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U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Stephen Lemberg
Acting General Counsel

Tel: 301-504-0980, x2218
Fax: 301-504-2403
Email: slemberg@cpsc.gov

Office of the General Counsel

March 12, 2002

Jeffrey D. Leathers, Esq.
Greer & Pipkin
P. O. Box 907
Tupelo, MS 38802-0907

Re: FOIA Appeal S1070105
TPI Wall Heaters

Dear Mr. Leathers:

By letter dated January 12, 2002, (received at CPSC on February 26, 2002), you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and the responsive documents.

I affirm the FOI Officer's decision to withhold the information responsive to your request. My decision is based on Exemptions 3 and 4 of the FOIA. 5 U.S.C. §§ 552(b)(3) and (b)(4).

The responsive documents are contained in an investigation file that CPSC closed without requiring TPI to take any corrective action. If an investigation has been closed at that stage, certain specific FOIA exemptions may apply. In this case, the FOI Officer correctly determined that those exemptions prohibit release of the information you seek here.

Exemption 3 of the FOIA provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to the withheld documents, we are relying on sections 6 and 15(b) of the Consumer Product Safety Act (CPSA). 15 U.S.C. §§ 2055

and 2064(b). Section 15(b) of the CPSA requires every manufacturer, distributor and retailer of a consumer product distributed in commerce who obtains information which reasonably supports the conclusion that such product fails to comply with an applicable consumer product safety rule, contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death to notify the Commission. Section 6(b)(5) prohibits the disclosure of information about a consumer product submitted pursuant to CPSA section 15(b) unless the Commission has issued a complaint under section 15(c) or (d) alleging that such product presents a substantial product hazard, the Commission has accepted in writing a remedial settlement agreement, or the person submitting the information agrees to its public disclosure. None of these three exceptions applies here. Therefore section 6(b)(5) dictates that we withhold the section 15(b) information in this file.

In addition, under Exemption 3, the Commission is relying on sections 6(a)(2) of the CPSA. Section 6(a)(2) expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission which contains or relates to trade secrets or other confidential commercial information. Section 6(a)(2) incorporates Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information obtained from a person.

Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain the necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The information that has been withheld pursuant to Exemption 3, relying on section 6(a)(2), and Exemption 4 consists of technical engineering evaluations, TPI confidential sales data and related materials and product blueprints.

In applying FOIA Exemption 3 we are also relying on Section 6(b)(1) of the CPSA. That section requires that, before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission must notify and provide a summary of the information to each manufacturer or private labeler to which the information pertains and provide a reasonable opportunity for comment. The Commission must also take reasonable steps to assure, prior to its disclosure, that such information is accurate, and that disclosure is fair in the circumstances and reasonably related

Jeffrey D. Leathers, Esq.

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to effectuating the purposes of the CPSA. I affirm the decision of the FOI officer who determined that disclosure of this information would not be fair in the circumstances. Information being withheld consists of claim or complaint information, and staff notes and correspondence with the company during negotiation where the company requested confidentiality. See 16 C.F.R. § 1101.33.

You have the right to seek judicial review of this decision as provided by 5 U.S.C. § 552(a)(4)(B). If you have any questions, please call Melissa Hampshire, the attorney assigned to this matter, at (301) 504-0980.

Sincerely,

A handwritten signature in cursive script that reads "Stephen Lemberg". The signature is written in dark ink and is positioned above the printed name and title.

Stephen Lemberg
Acting General Counsel

GREER & PIPKIN
ATTORNEYS AT LAW
208 NORTH GLOSTER STREET
POST OFFICE BOX 907
TUPELO, MISSISSIPPI 38802-0907
INTERNET E-MAIL: greerandpipkin@dixie-net.com

TELEPHONE: 662-842-5345

ATTORNEYS:
MICHAEL D. GREER
ANNA CATHERINE PIPKIN*
JEFFREY D. LEATHERS
*Also Licensed in Tennessee

2002 FEB 26 A 10:00
FACSIMILE: 662-842-5870

LEGAL ASSISTANTS:
CHRISTY B. COLBURN
SHARLENE R. NORRIS
BETH PERRY

January 12, 2002

FOIA APPEAL
General Council
Attn. Office of the Secretary
U.S. Consumers Product Safety Commission
Washington, DC 20207

0388 TPE

Dear Sir or Madam:

This letter is written pursuant to 16C.F.R. Section 1015.7. Previously we had requested information pursuant to the Freedom of Information Act in a letter dated December 13, 2001 this request is denied. Please let this letter serve as appeal of that request. It is our position that this information is reasonable necessary to prevent lose of life giving the number of fires caused by TPI Heaters. We would request that our appeal be considered as quickly as possible by this office. If you need any further information concerning this appeal request, please fill free to write or call.

Sincerely Yours,


Jeff Leathers

jdl/bp

Enclosure



DEC 27 2001

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Director and Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

December 13, 2001

CERTIFIED MAIL

Jeff Leathers
PO BOX 907
Tupelo, MS 38802-0907

Re: FOIA Request S1070105: TPI Corporation Electric Radiant Wall Heater Model 22R30
CPSC File FC920021

Dear Mr. Leathers:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U. S. Consumer Product Safety Commission (Commission). The responsive records are from the Commission's Atlanta Field Office Compliance Investigation (CPSC File FC920021) of the TPI Corporation electric radiant wall heater, model 22R30. The file was closed in 1994 without any corrective action required of TPI. The Commission's staff concluded that no safety issue existed with the product. The Commission did not file an action against TPI under Sections 12 or 15 of the Consumer Product Safety Act (CPSA), and no remedial settlement was sought by the Commission or offered by TPI.

We must withhold from disclosure all of the records from the file, which are contained in the Commission's law enforcement investigatory files, pursuant to the FOIA Exemptions 3, and 4, 5 U.S.C. §§ 552(b)(3), and (b)(4), and sections 6(a)(2), 6(b)(1), and 6(b)(5) of the CPSA, 15 U.S.C. §§ 2055(a)(2), 6(b)(1), and 6(b)(5). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. The files contain proprietary and confidential information that we must withhold pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. Specifically, we are withholding file materials containing unconfirmed or inaccurate information about complaints and claims information and confidential commercial information, such as, submitted proprietary correspondence, sales data, testing details and quality assurance materials.

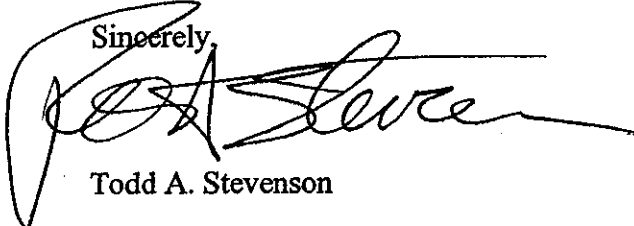
We are also relying in part to section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. It would not be fair in the circumstances to disclose a firm's notes, drafts or minutes of meetings to discuss and negotiate settlements agreements, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. § 1101.33.

In applying Exemption 3, we are also relying on section 6(b)(5) of the CPSA. That section prohibits the disclosure of information submitted under section 15(b) of the CPSA and relating to such an inquiry, unless the Commission has issued a complaint, accepted in writing a remedial settlement agreement, or the manufacturer agrees to the disclosure. CPSA section 15(b) requires manufacturers to report to the Commission and provide information regarding their products and potential substantial product hazards. The withheld information from the file includes information submitted by the manufacturer pursuant to section 15(b) of the CPSA or records derived from and based on that information. The Commission has not issued a complaint or accepted a remedial settlement agreement and the firm has not consented to disclosure.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

Processing this request, performing the file searches and preparing the information, cost the Commission \$100.00. In this instance, we have decided to waive all of the charges.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", written over a horizontal line.

Todd A. Stevenson



0388 TPI

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Director and Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

December 13, 2001

CERTIFIED MAIL

Jeff Leathers
PO BOX 907
Tupelo, MS 38802-0907

Re: FOIA Request S1070105: TPI Corporation Electric Radiant Wall Heater Model 22R30
CPSC File FC920021

Dear Mr. Leathers:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U. S. Consumer Product Safety Commission (Commission). The responsive records are from the Commission's Atlanta Field Office Compliance Investigation (CPSC File FC920021) of the TPI Corporation electric radiant wall heater, model 22R30. The file was closed in 1994 without any corrective action required of TPI. The Commission's staff concluded that no safety issue existed with the product. The Commission did not file an action against TPI under Sections 12 or 15 of the Consumer Product Safety Act (CPSA), and no remedial settlement was sought by the Commission or offered by TPI.

We must withhold from disclosure all of the records from the file, which are contained in the Commission's law enforcement investigatory files, pursuant to the FOIA Exemptions 3, and 4, 5 U.S.C. §§ 552(b)(3), and (b)(4), and sections 6(a)(2), 6(b)(1), and 6(b)(5) of the CPSA, 15 U.S.C. §§ 2055(a)(2), 6(b)(1), and 6(b)(5). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. The files contain proprietary and confidential information that we must withhold pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. Specifically, we are withholding file materials containing unconfirmed or inaccurate information about complaints and claims information and confidential commercial information, such as, submitted proprietary correspondence, sales data, testing details and quality assurance materials.

We are also relying in part to section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. It would not be fair in the circumstances to disclose a firm's notes, drafts or minutes of meetings to discuss and negotiate settlements agreements, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. § 1101.33.

In applying Exemption 3, we are also relying on section 6(b)(5) of the CPSA. That section prohibits the disclosure of information submitted under section 15(b) of the CPSA and relating to such an inquiry, unless the Commission has issued a complaint, accepted in writing a remedial settlement agreement, or the manufacturer agrees to the disclosure. CPSA section 15(b) requires manufacturers to report to the Commission and provide information regarding their products and potential substantial product hazards. The withheld information from the file includes information submitted by the manufacturer pursuant to section 15(b) of the CPSA or records derived from and based on that information. The Commission has not issued a complaint or accepted a remedial settlement agreement and the firm has not consented to disclosure.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

Processing this request, performing the file searches and preparing the information, cost the Commission \$100.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Stevenson, Todd A.

From: Jeff Leathers [JeffreyLeathers@excite.com]
Sent: Wednesday, July 18, 2001 11:26 AM
To: tstevenson@cpsc.gov
Subject: Freedom of Information Request

I would appreciate any information this commission has regarding
TPI Corporation
Johnson City, Tennessee

I am interested in any information regarding Radiant Wall Heater 22R30
I am particularly interested in a study conducted in 1993 which I think can
be identified as CPSC FC920021. I believe this investigation concerned
house fires caused by the heater turning on automatically due to a defective
thermostat. I am willing to pay any fee or expense for this information.
This information is important as we believe that this heater is responsible
for at least 75 house fires, 26 more than in 1993 at the time of the CPSC
investigation.

My address: Jeff Leathers
P.O. Box 907
Tupelo, MS 38802--0907
contact no. (662)842-5345 ext. 10

S/c

ER/S

AY

03882

Send a cool gift with your E-Card
<http://www.bluemountain.com/giftcenter/>

S-1070105



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

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BAS (4)

A large, stylized handwritten signature in black ink, likely belonging to Todd A. Stevenson.

Todd A. Stevenson
Director and Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

April 5, 2002

Sean P. Gallagher
Greenebaum, Doll & McDonald
3300 National City Tower
101 South 5th Street
Louisville, KY 40202-3197

Re: FOIA Requests S1080141 and S1090103: Baseball Bat Petition CP00-1, Drafts and Materials Received after May 1, 2001

Dear Mr. Gallagher:

Thank you for your Freedom of Information Act (FOIA) requests seeking information from the U.S. Consumer Product Safety Commission (Commission). Based on your Appeal of my denial by my letter dated February 8, 2002, I have reconsidered the withholding of the requested materials. Enclosed are copies of the undated draft Commission staff memorandum regarding the petition, staff handwritten notes, and correspondence discussing the draft memorandum from the New York City Council and law firm of Honingman, Miller Schwartz and Cohn, of Detroit Michigan on behalf of Easton Sports, Inc.

Sincerely,

Todd A. Stevenson

Enclosures

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207-0001

OFFICE OF THE GENERAL COUNSEL

Stephen Lemberg
Acting General Counsel
Tel: 301-504-0980 ext. 2218
Fax: 301-504-0403
E-Mail: cpsc-gc@cpsc.gov

April 4, 2002

Sean P. Gallagher, Esq.
Greenbaum, Doll & McDonald
3300 National City Tower
101 South 5th Street
Louisville, Kentucky 40202-3197

Re: FOIA Appeals #S-1080141 and S1090103

Dear Mr. Gallagher:

By letter dated February 22, 2002 you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and the responsive documents.

The FOI Officer has reconsidered his decision regarding the documents responsive to your request - an undated draft Commission staff memorandum regarding the baseball bat petition, correspondence from third parties on the undated memorandum and Commission staff notes and notes of telephone conversations. These documents are being released today. In accordance with 16 C.F.R. 1015.15(c) the Commission staff documents are marked "DRAFT" to indicate their tentative nature. The FOI Officer is sending you these materials under separate cover.

Sincerely,



Stephen Lemberg
Acting General Counsel



Sean P. Gallagher
Direct 502-587-3773 Fax 502-587-3695 E-mail spg@gdm.com

February 22, 2002

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

FOIA Appeal
General Counsel
Attn: Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Dear General Counsel:

This letter constitutes an appeal of your denial of FOIA Requests S1080141 and S1090103.

First, you have withheld an undated draft Commission staff memorandum regarding the baseball bat petition. Draft Commission documents are subject to release provided they are marked to indicate their tentative nature. See 16 C.F.R. § 1015.15(c). In any event, this particular document has been made available to third parties. This is evident from the fact that the New York City Counsel and the law firm of Honnigan, Miller Schwartz and Cohn (on behalf of Easton Sports, Inc.) was allowed to comment on the draft document. You indicate in your letter that this draft memorandum constitutes an intra-agency memorandum and "clearly falls within the attorney-client and attorney-work product privileges." However, because this document has been disclosed to third-parties, such privilege has been waived.

Second, you withheld copies of the correspondence from the New York City Counsel and the law firm of Honnigan, Miller Schwartz and Cohn (on behalf of Easton Sports, Inc). It appears that this correspondence consists of comments from third parties on the baseball bat petition. Such correspondence is neither privileged nor an intra-agency communication, and should therefore be disclosed.

Third, you withheld copies of "staff handwritten notes." However, to the extent any of these notes were taken during a telephone conversation held between an Agency employee and an outside person, they must be disclosed. See 16 C.F.R. §1012.7.

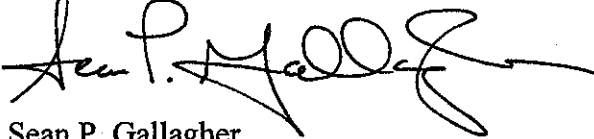
February 22, 2002

Page 2

It is the policy of the Commission that "disclosure is the rule and withholding is the exception." 16 C.F.R. §1015.1(b). It is troubling that the Commission prepared a draft memorandum, allowed it to be disclosed to selected third parties, accepted comments from such parties and now refuses to disclose such comments.

In light of the foregoing, I hereby appeal the denial of FOIA requests S1080141 and S1090103.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean P. Gallagher", with a long horizontal flourish extending to the right.

Sean P. Gallagher

SPG/lh



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U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

A handwritten signature in black ink, appearing to be "T. Stevenson", written over a horizontal line.

Todd A. Stevenson
Director and Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785, X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

February 8, 2002

CERTIFIED MAIL

Sean P. Gallagher
Greenebaum, Doll & McDonald
3300 National City Tower
101 South 5th Street
Louisville, KY 40202-3197

Re: FOIA Requests S1080141 and S1090103: Baseball Bat Petition CP00-1, Drafts and Materials Received after May 1, 2001

Dear Mr. Gallagher:

Thank you for your Freedom of Information Act (FOIA) requests seeking information from the U.S. Consumer Product Safety Commission (Commission). The only records pertaining to your requests are an undated draft Commission staff memorandum regarding the petition, staff handwritten notes, and correspondence discussing the draft memorandum from the New York City Council and law firm of Honingman, Miller Schwartz and Cohn, of Detroit Michigan on behalf of Easton Sports, Inc. There are no submissions from the petitioner Mr. MacKay.

We must withhold these entire draft materials and derivative materials pursuant to the FOIA Exemption 5, 5 U.S.C. § 552(b)(5). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. The records being withheld consist of internal staff discussions containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both pre-decisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would impair the frank exchange of views necessary with respect to such matters.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

Processing this request, performing the file searches and preparing the information, cost the Commission \$80.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

GREENEBAUM DOLL & McDONALD PLLC

3300 NATIONAL CITY TOWER
101 SOUTH FIFTH STREET
LOUISVILLE, KENTUCKY 40202-3197
502/589-4200

SEAN P. GALLAGHER
502-587-3773
FAX 502-540-2163
E-MAIL spg@gdm.com

August 24, 2001

VIA FACSIMILE

Todd A. Stevenson
Freedom of Information Officer
Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

1/A

Re: FOIA Request

Dear Mr. Stevenson:

I am writing to request a copy of all draft agency documents relating to the baseball bat petition (CP-00-1). Pursuant to 16 C.F.R. § 1015.15(c) draft documents are subject to release as follows:

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"(c) Draft documents that are agency records are subject to release upon request in accordance with this regulation. However, in order to avoid any misunderstanding of the preliminary nature of a draft document, each draft document released will be marked to indicate its tentative nature. Similarly, staff briefing packages, which have been completed but not yet transmitted to the Commission by the Office of the Secretary are subject to release upon request in accordance with this regulation. Each briefing package or portion thereof released will be marked to indicate that it has not been transmitted or acted upon by the Commission. In addition, briefing packages, or portions thereof, which the Secretary upon the advice of the Office of the General Counsel has determined would be released upon request in accordance with this regulation, will be publicly available in the public reference facility established under § 1015.2 promptly after the briefing package has been transmitted to the Commissioners by the Office of the Secretary. Such packages will be marked to indicate that they have not been acted upon by the Commission."

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TS 2546

51080141

LEXINGTON, KENTUCKY COVINGTON, KENTUCKY CINCINNATI, OHIO NASHVILLE, TENNESSEE FRANKFORT, KENTUCKY

GREENEBAUM DOLL & McDONALD PLLC

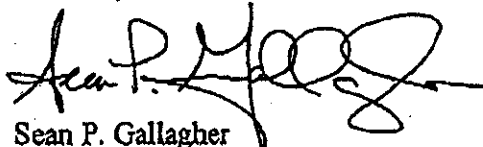
Todd A. Stevenson

August 24, 2001

Page 2

Please give me a call if you have any questions or need any further information. I appreciate your time and effort on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean P. Gallagher". The signature is stylized with a large, sweeping "S" and "G".

Sean P. Gallagher

SPG/lh

LOU:656021.1

GREENEBAUM DOLL & McDONALD PLLC

3300 NATIONAL CITY TOWER
101 SOUTH FIFTH STREET
LOUISVILLE, KENTUCKY 40202-3197
502/589-4200

SEAN P. GALLAGHER
502-587-3773
FAX 502-540-2163
E-MAIL spg@gdm.com

September 25, 2001

VIA FACSIMILE

Todd A. Stevenson
Freedom of Information Officer
Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

11A

Re: FOIA Request

Dear Mr. Stevenson:

I am writing to request copies of the following information relating to the Baseball Bat Petition (CP 00-1):

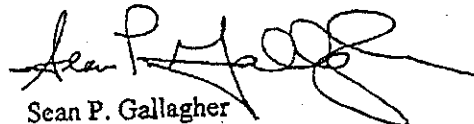
1. All materials submitted by petitioner, Jack MacKay, on or after May 1, 2001;
2. Summaries, transcripts or notes of all telephone conversations held between Agency employees and outside parties on or after May 1, 2001;
3. All written communications, including letters, faxes and email, between Agency employees and outside persons, on or after May 1, 2001; and
4. All materials submitted to the Commission by outside parties on or after May 1, 2001.

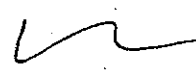
504/

Please give me a call if you have any questions or need any further information. I appreciate your time and effort on this matter.

BRANC
D. Y

Sincerely,


Sean P. Gallagher



SPG/lh
LOU:660851.1

S-1090103



(5)

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Melissa Hampshire
Acting General Counsel

Phone 301-504-0980
Fax 301-504-0403

May 10, 2002

Jan Eric Peterson, Esq.
Peterson, Young, Putra Law Offices
2800 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1609

Re: FOIA Appeal S2010203 on Glowmaster and Mr. Bar-B-Q portable stoves

Dear Mr. Peterson:

By letter dated March 6, 2002 (received on March 25), you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request on Glowmaster and Mr. Bar-B-Q portable stoves.

Under authority delegated to me by the Commission, 16 C.F.R. 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold the two files on these products based on FOIA Exemptions 3 and 7(A), 5 U.S.C. §§ 552(b)(3) and (b)(7)(A). For now, these files are part of an ongoing enforcement investigation.

Exemption 3 of the FOIA provides for withholding information that is specifically exempted from disclosure by another statute. In applying Exemption 3 to the withheld files, I am relying on sections 6(a) and 6(b) of the Consumer Product Safety Act, 15 U.S.C. §§ 2055(a) and (b). Section 6(a)(2), which incorporates FOIA Exemption 4, expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission which contains or relates to trade secrets or other confidential commercial information. The Commission has not yet processed any possible claims of confidentiality under this provision for information in the two requested files. Section 6(b)(1) requires that, before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The Commission has not yet taken the reasonable steps that might permit disclosure of information in the two requested files.

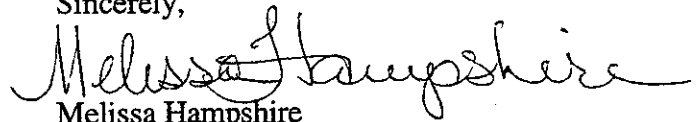
Jan Eric Peterson, Esq.

Page 2

Exemption 7(A) of the FOIA provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that its production could reasonably be expected to interfere with enforcement proceedings. Currently, this exemption applies to the two requested files. However, when they are closed, our FOI Officer will process them under sections 6(a) and (b). Some information may then become available to the public, and other information may continue to be exempt from disclosure under Exemptions 3, 7(A), or other FOIA exemptions. I suggest that you check periodically with our FOI Officer, Todd Stevenson, on the status of the two requested files.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in cursive script that reads "Melissa Hampshire". The signature is written in black ink and is positioned above the printed name and title.

Melissa Hampshire
Acting General Counsel



PETERSON YOUNG PUTRA
ATTORNEYS AT LAW

DEW
2/5/02
5

March 6, 2002

FOIA APPEAL
General Counsel
Attn: Office of the Secretary
US Consumer Product Safety Commission
Washington, DC 20207

Dear Sirs:

Attorneys

- FLETCHER, KELBY D.
- KNOPP, MATTHEW G.
- MASSONG, JUDY I.
- PETERSON, JAN ERIC
- PUTRA, BRIAN A.
- YOUNG, CHRISTOPHER E.
- ZEDER, FRED M.
- BRACELIN, ELIZABETH ,
(in memoriam)

Attached is a copy of the US Consumer Product Safety Commission's letter of February 8, 2002, denying our FOIA request S2010203: Glowmaster GM-1300 portable gas-fired cook stove, RaNee Industrial Co., model RE-2100SV cook stove, Chef Master model 40066 by Mr. Bar-B-Q, RaNee Industrial Co./complaints, reported incidents, investigations of incidents or corrective action or recall files/file search 1992 to present.

We wish to appeal the denial of our FOIA request on this product dated February 8th and signed by Todd Stevenson. This product has been on the market for some time, and the Underwriter's Laboratory warning to consumers, restaurant owners and retailers about this product posing a fire hazard was issued April 12, 2000. It would seem that there has been plenty of time for the Commission to investigate this product and that it is in the public's interest to reveal the results of that investigation and warn the public about any risks associated with this product.

We represent an individual who was badly burned when this product blew up when being appropriately used pursuant to the directions. We have reason to believe this product is still being sold for individual consumer use and on watercraft throughout the United States.

Thank you for your consideration.

Very truly yours,

PETERSON, YOUNG, PUTRA, FLETCHER,
ZEDER, MASSONG & KNOPP, P.S.

*Dictated but not read by attorney.
Sent unsigned to avoid delay.*

Jan Eric Peterson

JEP:mem\knapp\foia appeal 030602 jep
Attachment

Peterson Young Putra
Law Offices
2800 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1609

(206) 624-6800
(206) 682-1415 fax

www.pypfirm.com
mail@pypfirm.com



Wek ✓
JBP ✓

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Director and Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

February 8, 2002

RECEIVED

FEB 11 2002

Peterson, Young, Putra, Fletcher,
Zeder, Massong & Knopp

CERTIFIED MAIL

Patricia Brooks
Peterson Young Putra
1501 4th Avenue
Suite 2800
Seattle, WA 98101

Re: FOIA Request S2010203: Glowmaster GM-1300 Portable Gas-Fired Cook Stove, RaNee Industrial Co., Model RE-2100SV Cook Stove, Chef Master Model 40066 by Mr. Bar-B-Q, RaNee Industrial Co. / Complaints, Reported Incidents, Investigations of Incidents or Corrective Action or Recall Files / File Search 1992 to Present

Dear Ms. Brooks:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). We must withhold all of the records regarding the Commission's Office of Compliance's active litigation and law enforcement investigatory files, PI000026 Glowmaster, PI000103 Glowmaster, and PI000102 Mr. Bar-B-Q, Inc., RaNee Industrial, pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

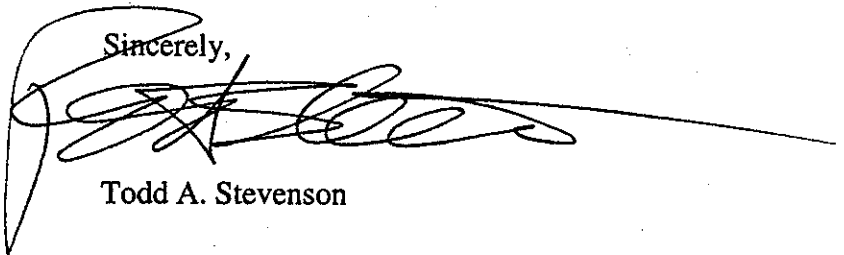
The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both pre-decisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with

exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

The file information may be subject to disclosure once the case is closed. You may want to resubmit your request in a few months. Processing this request, performing the file searches and reviewing the information, cost the Commission \$60.00. In this instance, we have decided to waive all of the charges.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", written over a horizontal line. The signature is stylized and somewhat cursive.

Todd A. Stevenson



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

DEN 2010203

Todd A. Stevenson
Director and Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

February 8, 2002

CERTIFIED MAIL

Patricia Brooks
Peterson Young Putra
1501 4th Avenue
Suite 2800
Seattle, WA 98101

Re: FOIA Request S2010203: Glowmaster GM-1300 Portable Gas-Fired Cook Stove, RaNee Industrial Co., Model RE-2100SV Cook Stove, Chef Master Model 40066 by Mr. Bar-B-Q, RaNee Industrial Co. / Complaints, Reported Incidents, Investigations of Incidents or Corrective Action or Recall Files / File Search 1992 to Present

Dear Ms. Brooks:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). We must withhold all of the records regarding the Commission's Office of Compliance's active litigation and law enforcement investigatory files, PI000026 Glowmaster, PI000103 Glowmaster, and PI000102 Mr. Bar-B-Q, Inc., RaNee Industrial, pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both pre-decisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with

exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

The file information may be subject to disclosure once the case is closed. You may want to resubmit your request in a few months. Processing this request, performing the file searches and reviewing the information, cost the Commission \$60.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Stevenson, Todd A.

From: Patricia L. Brooks [pat@pypfirm.com]
Sent: Thursday, January 31, 2002 10:46 AM
To: 'Stevenson, Todd A.'
Subject: RE: FOIA Request

Thank you for calling that to my attention - I do apologize for the error. My address is: Patricia Brooks, Peterson Young Putra, 1501 Fourth Avenue, Ste. 2800, Seattle, WA 98101. > 11A

-----Original Message-----

From: Stevenson, Todd A. [mailto:TStevenson@cpsc.gov]
Sent: Thursday, January 31, 2002 5:09 AM
To: 'pat@pypfirm.com'
Subject: RE: FOIA Request

Please provide a street mailing address. It is not likely that any records located will be available online.
Todd Stevenson, Office of the Secretary

-----Original Message-----

From: Patricia L. Brooks [mailto:pat@pypfirm.com]
Sent: Wednesday, January 30, 2002 5:30 PM
To: tstevenson@cpsc.gov
Subject: FOIA Request

Mr. Stevenson:

Under the provisions of the Freedom of Information Act, 5 U.S.C. 552, I am requesting release of complete information relevant to the following products: Glowmaster GM-1300 portable gas-fired cook stove, the RaNee Industrial Co. Model No. RE-2100SV cook stove, the Chef Master Nodel No. 40066 by Mr. Bar-B-Q, manufactured by RaNee Industrial Co. of Korea. This request includes, but is not limited to information regarding fires, damage, injuries, burns, and complaints of any kind regarding any of these products. 3248

If there are any fees for searching for, or copying the records I have requested, please supply the records without informing me of the costs if fees do not exceed \$500. ER45

If all or any part of this request is denied, please cite the specific exemptions which you think justifies your refusal to release the information and inform me of the appeal procedures available to me under the law. D. Y

I would appreciate your handling this request as quickly as possible, and I look forward to hearing from you at your earliest opportunity.

Very truly yours,

Pat Brooks
Peterson Young Putra
Seattle, WA

S-2010203



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Stephen Lemberg,
Acting General Counsel
Office of the General Counsel

Tel: 301-504-0980, x2218
Fax: 301-504-0403
Email: slemberg@cpsc.gov

April 23, 2002

Mr. Stuart M. Statler
2369 North Nelson Street
Arlington, VA 22207

RE: FOIA Appeal S1120110 Brinkmann smoker grills compliance file RP950027

Dear Mr. Statler:

By letter dated March 5, 2002, you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request on the recall file RP950027 of Brinkmann smoker grills.

Under authority delegated to me by the Commission, 16 C.F.R. 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold documents containing confidential information furnished by Brinkmann, notes of telephone conversations, draft documents prepared during settlement discussions, and correspondence with attachments between Commission staff and counsel for Brinkmann, based on FOIA Exemptions 3 and 4, 5 U.S.C. §§ 552(b)(3) and (b)(4). I am also affirming the Freedom of Information Officer's decision to withhold the preliminary staff determination based on FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(E).

Exemption 3 of the FOIA provides for withholding information that is specifically exempted from disclosure by another statute. In applying Exemption 3 to the withheld documents, I am relying on sections 6(b)(1) and (5) of the Consumer Product Safety Act, 15 U.S.C. § 2055(b)(1) and (5).

Section 6(b)(1) requires that, before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The information that is being withheld pursuant to Exemption 3, based on section 6(b)(1), consists of documents containing confidential information furnished by Brinkmann, including the preliminary staff determination, notes of telephone conversations, draft documents prepared during settlement discussions, and correspondence with attachments between Commission staff and counsel for Brinkmann. All of these documents concern the firm's section 15 report. The Commission has determined that it is unfair in the circumstances to disclose information

Mr. Stuart M. Statler

Page 2

furnished by a firm to facilitate prompt remedial action or settlement where the firm has a reasonable expectation that the information will be maintained in confidence. 16 C.F.R. §§ 1101.32(b)(1) and (b)(2). The withheld information falls within the scope of these regulations.

Moreover, in applying Exemption 3, the Commission is relying on section 6(b)(5) of the CPSA. That section prohibits disclosure of information submitted under section 15(b) of the CPSA unless the Commission has issued a complaint, has accepted in writing a remedial settlement agreement, or the manufacturer has agreed to the disclosure. The withheld information was submitted by Brinkmann pursuant to section 15(b) and the Commission has not issued a complaint or accepted in writing a remedial settlement dealing with the smoker grills and Brinkmann has not consented to the disclosure of this information.

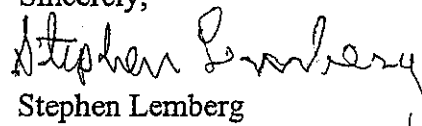
In addition, under Exemption 3, the Commission is relying on section 6(a)(2) of the CPSA. 15 U.S.C. § 2055(a)(2). Section 6(a)(2) expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission which contains or relates to trade secrets or other confidential commercial information. Section 6(a)(2) incorporates Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information obtained from a person.

Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain the necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The information that has been withheld pursuant to Exemption 3, based on section 6(a)(2), and Exemption 4 consists of portions of a preliminary staff determination and a full section 15 report containing Brinkmann's confidential sales and customer data, engineering data and drawings, and other confidential business correspondence.

Exemption 7(E) of the FOIA exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (E) would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 552(b)(7)(E). The information withheld under Exemption 7(E) consists of an internal staff preliminary determination report. This information was compiled for the purpose of enforcing section 15 of the CPSA and would disclose the Commission's investigatory techniques if released. Disclosure of the Commission's investigatory techniques, which are not shared with the public, would enable companies to change their operations to circumvent the investigatory process without complying with CPSA section 15.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,


Stephen Lemberg
Acting General Counsel

3248 BRE 6
2/7/02

STUART M. STATLER

esms@comcast.net

2369 NORTH NELSON STREET
ARLINGTON, VIRGINIA 22207
703/ 524-8990 (ph.)
703/ 524-8418 (fax)

March 5, 2002

FOIA APPEAL
General Counsel
Attn: Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, DC 20207

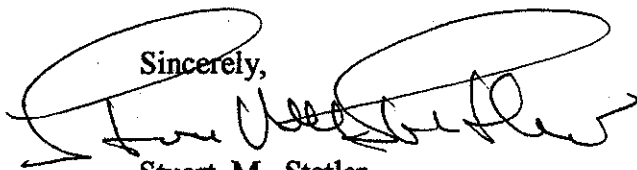
CPSC/Office of the Secretary
FOIA Request # 2002-000545
MARCH 21 AM 11:49

***Re: FOIA Request S1120110 –
Brinkmann Smoker Grills,
Recall File RP950027***

Having requested, back in early-January of this year, the above-referenced CPSC compliance file which relates to a recall conducted more than six years ago, I am distressed to learn that the entire file is being withheld. That message was conferred to me in a February 7, 2002 letter, which I received approximately one week later. It sets forth a series of excuses and purported administrative exclusions which have the effect of hiding the facts and circumstances of this safety risk from public perusal, wholly contrary to the language of the CPSA which I helped to write, as well as the spirit of openness underlying that the Act which I helped to uphold as a CPSC Commissioner (1979-86).

If this is standard operating procedure, the cause of public safety is disserved when an examination of the facts before the Commission cannot be had and the reasons for its decisions cannot be understood. In this light, I urge reconsideration of my original request. A public safety agency, known throughout its distinguished tenure for an abiding commitment to openness, should not hide behind legalisms to deny essential safety information about a now-closed corrective action, which it approved. The file is being withheld in its entirety from public purview, notwithstanding clear public interest in its disclosure. Thank you, in advance, for your attention to this matter.

Sincerely,



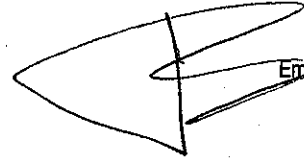
Stuart M. Statler



3248
BRT

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Director and Freedom of Information Officer
Office of the Secretary



Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

February 7, 2002

CERTIFIED MAIL

Stuart M. Statler
2369 North Nelson Street
Arlington, VA 22207

Re: FOIA Request S1120110: Brinkmann S-80 Smoker Grills 1995 Recall
/ Corrective Action or Recall File RP950027

Dear Mr. Statler:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission.

We must withhold from disclosure the entire records responsive to your request that are contained in the Commission's law enforcement investigatory files, CPSC Compliance files RP950027, Brinkmann S-80 Smoker Grills, pursuant to the FOIA Exemptions 3, and 4, 5 U.S.C. §§ 552(b)(3), and (b)(4), and sections 6(a)(2) and 6(b)(5) of the Consumer Product Safety Act (CPSA), 15 U.S.C. §§ 2055(a)(2), and 6(b)(5). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. The files contain proprietary and confidential information that we must withhold pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. We are withholding proprietary sales and customer information, engineering data and drawings, and other confidential business correspondence.

In applying Exemption 3, we are also relying on section 6(b)(5) of the CPSA. That section prohibits the disclosure of information submitted under section 15(b) of the CPSA and relating to such an inquiry, unless the Commission has issued a complaint, accepted in writing a remedial settlement agreement, or the manufacturer agrees to the disclosure. CPSA section 15(b) requires manufacturers to report to the Commission and provide information regarding their products and potential substantial product hazards. The withheld information from the file

includes information submitted by the manufacturer pursuant to section 15(b) of the CPSA or records derived from and based on that information. The Commission has not issued a complaint or accepted a remedial settlement agreement and the firm has not consented to disclosure.

We must also withhold other internal staff records contained in the Commission's Office of Compliance's law enforcement investigatory files pursuant to the Exemptions 5 and 7(E) of the FOIA, 5 U.S.C. §§ 552(b)(5) and (b)(7)(E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party in litigation with the agency. FOIA Exemption 7(E) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

The records being withheld consist of internal notes and memoranda containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations that the Commission administers.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

Processing this request, performing the file searches and reviewing the information, cost the Commission \$100.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Todd A. Stevenson
Stevenson, Todd A.

From: Schoem, Marc J.
Sent: Friday, December 21, 2001 10:56 AM
To: Stevenson, Todd A.
Cc: Gidding, Michael J.; Stone, Eric L.; Schoem, Alan H.
Subject: FW: Case file on Brinkmann Charcoal Water Smokers

Todd - a voice from the past! I am not sure which case he wants - RP960015 or RP950027 since they both involve smoker grills. He talked about a 1995 press release.

Can you handle? Thanks

-----Original Message-----

From: Stuart Statler [mailto:e-sms@home.com]
Sent: Friday, December 21, 2001 10:31 AM
To: mschoem@cpsc.gov
Subject: Case file on Brinkmann Charcoal Water Smokers

321.8, 3248

SLC

Per our discussion earlier today, I am interested in obtaining the entire case file, undoubtedly now closed, on Brinkmann charcoal water smokers --the subject of a Sept 1994 recall action. If there are any other related or updated materials --including any possible fines or penalties -- I'd like to obtain them as well. The information can be sent to me at:

Stuart M. Statler
2369 N. Nelson St
Arlington, VA 22207

Rel's
Statler
in
02 FND

Thanks, in advance, for expediting this request. stuart

D-4

S-1120110



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Stephen Lemberg
Acting General Counsel

Office of the General Counsel

Tel: 301-504-0980, x2218
Fax: 301-504-0403
Email: slemberg@cpsc.gov

April 23, 2002

Mr. Joe L. Frost
5517 Courtyard Drive
Austin, Texas 78731

RE: FOIA Appeal S110143 Dairy Queen Recall Files

Dear Mr. Frost:

By letter dated January 3, 2002 (received in the Office of the Secretary of the Commission on March 15, 2002) you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and the responsive document: a draft technical report prepared by Commission staff.

I affirm the FOI Officer's decision as to the withheld document. It is being withheld pursuant to FOIA Exemption 5 and 7(E) of the FOIA. 5 U.S.C. §§ 552(b)(5) and (b)(7)(E). FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents which would not be available by law to a party in litigation with the agency. The information being withheld pursuant to FOIA Exemption 5 is the technical staff's draft product safety assessment about a Dairy queen ice cream cone whistle. Exemption 5 incorporates the deliberative process privilege. The internal memoranda and staff notes withheld in this case consist of staff recommendations containing both pre-decisional and deliberative discussions. The deliberative process privilege protects advice, recommendations, and opinions that are part of the agency's deliberative, consultative, and decision-making processes. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. Release of this information would stifle the Commission's decisionmaking ability with respect to product investigations by impairing open and frank communication within the agency. This draft document contains recommendations, opinions, suggestions and analyses of the Commission's technical staff that are predecisional and deliberative and clearly fall within FOIA Exemption 5.

We are also withholding the draft report under Exemption 7(E) of the FOIA. Exemption 7(E) exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (E) would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 552(b)(7)(E). This draft technical report was compiled for the purpose of enforcing the provisions of the CPSA and would disclose the Commission's investigatory techniques if released. Disclosure of the Commission's investigatory techniques, which are not shared with the public, would enable companies to change their operations to circumvent the investigatory process without complying with the CPSA requirements.

By separate cover, the Commission's FOI officer will advise you today that he is instituting a new search for the information you requested in your appeal letter related to fatal incidents on Dairy Queen playground equipment. You can expect to hear from the FOI Officer on the status of your request within 10 days.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Stephen Lemberg
Acting General Counsel

7

JOE L. FROST, Ed.D
CONSULTANT AND PARKER CENTENNIAL PROFESSOR EMERITUS
5517 COURTYARD DRIVE
AUSTIN, TEXAS 78731
TELEPHONE (512) 346-5330
FAX (512) 346-0207
E-MAIL JFROST@MAIL.UTEXAS.EDU

February 9, 2002

FOIA Appeal, General Counsel
Attn: Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, D.C 20207

3273
DAIRY

Re: FOIA Request S-1100143: Dairy Queen Playground Equipment, Files RP980059 & RP980142, 1990 to present.

Dear General Counsel:

This is to appeal the decision to withhold notes, memoranda and other documents related to the above request. I am consulting with a law firm with respect to a fatal injury to a child falling from playground equipment at a Dairy Queen store in Orange, Texas on October 23, 1999. I believe that the material withheld would be directly relevant to determining responsibility for the fatal injury.

I have not been able to locate a CPSC record of Dairy Queen notifying CPSC of this equipment related fatality. Do you have such a record?

Thank you for your assistance.

Sincerely,


Joe L. Frost



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D. C. 20207
January 3, 2002

Certified Mail

Joe Frost, Ed
Parker Centennial Professor Emeritus
5517 Coutyard Drive
Austin, TX 78731

RE: FOIA Request S- 1100143: Dairy Queen Playground Equipment, Files RP980059 & RP980142, Search Covers 1990 to Present

Dear Mr. Frost:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission. The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed.

The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in files RP980059 and RP980142 and are identified as notes, test reports and other correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

We must withhold the other records pursuant to Exemptions 5 and 7(E) of the FOIA, 5 U.S.C. §§ 552(b)(5), (b)(7)(E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda, which would not be available by law to a party in litigation with the agency. FOIA Exemptions 7(E) provide for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information (E) reveal techniques.

The records being withheld consist of internal notes, drafts, memoranda and other documents containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by

3273
DAI

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some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigator records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations that the Commission administers.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

Thank you for your interest in consumer product safety. The cost to the Commission to prepare this information was \$45.00. In this case we have decided to waive the charges. Should you have any questions, contact Eva M. Grady, Paralegal Specialist by letter, facsimile (301) 504-0127 or telephone (301) 504-0785.

Sincerely

Todd A. Stevenson, Director
Officer of the Secretary and
Freedom of Information Officer

Enclosure

Stevenson, Todd A.

From: Joe Frost [jfrost@mail.utexas.edu]
Sent: Tuesday, October 30, 2001 10:37 AM
To: cpsc-os@cpsc.gov
Subject: Dairy Queen data 5004

This is a Freedom of Information Act request for records of the following:

1. Injuries and deaths of children in Dairy Queen store playgrounds for 1990 through the present time.
2. Injuries and deaths involving toys distributed by Dairy Queen stores for the period 1990 through the present time.
3. Recalls and hazard reports for Dairy Queen playground equipment and toys for the period 1990 through the present time. ~~NR~~ 5004

Please mail this information to me at 5517 Courtyard Drive, Austin, Texas 78731. Thank you for your assistance. Joe Frost

Joe L. Frost, EdD
Consultant and
Parker Centennial Professor Emeritus
University of Texas
Phone: 512-346-5330
Fax: 512-3460207
5517 Courtyard Drive, Austin, TX 78731

NR

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U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Melissa Hampshire
Acting General Counsel

Phone 301-504-0980
Fax 301-504-0403

April 30, 2002

Nigel P. Kent, Esq.
Clark, Wilson
800-885 W Georgia Street
Vancouver, BC V6C3H1

Re: FOIA Appeal S2010140 on Peg Perego ride-on toy vehicles

Dear Mr. Kent:

By letter dated March 11, 2002 (received on April 9), you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request for the Commission's compliance file on Peg Perego ride-on toy vehicles.

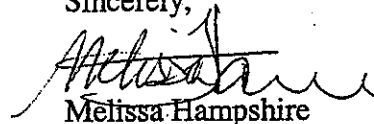
Under authority delegated to me by the Commission, 16 C.F.R. 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold the file based on FOIA Exemptions 3 and 7(A), 5 U.S.C. §§ 552(b)(3) and (b)(7)(A). However, as discussed below, at least some of this file may become available for public disclosure soon.

Exemption 3 of the FOIA provides for withholding information that is specifically exempted from disclosure by another statute. In applying Exemption 3 to the withheld file, I am relying on sections 6(a) and 6(b) of the Consumer Product Safety Act, 15 U.S.C. §§ 2055(a) and (b). Section 6(a)(2), which incorporates FOIA Exemption 4, expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission which contains or relates to trade secrets or other confidential commercial information. The Commission has not yet processed any possible claims of confidentiality under this provision for information in the requested file. Section 6(b)(1) requires that, before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The Commission has not yet taken the reasonable steps that might permit disclosure of information in the requested file.

Exemption 7(A) of the FOIA provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that its production could reasonably be expected to interfere with enforcement proceedings. However, the Commission has recently provisionally approved a civil penalty settlement that would let the staff close the file if the settlement becomes final. If so, our FOI Officer will process the file under sections 6(a) and (b). And some information may then become available to the public. After the processing is complete, the FOI Officer will contact you again.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,


Melissa Hampshire
Acting General Counsel

CLARK, WILSON

BC's Law Firm for Business

Reply Attention of Nigel P. Kent
Direct Tel. 604.643.3135
EMail Address npk@cwilson.com
Our File No. 6819-41 / D/JTL/318893-1

Clark, Wilson
Barristers & Solicitors
Patent & Trade-Mark Agents
800-885 W Georgia Street
Vancouver, BC V6C 3H1
Tel. 604.687.5700
Fax 604.687.6314

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March 11, 2002

BY MAIL

FOIA APPEAL
General Counsel
U.S. Consumer Product Safety Commission
Washington, DC 20207

Attention: Office of the Secretary

Dear Sirs/Mesdames:

Re: **Freedom of Information Act Request Number
S-2002010140 / Commission Office of Compliance File
CA970033 (Peg Perego USA, Inc.)**

1330
PEB
2/26/02

We are in receipt of your letter of February 26, 2002, denying our request for the production of documents contained in the above captioned file. In accordance with 16 CFR 1015.6, we hereby appeal the denial.

We would like to take this opportunity to voluntarily limit the scope of this appeal. Our request under the *Freedom of Information Act* (5 USC 552(b), "FOIA") was for all information in the Commission's file. We can now restrict that request to technical or engineering documents that formed the basis for the Commission's decision to recall Peg Perego battery powered riding toys (the "Toys"). Essentially, we want access to scientific opinion that we may introduce as evidence in private litigation. We understand that the Commission has a policy against making its employees available to testify in private litigation.

You have cited the following exemptions under the FOIA in support of your denial:

1. (3) – matters specifically exempted by statute, other than the FOIA;
2. (4) – matters that are trade secrets and commercial or financial information obtained from a person and privileged or confidential;
3. (5) – inter-agency or intra-agency memoranda or letters which would not be available by law to the requestor; and
4. (7)(A) – records or information compiled for law enforcement purposes, to the extent that the records or information could reasonably be expected to interfere with enforcement proceedings.

We will set out our appeal according to each of these exemptions.

(3) and (4) – Proprietary and Confidential Information

To the extent that the material we are asking for is proprietary or confidential, we would argue that the supplier of that information, Peg Perego U.S.A., Inc., has waived its claim to confidentiality with respect to our request. We understand that Peg Perego U.S.A., Inc. has sent to you a letter authorizing the release of such information to us. Enclosed is a copy of the letter, which we were copied with. 15 USC 2055(a)(5) gives the Commission the discretion to determine whether or not a document is indeed confidential. Given the explicit authorization of Peg Perego U.S.A., Inc., we would argue that this is a case where the Commission's discretion can be exercised.

(5) Inter-Agency or Intra-Agency Communications

Undoubtedly, there is a public interest argument to be made for not disclosing intra-governmental communications that would expose the Commission's pre-decisional and deliberative discussions. However, our refined request is for only those technical documents that support the Commission's decision to recall the Toys. Specifically, we are requesting any engineering reports that prove the defect in the Toys. Enclosed is a letter sent by the Commission to the attorney for Peg Perego U.S.A., Inc. on January 25, 1999. The conclusions expressed in the January 25, 1999 letter must have been based on some technical analysis. It is this analysis that we are seeking. While, strictly speaking, such a report may fall under exemption (5), it cannot truly be considered "pre-decisional" or "deliberative" as it is the final, technical, conclusion of the Commission of which the January 25, 1999 letter is the articulation.

(7)(A) Records or Information Compiled for Law Enforcement Purposes

As we are only requesting the technical or engineering report that is the basis for the Commission's decision to recall the Toys, we hope that we no longer run afoul of this exemption. We are asking for the analysis of the Toys, not disclosure of any communications that would impair the frank exchange of views necessary in investigations of this nature.



We note also that Federal Regulations with respect to the information disclosure and testimony of Commission employees in private litigation (16 CFR 1016) contemplate the provision and certification of materials in the Commission's possession. This purpose of this regulation is to avoid the need for Commission employees to testify in private litigation. Surely, this regulation is designed specifically for the sort of request we are making. How can we avoid calling a Commission employee to testify in our private litigation, if the Commission will not provide information under its own regulation?

Finally, it would appear from 5 USC 552(b) that even where some material responsive to a request comes under an exemption, that any reasonably segregable portion of a record shall be provided to a person requesting such record after the deletion of the portions which are exempt. We would ask that you reconsider whether portions of the material we are requesting can be supplied to us.

As mentioned to you in our previous communications, we are working against the clock in our litigation. While we recognize that our appeal does not fit within the definition of


"compelling need" found in the FOIA, we would request with the utmost respect that our appeal be placed on the fastest track possible. We feel that the restriction of our request to just those technical documents that support the Commission's decision to recall the Toys will make this appeal easier to consider.

If we can provide any further information or clarify anything set out in this appeal, please do not hesitate to contact the undersigned.

Yours truly,

CLARK WILSON

Per:


Nigel P. Kent

NPK/jtl

Encl.

cc: client

**ALEXANDER
HOLBURN, BEAUDIN
& LANG**

Barristers & Solicitors - Trade Mark Agents

P.O. Box 10057, 2700 - 700 West Georgia Street, Vancouver, BC, Canada V7Y 1B8 Tel: (604) 688-1351 Fax: (604) 669-7642 www.ahbl.ca

February 15, 2002

VIA FACSIMILE (301) 504-0127

U.S. Consumer Products Safety Commission
Washington, D.C.
202207

Reply to: Judi P. Kennedy
Direct Line: (604) 643-2401
E-mail: jkennedy@ahbl.ca
File No.: 58524/1

Attention: Mr. Todd Stevenson, Office of the Secretary

Dear Sirs/Mesdames:

Re: Kevin Paul Takenaka, Rardi Louise Takenaka, Kenneth Cannon and Pamela Lynn Cannon V. Trevor Stanley, Sharon Stanley, Village Appliances, Doing Business As Village Appliance Repairs, T.J.'S The Kiddies Store Ltd., Peg Perego Canada Inc., Peg Perego U.S.A., Inc., and Peg Perego SPA
Supreme Court of British Columbia Action No. B983185 (Vancouver Registry)
FOIAS-2002-01-01-40 CPSC Recall 99-084

We are the solicitors for Peg Perego U.S.A., Inc., who has been named as a defendant in a certain products liability lawsuit in the Supreme Court of British Columbia under the Registry Action referenced above. The action arises from a fire which occurred on September 2, 1996 and which is alleged to have originated in a Peg Perego toy vehicle. The Plaintiff counsel has made a demand for discovery of documents pertaining to the release of the CPSC file and

We understand your office has already been requested by the solicitor for the Plaintiffs, Mr. Nigel Kent of the Clark Wilson law firm, to provide a certified copy of the CPSC file materials. This letter is to confirm that Peg Perego U.S.A. consents to the immediate release of the said materials by CPSC, to Mr. Kent's office only, and requests that the documents and any accounts for reproducing same be delivered as soon as possible to Mr. Nigel Kent, Clark Wilson, Barristers & Solicitors, 800 - 855 West Georgia Street, Vancouver, B.C., Canada, V6C 3H1.

Thank you for your cooperation and assistance.

Yours truly,
ALEXANDER, HOLBURN, BEAUDIN & LANG

Per:

Judi P. Kennedy

JPK/pmd

CASSELS POULIOT ALEXANDER NORIEGA
Toronto Montreal Vancouver Mexico City

Affiliates: Minneapolis - Kansas City - St. Louis In Association with Ong & Chung/Hong Kong

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U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Jean Kennedy
Compliance Officer

Recalls and Compliance Division

Tel: 301-504-0608 ext. 1360
Fax: 301-504-0359
Email: jkennedy@CPSC.gov

January 25, 1999

Mr. Mark S. Kittaka
Barnes & Thornburg
600 One Summit Square
Fort Wayne, IN 46802

Dear Mr. Kittaka:

This is an amended response to your January 19, 1999 letter, in which you discuss Peg Perego's proposed corrective actions regarding its battery-operated cars.

With respect to excluding Peg Perego's six-volt cars from the recall, the staff's decision will be based on the capacity, the amp hours rating, and the load current of the six-volt batteries used in those cars. Please provide this information on all six-volt cars.

Peg Perego has reported a total of 300 fire condition incidents to CPSC that occurred since 1994. About two-thirds [262] of those involve connector failures from overheating and melting. This is a significant number of incidents involving the number of cars sold. This number represents only those incidents reported to Peg Perego and may not include similar incidents where cars were repaired by service centers or insurance companies settled house fire claims, when no cause of fire was established.

Peg Perego has used several connectors over the years. One design, type B, is a "banana" plug and jack connector that is polarized and is similar to plugs in automobile accessory circuits. This connector was used from 1990 to January 1994. Another design, type C, is a friction-fit connector that was used from January 1994 to August 1997. The "C" connector has a locking feature with a release button.

The staff wishes to restate its determination about the defect and hazard with the Peg Perego connectors [B and C]. Both B and C connectors can present fire hazards. These connectors are subpar, overheat and have produced melting, flames, whole vehicle fires and house fires. The potential hazards with the connectors encompass several factors, namely high contact resistance, low melting temperature of the connector thermoplastic materials, and insufficient wire strain relief for this type product.

Mr. Mark S. Kittaka

Page 2

Other factors which contribute to the potential hazard include: (1) the presence of considerable potential energy from two 6-volt batteries at all times in the connector, and (2) the flammability rating and melting point of the plastic materials.

Both connectors are thermoplastic materials. Type B appears to be a vinyl material; type C is reported to be a V-O rated thermoplastic. The low melt point of the C-connector body (reported to be 298 degrees F) is not a safety feature but a contributing factor to the hazard of this connector. With lower heat required to melt the connector, opposite polarity contact is more likely and sooner. The V-O rating for the plastic connectors does not mean the plastic material will not ignite and burn. That rating indicates that it will resist flaming from limited applications of a test flame. However, flame may continue when a sufficient heat source is present. When the heat source is removed the V-O materials will generally extinguish quickly. In the case of shorting contacts, the current flows until the battery is depleted, which could be anywhere from a few minutes to an hour.

Both connectors will support ignition from a sustained heat source, i.e. a degraded metal contact. Overheated contacts can cause the thermoplastic connector to decompose, soften, or melt over time to produce an electrical fault between opposite polarities in the connector. An opposite polarity fault may not trigger the 30 ampere fuse(s) at the battery because the nature of the fault may be resistive and not draw sufficient current to cause a fuse to open the circuit. Shorted contacts can ignite the thermoplastic connector itself. Connector failures can also ignite the flammable plastic chassis of the toy vehicle with the entire vehicle going to fire. Melting indicates the potential hazards with B and C connectors, which have resulted and will continue to result in fires.

In your letter of January 19, 1999 you state that "the typical failure mode (of the C connector) is that the terminals develop a higher resistance level (probably from contaminants such as dirt, etc.) which leads to additional heat being developed. When this heat reaches a certain level, the plastic housing fuses together and cannot be disconnected to recharge the battery." The fusing of a connector from overheating is not a fail-safe property. In fact, overheating that leads to fusing conditions may result in further melting that leads to opposite polarity contact and fire. The hazard is the current flowing through the high resistance contacts, resulting in melting and leading to an opposite polarity fault in the connector. The resultant extreme heat at the contacts will not necessarily activate fuses that are protecting the battery and wiring. Either the contacts in the connectors or the wires that are crimped to the connector terminals can experience high resistance and overheat. Overheating can reach the melting point temperature of the metals at the interface between the contacts.

Consumers unmating a slightly fused connector can damage the wires, which can subsequently lead to overheating. If this occurs, when the battery is reconnected to the harness after charging, the full current of a newly charged battery flows through loosened connector wires. The C connector has poor strain relief and the B connector lacks adequate engagement characteristics, making both connectors inadequate for continual mating and unmating or rough handling by child users. Peg Perego examined this type of failure on the [Nichter] Ranger GT and determined that the wires going into the connector had a short.

Mr. Mark S. Kittaka

Page 3

Alternatively, if consumers cannot separate the connector, it is possible that some consumers might attempt to repair the connector, rather than discard the vehicle or bring it to a service center. Consumers may not appreciate the consequences of do-it-yourself repairs because they may fail to realize the large amount of energy available in the connector during a fault condition.

About half of the 262 connector incidents and the 33 vehicle fires and house fires reported to Peg Perego involve cars manufactured before 1995 and therefore would be the likely result of failing B connectors. One car, the Gaucho A151, has been involved in 123 connector incidents. It appears that approximately 100 connector incidents involve Gauchos manufactured before 1995, again indicating the B connector was the source of overheating.

If there are no incident reports of overheating with the AMP connector, the AMP component may prove to be an adequate replacement for the C-connector, because it appears to have adequate contacts and a plastic material with a higher melting point. If these conditions are met, the CPSC staff would accept the corrective action proposal to give consumers AMP connectors on cars with B and C connectors to prevent potential fire hazards. The corrective action would include all 12 models that have experienced connectors overheating, especially the Gaucho A151. The Diablo, Magica, Magnum and Dragon are also included.

CPSC engineering staff cannot comment on the Peg Perego vehicle field reports without having the opportunity to examine the samples and the actual reports regarding these vehicles. Please provide complete reports on each vehicle by Fed Ex this week. Please also provide the following samples: Zoll [RA309], Garcia [RMA5708], Edwards [RMA__], Wojewoda [RA1652], Deleon and Milarz [RA1051]. Our engineers also request to examine all recent returned samples.

In addition to the above, the staff requests the following information:

1. Production numbers for all models in 1997 and 1998. Your chart provides only sales for 1997.
2. A list by year of numbers of all models produced that contain an ignition switch.
3. A list by year of numbers of all models produced that include a "false motor."
4. Wiring schematics of all 12-volt vehicles.
5. Were Gaucho Grande vehicles made with both C and AMP connectors? How many vehicles used each type of connector [by year]?
6. Sale prices of cars from 1990-1996.
7. What are Service Centers providing when they find melted or failed B connectors in Gauchos manufactured before 1996?

Mr. Mark S. Kittaka

Page 4

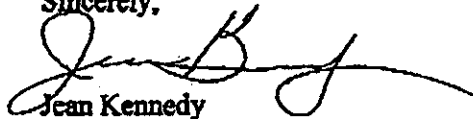
8. Specifications of the AMP connector, including contact rating, flammability rating and melting point.

9. The 1999 catalogue of all Peg Perego products.

The staff will discuss with Peg Perego options to address the connector hazard. Those options set out in 15 U.S.C. {2064(d) include repair, replacement or refund. Qualified Peg Perego service personnel could remove the B-connectors and replace them with a new type of connector. This would be similar to the corrective action conducted by another manufacturer of battery ride-on cars. A replacement harness for vehicles with the old B connectors is another option to consider. Providing coupons to consumers towards the purchase of a new vehicle or other Peg Perego products, based on the cost of the original vehicle less a reasonable allowance for years of use, is another possibility. If the coupon amount is \$90-\$180, that option may be cost effective for the company and agreeable to the consumer to buy a new vehicle because the old one cannot be fixed. Any amount the consumer receives would have to be weighed against the manufacturer's cost to make the vehicle. Any amount provided needs to serve as a sufficient incentive to encourage the consumer to take advantage of the recall and remove the potentially hazardous product from use. Another option is a cash refund.

We look forward to a satisfactory resolution within a reasonable time frame. In November we agreed to announce this recall to consumers in January. We anticipate that with due diligence Peg Perego can provide the resolution rather quickly so that both CPSC's and your goals for the safety of the consumers can be assured.

Sincerely,



Jean Kennedy
Recalls and Compliance Division

cc: Ronald Yelenik, Esq.
Compliance and Litigation Division
William King
Director, Division of Electrical Engineering



1330 PEG

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Director and Freedom of Information Officer
Office of the Secretary

A handwritten signature in black ink, appearing to read "T. Stevenson".

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

February 26, 2002

AIR MAIL

Nigel P. Kent, Esq.
Clark, Wilson
800-885 W Georgia Street
Vancouver, BC V6C3H1
CANADA

Re: FOIA Request S2010140: Peg Perego USA, Inc., Battery Operated Ride-On Toy Vehicles / Commission Office of Compliance File CA970033

Dear Mr. Kent:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). We must withhold all of the records regarding the Commission's Office of Compliance's active litigation and law enforcement investigatory file, CA970033, Peg Perego USA, Inc., pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both pre-decisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal

information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

The file also contains proprietary and confidential information submitted by the company under investigation that we must withhold pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor.

According to the Commission's FOIA regulations at 16 C.F.R. § 1015.7, a denial of access to records may be appealed within thirty (30) days of your receipt of this letter by writing to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

The file information may be subject to disclosure once the case is closed. You may want to resubmit your request in a few months. Processing this request, performing the file searches and reviewing the information, cost the Commission \$60.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

CLARK, WILSON

BC's Law Firm for Business

Reply Attention of Nigel P. Kent
Direct Tel. 604.643.3135
EMail Address npk@cwilson.com
Our File No. 06819-41 / D/NPK/296828.1

Clark, Wilson
Barristers & Solicitors
Patent & Trade-Mark Agents
800-885 W Georgia Street
Vancouver, BC V6C 3H1
Tel. 604.687.5700
Fax 604.687.6314

KMS 1/05

CO215014

January 7, 2002

VIA FAX: (301) 504-0359 & MAIL

U.S. Consumer Products Safety Commission
Washington, D.C. 20207

**Attention: Jean Kennedy,
Recalls and Compliance Division**

SA

Dear Sirs/Mesdames:

Re: Fire Hazards in Peg Perego Riding Vehicles /1330

We are the solicitors here in British Columbia for certain individuals whose house was destroyed in 1996 as a result of a fire originating in a Peg Perego battery-operated children's riding vehicle. This is precisely the sort of vehicle that was subject to the CPSC Recall 99-084 issued on March 24, 1999. 1330

Enclosed for your information is a copy of the Amended Statement of Claim issued in the lawsuit that has been instituted against Peg Perego as a result of the fire. The matter is set for trial here in Vancouver, British Columbia during the month of May 2002.

Enclosed for your ease of reference are copies of the July 7, 1998 and January 25, 1999 letters issued by the CPSC to Peg Perego's attorneys regarding the various safety concerns surrounding these vehicles and which formed part of the extensive correspondence and communications that apparently occurred between the parties in that regard.

We have been having considerable difficulty with extracting relevant information and documentation from the Peg Perego defendants. It is apparent, however, that the CPSC conducted its own investigation into the safety hazards posed by these vehicles and that the CPSC has a fairly extensive file regarding engineering and safety analyses. We would very much like to obtain a complete copy of the CPSC files in this matter and, indeed, we may require one or more of the CPSC engineers or other investigators who handled this matter to attend here in Vancouver as a witness at the upcoming trial. >

We are writing to inform you of all of the above and to inquire what is the appropriate procedure for obtaining copies of the CPSC files and securing the attendance of the CPSC investigating engineer(s) as a witness for the B.C. lawsuit. Would you be kind enough to get back to us in this regard as soon as possible so that we can get the appropriate procedures underway. 10/12
ERU/S
D.5

J-2010140

Thank you for your cooperation and assistance. We look forward to hearing from you by return.

Yours truly,

CLARK, WILSON

Per:

Nigel P. Kent

NPK/lfl

Encl.

bcc: The Hartford, Att: Gerry Jeannotte
Your File No. 0586361

CLARK, WILSON

BC's Law Firm for Business

Clark, Wilson
Barristers & Solicitors
Patent & Trademark Agents
800 – 885 West Georgia Street
Vancouver BC V6C 3H1 Canada
Tel. 604.687.5700
Fax 604.687.6314
EMail central@cwilson.com
Website www.cwilson.com

FACSIMILE TRANSMISSION PAGE

January 7, 2002

File No.: 06819-41

Page 1 of Page(s) Transmitted

TO	Name	Ms. Jean Kennedy	Fax No.	(301) 594-0359
	Firm/City	U.S. Consumer Product Safety Commission, Washington, DC	Telephone	(301) 504-0608

This facsimile transmission is intended solely for the use of the individual or entity named above and contains information that is **PRIVILEGED AND CONFIDENTIAL**. Any use of this communication by an unintended recipient is strictly prohibited. If you are not the intended recipient, please notify us by telephone and return your copy to us by mail. Law Society Rules prescribe that if received by an unintended recipient, this must be returned without being read.

FROM	Name	Nigel P. Kent	Direct Line	604.643.3135
	Subject	Fire Hazards in Peg Perego Riding Vehicles	E-Mail	npk@cwilson.com

INFO	Original will be:	<input type="checkbox"/> retained on file	<input checked="" type="checkbox"/> mailed to you	<input type="checkbox"/> sent to you by courier
	If any difficulty is experienced in this transmission, please contact the sender, or ask for a fax clerk, at (604) 687-5700.			

MESSAGE, IF ANY:

Please see attached.



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Todd A. Stevenson
Deputy Secretary and
Freedom of Information Officer
Office of the Secretary

Tel: 301-504-0785X1239
Fax: 301-504-0127
Email: tstevenson@cpsc.gov

January 23, 2002

Mr. Nigel Kent
Clark Wilson
800-855 W. Georgia Street
Vancouver B. C. Canada V6C 3H1

Freedom of Information Act Request Number : S-2002010140
Consumer Product Incident Report Number : C0215014 (Peg Perego Riding Vehicles)

Dear Mr. Kent:

Thank you for your recent letter to the U.S. Consumer Product Safety Commission (CPSC). We have assigned two tracking numbers, because your letter requests information from the CPSC and also reports an incident or complains about a product. Refer to those numbers if you need to contact us. As to the FOIA request, be assured that every effort is being made to process your request as promptly as possible and the records you requested which can be released will be made available to you at the earliest possible date.

Regarding your complaint or reported incident, our staff will review the information you provided and add it to the CPSC databases or the appropriate agency project file. This type of information allows us to focus on cases that pose the greatest degree of risk to consumers. In determining whether to take action, the Commission considers a number of factors including the likelihood of injury, the nature and degree of injury, and whether action by the Commission can correct the problem.

Our staff will contact you if we need additional information. The Commission appreciates the interest you have shown in helping us to reduce the unreasonable risk of injury from consumer products.

Sincerely,

Todd A. Stevenson

CLARK, WILSON

BC's Law Firm for Business

Reply Attention of Nigel P. Kent
Direct Tel. 604.643.3135
EMail Address npk@cwilson.com
Our File No. 06819-41 / D/NPK/296828.1

Clark, Wilson
Barristers & Solicitors
Patent & Trade-Mark Agents
800-885 W Georgia Street
Vancouver, BC V6C 3H1
Tel. 604.687.5700
Fax 604.687.6314

January 7, 2002

VIA FAX: (301) 504-0359 & MAIL

U.S. Consumer Products Safety Commission
Washington, D.C. 20207

Attention: **Jean Kennedy,**
Recalls and Compliance Division

Dear Sirs/Mesdames:

Re: Fire Hazards in Peg Perego Riding Vehicles

We are the solicitors here in British Columbia for certain individuals whose house was destroyed in 1996 as a result of a fire originating in a Peg Perego battery-operated children's riding vehicle. This is precisely the sort of vehicle that was subject to the CPSC Recall 99-084 issued on March 24, 1999.

Enclosed for your information is a copy of the Amended Statement of Claim issued in the lawsuit that has been instituted against Peg Perego as a result of the fire. The matter is set for trial here in Vancouver, British Columbia during the month of May 2002.

Enclosed for your ease of reference are copies of the July 7, 1998 and January 25, 1999 letters issued by the CPSC to Peg Perego's attorneys regarding the various safety concerns surrounding these vehicles and which formed part of the extensive correspondence and communications that apparently occurred between the parties in that regard.

We have been having considerable difficulty with extracting relevant information and documentation from the Peg Perego defendants. It is apparent, however, that the CPSC conducted its own investigation into the safety hazards posed by these vehicles and that the CPSC has a fairly extensive file regarding engineering and safety analyses. We would very much like to obtain a complete copy of the CPSC files in this matter and, indeed, we may require one or more of the CPSC engineers or other investigators who handled this matter to attend here in Vancouver as a witness at the upcoming trial.

We are writing to inform you of all of the above and to inquire what is the appropriate procedure for obtaining copies of the CPSC files and securing the attendance of the CPSC investigating engineer(s) as a witness for the B.C. lawsuit. Would you be kind enough to get back to us in this regard as soon as possible so that we can get the appropriate procedures underway.

RECEIVED
CPSC
OFFICE OF COMPLIANCE
2002 FEB 13 AM 10:45

~~2010/140~~ 2010/140

Thank you for your cooperation and assistance. We look forward to hearing from you by return.

Yours truly,

CLARK, WILSON

Per:



Nigel P. Kent

NPK/lfi

Encl.

Amended pursuant to the Order of Master Bolton, dated February 9, 2000 and entered April 7, 2000. Original Statement of Claim was filed on December 21, 1998.

No. B983185
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KEVIN PAUL TAKENAKA, RARDI LOUISE TAKENAKA,
KENNETH CANNON and PAMELA LYNN CANNON

PLAINTIFFS

AND:

TREVOR STANLEY, SHARON STANLEY,
VILLAGE APPLIANCES doing business as
VILLAGE APPLIANCE REPAIRS,
T.J.'S THE KIDDIES STORE LTD.,
PEG PEREGO CANADA INC.,
PEG PEREGO U.S.A., INC. and
PEG PEREGO SPA

DEFENDANTS

AMENDED STATEMENT OF CLAIM

1. The Plaintiff, Rardi Louise Takenaka, is a homemaker and teacher and the Plaintiff, Kevin Paul Takenaka, is a painter, both of whom reside at 4606 - 201 Street, Langley, British Columbia.
2. The Plaintiff, Pamela Lynn Cannon, is a homemaker and teacher and the Plaintiff Kenneth Cannon, is a painter, both of whom reside at 19668 Wakefield Drive, Langley, British Columbia.
3. The Defendants, Trevor and Sharon Stanley, reside at 25 Gondola Point Road, Rothesay, New Brunswick.

4. The Defendant, Village Appliances doing business as Village Appliance Repairs, is a sole proprietorship registered pursuant to the laws of British Columbia and has a mailing address at 143 East 2nd Street, North Vancouver, BC, V7L 1C2.

5. The Defendant, T.J.'s The Kiddies Store Ltd., is a corporation duly incorporated pursuant to the laws of British Columbia and has a registered office at 3331 Jacombs Road, Richmond, BC, V6V 1Z6.

6. At all material times the Defendants Village Appliances and T.J.'s The Kiddies Store Ltd. were both authorized dealers and repair centres for Peg Perego products.

7. The Defendant, Peg Perego Canada Inc., is a corporation duly incorporated pursuant to the laws of Ontario and has a registered office at 585 Granite Court, Pickering, ON, L1W 3K1 (Attention: Bruno G. Biernat).

8. The Defendant, Peg Perego U.S.A., Inc., is a corporation duly incorporated pursuant to the laws of Indiana and has an address at 3625 Independence Drive, Fort Wayne, Indiana, U.S.A., 46818, and a registered agent whose name and address are Dale Schipper, 6009 Highgate Place, Fort Wayne, Indiana, U.S.A., 46815.

9. The Defendant, Peg Perego SPA, is a corporation duly incorporated pursuant to the laws of Italy, and has a registered office at Via De Gasperi, 20043 Arcore MI, Italy.

10. The Plaintiffs state that on or about September 2, 1996, a fire took place at the then residence of the Defendants, Trevor and Sharon Stanley, located at 19676 Wakefield Drive, Langley, BC and that the fire spread to the residence of the Plaintiffs located at 19668 Wakefield Drive, Langley, BC, causing damage to the property of the Plaintiffs.

11. The Plaintiffs claim that the fire originated in a toy 1990 Peg Perego Gaucho Jeep owned by Trevor and/or Sharon Stanley (the "Toy Jeep") which the Defendants, Trevor and Sharon Stanley, had plugged into an electrical outlet in their garage in order to re-charge its battery.

12. On numerous occasions before the fire the electrical fuse in the Toy Jeep had blown and was replaced by the Defendants Trevor or Sharon Stanley who knew or ought to have known that there was a serious fault in the electrical system in the Toy Jeep's electrical system.

13. In or about November 1995 the Defendants Trevor and Sharon Stanley took the Toy Jeep to the Defendant Village Appliances for repairs. At that time the Defendant Village Appliances replaced the battery and also effected certain repairs to the electrical system in the Toy Jeep.

14. In the summer of 1996 the Toy Jeep continued to experience electrical problems, including constant blowing of fuses, and in early July 1996 the Defendants Trevor and Sharon Stanley took the Toy Jeep to the Defendant T.J.'s The Kiddies Store Ltd. for further repairs. At that time the Defendant T.J.'s The Kiddies Store Ltd. noted that there was a short in the engine motor and that the electrical harness connector had melted and the said Defendant effected a variety of repairs to the Jeep including the replacement of the electrical wiring system.

15. The Toy Jeep and its component parts were designed, manufactured, assembled, sold and distributed by one or more of the Defendant Peg Perego Canada Inc., the Defendant Peg Perego U.S.A. Inc. and the Defendant Peg Perego SPA (the "Perego Defendants"). The Toy Jeep was intended by the Perego Defendants to be used as a child's recreational toy.

16. The Toy Jeep is a dangerously defective product when used in the manner intended by the Perego Defendants. Particulars of the dangerous defects are as follows:

- (a) the electrical components of the Toy Jeep are susceptible to overheating resulting in fires; and
- (b) the pedals are susceptible to sticking presenting injury hazards to children.

17. The Perego Defendants knew or ought to have known, prior to the date of the fire, that the Toy Jeep was dangerously defective, by reason of:

- (a) research and development test and investigations in design of the product;
- (b) investigations and proceedings by the Consumer Safety Association of Canada or the U.S. Consumer Product Safety Commission;
- (c) high rate of reported injuries and fires suffered by users of Perego Toy Jeeps; and
- (d) reports of expert witnesses delivered by or on behalf of complainants in actions or causes in courts of other jurisdictions, arising out of injuries and losses suffered by the users of Perego Toy Jeeps.

18. In or about March 1999 the Defendant Peg Perego USA announced a recall of the Toy Jeep and issued a warning to consumers that the electrical components in the same were susceptible to overheating and presented fire and injury hazards. Before that point in time, the plaintiffs were unaware of, and had no means of knowing about, the aforesaid dangerous defect in the Toy Jeep.

19. The fire, and all loss and damage resulting therefrom, was caused by the fault, negligence and breach of duty of care of the Defendants particulars of which include:

- (a) AS TO THE DEFENDANTS, TREVOR AND SHARON STANLEY:
 - (i) failing to operate, charge and/or service the Toy Jeep in a safe manner and/or in accordance with the manufacturer's instructions;
 - (ii) failing to have the Toy Jeep serviced in a timely manner;
 - (iii) failing to have the Toy Jeep serviced by a qualified service provider;
 - (iv) servicing the Toy Jeep themselves when they were not qualified to do so;

(v) continuing to plug the Toy Jeep into an electrical outlet when they knew or ought to have known, by reason of the continually blowing fuses or otherwise, that the electrical system in the Jeep was defective; and

(vi) such further and other grounds of negligence as may be proven at trial.

(b) AS TO THE DEFENDANTS, VILLAGE APPLIANCES doing business as VILLAGE APPLIANCE REPAIRS and T.J.'S THE KIDDIES STORE LTD.:

(i) failing to properly diagnose and repair the electrical defects in the Toy Jeep;

(ii) failing to warn the Defendants Trevor and Sharon Stanley not to continue plugging the Toy Jeep into an electrical outlet if the same was experiencing electrical problems evidenced by the blowing of fuses;

(iii) failing to warn the Defendants Trevor and Sharon Stanley of the design problems and dangerous defects in the Jeep; and

(iv) such further and other grounds of fault and negligence as may be proved at trial.

(c) AS TO THE DEFENDANTS, PEG PEREGO CANADA INC., PEG PEREGO U.S.A., INC. and PEG PEREGO SPA:

(i) negligent design and/or manufacture of the Toy Jeep, the electrical components of which were susceptible to overheating and catching on fire thereby rendering the Toy Jeep unfit for its intended purpose;

(ii) negligent design and/or manufacture of replacement parts for the Toy Jeep which parts were susceptible to overheating and catching on fire thereby rendering the Toy Jeep unfit for its intended purpose;

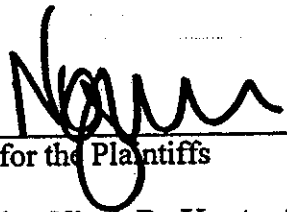
- (iii) designing, manufacturing and marketing a Toy Jeep which was dangerous, not of merchantable quality and not fit for its purpose;
- (iv) failing to make appropriate tests of the Toy Jeeps to ensure that they were safe, of merchantable quality and fit for their purpose;
- (v) failing to warn, and failing to instruct retailers to warn, consumers and potential users of the inherent danger associated with the use of the Toy Jeeps which were susceptible to overheating and causing fires;
- (vi) failing to warn, and failing to instruct retailers to warn, consumers and potential users of the design problems with the Toy Jeeps;
- (vii) failing to properly instruct, control and supervise the final assembly of the Toy Jeeps done by their dealers and or subsidiaries; and
- (viii) such other particulars of fault or negligence as may be proven at trial.

The Plaintiffs claim as follows:

- (a) General Damages;
- (b) Interest pursuant to the *Court Order Interest Act*;
- (c) Costs; and
- (d) Such further and other relief as to this Honourable Court may deem just.

PLACE OF TRIAL: Vancouver, British Columbia

Dated: December 21, 1998



Solicitor for the Plaintiffs

This AMENDED STATEMENT OF CLAIM is prepared by Nigel P. Kent of the firm of CLARK, WILSON, Barristers and Solicitors, whose place of business and address for delivery is 800 - 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Telephone: (604) 687-5700, Direct Line: (604) 643-3135).



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

Jean Kennedy
Compliance Officer

Recalls and Compliance Division

Tel: 301-504-0608 ext. 1360
Fax: 301-504-0359
Email: jkennedy@CPSC.gov

January 25, 1999

Mr. Mark S. Kittaka
Barnes & Thornburg
600 One Summit Square
Fort Wayne, IN 46802

Dear Mr. Kittaka:

This is an amended response to your January 19, 1999 letter, in which you discuss Peg Perego's proposed corrective actions regarding its battery-operated cars.

With respect to excluding Peg Perego's six-volt cars from the recall, the staff's decision will be based on the capacity, the amp hours rating, and the load current of the six-volt batteries used in those cars. Please provide this information on all six-volt cars.

Peg Perego has reported a total of 300 fire condition incidents to CPSC that occurred since 1994. About two-thirds [262] of those involve connector failures from overheating and melting. This is a significant number of incidents involving the number of cars sold. This number represents only those incidents reported to Peg Perego and may not include similar incidents where cars were repaired by service centers or insurance companies settled house fire claims, when no cause of fire was established.

Peg Perego has used several connectors over the years. One design, type B, is a "banana" plug and jack connector that is polarized and is similar to plugs in automobile accessory circuits. This connector was used from 1990 to January 1994. Another design, type C, is a friction-fit connector that was used from January 1994 to August 1997. The "C" connector has a locking feature with a release button.

The staff wishes to restate its determination about the defect and hazard with the Peg Perego connectors [B and C]. Both B and C connectors can present fire hazards. These connectors are subpar, overheat and have produced melting, flames, whole vehicle fires and house fires. The potential hazards with the connectors encompass several factors, namely high contact resistance, low melting temperature of the connector thermoplastic materials, and insufficient wire strain relief for this type product.

Other factors which contribute to the potential hazard include: (1) the presence of considerable potential energy from two 6-volt batteries at all times in the connector, and (2) the flammability rating and melting point of the plastic materials.

Both connectors are thermoplastic materials. Type B appears to be a vinyl material; type C is reported to be a V-O rated thermoplastic. The low melt point of the C-connector body (reported to be 298 degrees F) is not a safety feature but a contributing factor to the hazard of this connector. With lower heat required to melt the connector, opposite polarity contact is more likely and sooner. The V-O rating for the plastic connectors does not mean the plastic material will not ignite and burn. That rating indicates that it will resist flaming from limited applications of a test flame. However, flame may continue when a sufficient heat source is present. When the heat source is removed the V-O materials will generally extinguish quickly. In the case of shorting contacts, the current flows until the battery is depleted, which could be anywhere from a few minutes to an hour.

Both connectors will support ignition from a sustained heat source, i.e. a degraded metal contact. Overheated contacts can cause the thermoplastic connector to decompose, soften, or melt over time to produce an electrical fault between opposite polarities in the connector. An opposite polarity fault may not trigger the 30 ampere fuse(s) at the battery because the nature of the fault may be resistive and not draw sufficient current to cause a fuse to open the circuit. Shorted contacts can ignite the thermoplastic connector itself. Connector failures can also ignite the flammable plastic chassis of the toy vehicle with the entire vehicle going to fire. Melting indicates the potential hazards with B and C connectors, which have resulted and will continue to result in fires.

In your letter of January 19, 1999 you state that "the typical failure mode (of the C connector) is that the terminals develop a higher resistance level (probably from contaminants such as dirt, etc.) which leads to additional heat being developed. When this heat reaches a certain level, the plastic housing fuses together and cannot be disconnected to recharge the battery." The fusing of a connector from overheating is not a fail-safe property. In fact, overheating that leads to fusing conditions may result in further melting that leads to opposite polarity contact and fire. The hazard is the current flowing through the high resistance contacts, resulting in melting and leading to an opposite polarity fault in the connector. The resultant extreme heat at the contacts will not necessarily activate fuses that are protecting the battery and wiring. Either the contacts in the connectors or the wires that are crimped to the connector terminals can experience high resistance and overheat. Overheating can reach the melting point temperature of the metals at the interface between the contacts.

Consumers unmating a slightly fused connector can damage the wires, which can subsequently lead to overheating. If this occurs, when the battery is reconnected to the harness after charging, the full current of a newly charged battery flows through loosened connector wires. The C connector has poor strain relief and the B connector lacks adequate engagement characteristics, making both connectors inadequate for continual mating and unmating or rough handling by child users. Peg Perego examined this type of failure on the [Nichter] Ranger GT and determined that the wires going into the connector had a short.

Alternatively, if consumers cannot separate the connector, it is possible that some consumers might attempt to repair the connector, rather than discard the vehicle or bring it to a service center. Consumers may not appreciate the consequences of do-it-yourself repairs because they may fail to realize the large amount of energy available in the connector during a fault condition.

About half of the 262 connector incidents and the 33 vehicle fires and house fires reported to Peg Perego involve cars manufactured before 1995 and therefore would be the likely result of failing B connectors. One car, the Gaucho A151, has been involved in 123 connector incidents. It appears that approximately 100 connector incidents involve Gauchos manufactured before 1995, again indicating the B connector was the source of overheating.

If there are no incident reports of overheating with the AMP connector, the AMP component may prove to be an adequate replacement for the C-connector, because it appears to have adequate contacts and a plastic material with a higher melting point. If these conditions are met, the CPSC staff would accept the corrective action proposal to give consumers AMP connectors on cars with B and C connectors to prevent potential fire hazards. The corrective action would include all 12 models that have experienced connectors overheating, especially the Gaucho A151. The Diablo, Magica, Magnum and Dragon are also included.

CPSC engineering staff cannot comment on the Peg Perego vehicle field reports without having the opportunity to examine the samples and the actual reports regarding these vehicles. Please provide complete reports on each vehicle by Fed Ex this week. Please also provide the following samples: Zoll [RA309], Garcia [RMA5708], Edwards [RMA__], Wojewoda [RA1652], Deleon and Milarz [RA1051]. Our engineers also request to examine all recent returned samples.

In addition to the above, the staff requests the following information:

1. Production numbers for all models in 1997 and 1998. Your chart provides only sales for 1997.
2. A list by year of numbers of all models produced that contain an ignition switch.
3. A list by year of numbers of all models produced that include a "false motor."
4. Wiring schematics of all 12-volt vehicles.
5. Were Gaucho Grande vehicles made with both C and AMP connectors? How many vehicles used each type of connector [by year]?
6. Sale prices of cars from 1990-1996.
7. What are Service Centers providing when they find melted or failed B connectors in Gauchos manufactured before 1996?

8. Specifications of the AMP connector, including contact rating, flammability rating and melting point.
9. The 1999 catalogue of all Peg Perego products.

The staff will discuss with Peg Perego options to address the connector hazard. Those options set out in 15 U.S.C. {2064(d) include repair, replacement or refund. Qualified Peg Perego service personnel could remove the B-connectors and replace them with a new type of connector. This would be similar to the corrective action conducted by another manufacturer of battery ride-on cars. A replacement harness for vehicles with the old B connectors is another option to consider. Providing coupons to consumers towards the purchase of a new vehicle or other Peg Perego products, based on the cost of the original vehicle less a reasonable allowance for years of use, is another possibility. If the coupon amount is \$90-\$180, that option may be cost effective for the company and agreeable to the consumer to buy a new vehicle because the old one cannot be fixed. Any amount the consumer receives would have to be weighed against the manufacturer's cost to make the vehicle. Any amount provided needs to serve as a sufficient incentive to encourage the consumer to take advantage of the recall and remove the potentially hazardous product from use. Another option is a cash refund.

We look forward to a satisfactory resolution within a reasonable time frame. In November we agreed to announce this recall to consumers in January. We anticipate that with due diligence Peg Perego can provide the resolution rather quickly so that both CPSC's and your goals for the safety of the consumers can be assured.

Sincerely,


Jean Kennedy
Recalls and Compliance Division

cc: Ronald Yelenik, Esq.
Compliance and Litigation Division
William King
Director, Division of Electrical Engineering



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207-0001

OFFICE OF COMPLIANCE

Recalls and Compliance Division

Jean Kennedy

Compliance Officer

Tel: 301-504-0808 Ext. 1380

Fax: 301-504-0359

July 7, 1998

Telecopy - 219-420-1260

Mark S. Kittaka
Gallucci, Hopkins & Theisen, P.C.
229 West Berry Street, Suite 400
Fort Wayne, IN 46864-2663

Re: CPSC CA970033
Peg Perego, U.S.A., Inc.
battery riding vehicles

Dear Mr. Kittaka:

The staff appreciates Peg Perego's representatives meeting with us on July 1, 1998 to discuss the firm's corrective action plan. In summary, the staff believes the firm's new battery connector appears to have a positive engagement mechanism and adequate strain relief to minimize high resistance overheating. Also, changing to a new plunger-type footswitch, which should fail with the circuit open, appears to address the problem of a runaway vehicle. However, the results of these changes have not yet been independently confirmed by the staff.

To complete our assessment of the above components and of your Signallux Forward/Reverse and High/Low switches, we request that the firm provide the following within the next week:

1. 2 new batteries, 2 chargers, 3 High/Low switches,
3 Forward/Reverse switches, 6 new footpedal switches.

If possible, please Fed-Ex these to me Tuesday or Wednesday for quick delivery.

2. Returned F/R and H/L switches; 50 at this time [per Tim Harris at the time of the meeting].
3. 1 returned accelerator switch, received and inspected by Tim Harris as of July 1, 1998.

Page 2
CA970033

4. AMP documents that show testing procedures and results for the AMP connector now being used by Peg Perego. These should include testing for appropriate strain relief of the plug and cord for rough handling by children. It should also include testing for wire integrity with appropriate insertion and retraction of the two mating parts.
5. Signallux testing documents that show the switches are rated to these battery car applications, which include the following parameters: at least 30 amps, 12 volts, the horsepower of differing models, opposite polarity in housing, and environmental testing. If this type testing has not been done, the firm should do so as quickly as possible to verify that the switch is properly and adequately rated for these children's products.
6. Signallux documents for footpedal switch spring force, and application testing.
7. All complaints filed in law suits involving Peg Perego battery cars.

As stated at our meeting, the potential for battery car fires from overheating components that lead to house fires or children being burned is a serious hazard. Consumers have reported that vehicles caught fire while a child was riding. In 15 complaints, the whole vehicle caught fire; in 3 incidents the fire spread to parts of the house or garage; and in another 3 complaints, a child received burn injuries. In 189 consumer descriptions of the fire location, consumers reported that: 1) the wiring harness or the connector to the energy cube melted or was on fire; or 2) the energy cube and wiring harness caught fire and ignited the "false motor;" or 3) the vehicle caught fire under the hood and the vehicle completely melted; or 4) the battery was in flames.

Other sources of fires in incidents reported by consumers include the ignition switch and the battery case. CPSC engineers found that the ignition switch melted and failed open after 760 cycles of testing of the Peg Perego new sample sent to CPSC staff last year for analysis. Also, the plastic used for the ornamental complete encasing of the battery supported ignition and did not self-extinguish. The new Peg Perego sample received by CPSC staff in June 1998 does not include the ignition switch and has a different bracket-type casing for the battery. The staff recommends that the ignition switch and the battery casing be changed for added fire prevention in new vehicles. Please confirm if the firm intends to make those changes and when.

Because approximately 214 of the 242 incidents reported to Peg Perego involved fire/smoking/melting in the battery compartments, and because some consumers specifically saw that

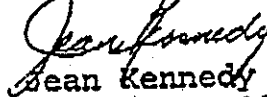
the battery cases, "false motors," or connectors had ignited, the staff recommends that the new battery connectors and new battery cases be included as part of a Peg Perego proposed corrective action plan, to replace footpedal switches that were reportedly failing in the "on" position.

Per our discussions, the firm will inform CPSC staff how it will accomplish a recall for consumers after assessing options to replace old connectors and batteries along with footpedals. This recall will depend upon CPSC technical staff's assessment of the documentation for AMP connectors and Signallux footpedal switches and the Signallux High/Low and Forward/Reverse switches.

The staff requests that Peg Perego immediately begin its production of new components that will address the overheating and fires associated with the present circuit's components. We are hopeful that we can agree to a corrective action plan and a schedule to accomplish the plan in a spirit of cooperation with Peg Perego's engineering staff and with CPSC staff's input during the next two weeks.

Thank you for your continued cooperation in this matter.

Sincerely,


Sean Kennedy

Compliance Officer
Recalls and Compliance Division

cc: Consumer Product Safety Commission
Central Regional Center
Suite 2945
230 S. Dearborn St.
Chicago, IL 60604