Respondent's facilities or the facilities of its distributors have a flow restriction device installed and comply with the Federal water conservation standard.
3. **Obligations of DOE.**
 - a. In express reliance on the covenants and representations in this Compromise Agreement and to avoid further expenditure of public resources, the DOE agrees to accept Respondent's payment pursuant to paragraph III.1.a. in full satisfaction of the penalty authorized by the Act.
 - b. The DOE agrees to promptly issue an order adopting this Agreement.
 - c. The DOE agrees to terminate the enforcement action with prejudice upon receipt of Respondent's civil penalty payment.
 - d. This Compromise Agreement does not restrict DOE's authority to conduct testing pursuant to 42 U.S.C. 6296 and 10 CFR § 430.70.
4. **Jurisdiction and Governing Law.** This Compromise Agreement is entered pursuant to the DOE's authority to interpret and enforce its rules for energy efficiency and to enter into its own agreements interpreting and applying those rules. The Parties agree that the DOE has jurisdiction over Respondent and exclusive jurisdiction over the matters contained in this Compromise Agreement and has the authority to enter into this Compromise Agreement.
5. **Effective Date.** The Parties agree that this Compromise Agreement shall become effective on the date on which the General Counsel issues the Adopting Order. Upon release, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel. Any violation of the

Adopting Order or of the terms of this Compromise Agreement shall constitute a separate violation of an agency Order, entitling the DOE to exercise any rights and remedies attendant to the enforcement of an agency Order.


6. **Waivers.** Respondent agrees not to seek judicial review or otherwise contest or challenge the validity of the terms and penalties set out in this Compromise Agreement or the Notice associated with this case, including any right to judicial review that may be available to the Respondent. If either Party (or the United States on behalf of the DOE) brings a judicial action to enforce the terms of this Compromise Agreement, neither Respondent nor the DOE shall contest the validity of the Compromise Agreement, and Respondent shall waive any statutory right to a trial *de novo*. Respondent hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504, relating to the matters addressed in this Compromise Agreement.
7. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves only the violations alleged in the Notice.
8. **Merger.** This Compromise Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings and agreements between the Parties, whether oral or written.
9. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.
10. **Invalidity.** In the event that this Compromise Agreement in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.
11. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
12. **Counterparts.** This Compromise Agreement may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.



Laura L. Barhydt
Special Advisor to the General Counsel
U.S. Department of Energy

4/21/10

Date



Jack Abel, P.E.
Vice President
Watermark Designs Holdings, Ltd.

4/15/10

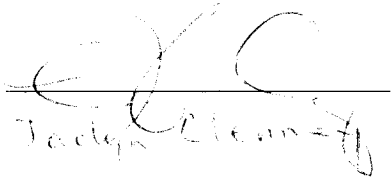
Date

Certificate of Service

This is to certify that on April 26, 2010, the undersigned served the designated copies on each of the parties listed below in the manner indicated.

Avi Abel
Watermark Designs, Ltd.
350 Dewitt Avenue
Brooklyn, New York 11207

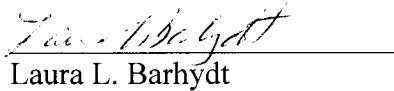
Certified Mail



This is to certify that on April 22, 2010, the undersigned served the designated copies on each of the parties listed below in the manner indicated.

Salo Zelermyer, Esq.
Bracewell & Giuliani LLP
2000 K Street, NW, Suite 500
Washington, DC 20006

E-mail
salo.zelermyer@bgllp.com



Laura L. Barhydt