



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

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chairman Hal Stratton
Commissioner Thomas H. Moore
Commissioner Mary Sheila Gall

ITEM:

In the Matter of Daisy Manufacturing Company (CPSC Docket No. 02-2) –
Offer of Settlement
(Briefing package dated May 14, 2003, OS No. 5483)

DECISION:

The Commission voted (2-1, Commissioner Gall dissenting) to reject the proposed Consent Agreement and Order (Offer of Settlement) for CPSC Docket No. 02-2 - In the Matter of Daisy Manufacturing Company and direct the Office of the General Counsel to draft an appropriate implementing document.

Commissioners Gall issued a statement with her vote. The statement is attached.

For the Commission:

A handwritten signature in black ink, appearing to read "T. A. Stevenson", is written over a stylized, dark, scribbled background.

Todd A. Stevenson
Secretary

* Ballot vote due September 15, 2003 (originally due May 22, 2003)



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**STATEMENT OF THE HONORABLE MARY SHEILA GALL
ON PROPOSED CONSENT AGREEMENT AND
ORDER SUBMITTED BY DAISY**

September 15, 2003

I voted to approve the proposed Consent Agreement and Order ("the settlement offer") submitted by Daisy Manufacturing Company ("Daisy") to settle CPSC Docket No: 02-2, *In the matter of Daisy Manufacturing Company* because it is in the public interest and represents a fair resolution of this case.

I opposed the filing of this case when it was presented to the Commission almost two years ago. Since that time, Complaint Counsel and Daisy have developed their cases through discovery and pre-trial motions. In May of this year the Presiding Officer transmitted Daisy's settlement offer. In order to evaluate the fairness and adequacy of that settlement offer, I reviewed the record as it now exists. Based on my review of that record I believe that Daisy's settlement offer is adequate to correct whatever hazard *may be* presented by Daisy's Model 856 and 880 air rifles.

I emphasize that my decision to approve Daisy's proposed settlement is based on my review of the record *as it now exists*. If this case proceeds to trial the parties will present their evidence to the Presiding Officer and a new record will be developed. I will, of course, base any subsequent decision as to the merits of this case on the record as it exists at that time.

Why the Daisy Settlement Proposal is in the Public Interest and Resolves the Case Fairly

Issues Generic to Air Guns

The Daisy settlement offer proposes to refer to the voluntary standards setting process five issues raised by the case:

1. The use of gravity-feed magazines.
2. The color of loading ports.
3. The use of an automatically resetting safety.
4. The appropriate age recommendations for airguns with a muzzle velocity exceeding 350 feet per second.

5. The appropriate muzzle velocity for airguns.

These issues are not unique to either the Daisy 856 or 880 model air rifles, nor to Daisy air guns. Rather, they are industry-wide concerns. They should not be the subjects of an administrative complaint directed against one manufacturer seeking a corrective action for certain models of air guns. They are more appropriately resolved in the voluntary standards setting process that has already resulted in such a standard for air guns. If the Commission finds that it is dissatisfied with the results of the voluntary standards setting process, it is always free to begin rulemaking proceedings that will apply to the entire industry.

Issues Specific to the Models 856 and 880 Air Rifles

The Daisy settlement offer also deals with the magazine-lodging allegations of the complaint that are specific to the Models 856 and 880 air rifles. The Daisy settlement offer states that Daisy will continue to manufacture the Model 856 air rifle as a single-shot pellet gun. Since current and future production of the Model 856 will not have a magazine, there is no possibility that a BB will become lodged in the magazine.

In the case of the Model 880 the record reveals that BBs lodging in the magazine of the Model 880 are exclusively a laboratory phenomenon. Lodging can be induced either by use of grossly out-of-specification BBs (not manufactured by Daisy) or by a modification to the magazine that ordinary users of the Model 880 would likely not undertake and that would be readily noticed if it did occur. I conclude whatever hazard *may exist* with the magazine design of the Model 880 will be addressed by Daisy's "Take Aim at Safety" campaign, for the same reasons that it addresses whatever hazard may exist in the magazine arrangements of many Model 856 air rifles in the hands of consumers.

In the case of previously-produced Model 856 air rifles, the record reveals that BBs appear to lodge in the magazine in field use. However, a lodged BB *in and of itself* presents no hazard. A hazard may be presented if the BB then moves from the magazine into the chamber, and the rifle is discharged at close range at another person. However, the BB can only move from the magazine to the chamber by normal loading movements on the part of the shooter; *there is no self-loading mechanism that moves the BB from the magazine to the chamber without any intervention on the part of the shooter.* During normal loading operations the shooter is able to see the BB as it moves from the magazine and into the loading port. Moreover, the shooter personally provides the propellant force for the discharge by either repeatedly pumping the forend in the case of the Model 856, or repeatedly moving a lever in the case of the Model 880. The shooter can be under no illusion that either air rifle is in a condition to be discharged. The shooter also has ample opportunity to observe whether a projectile has been placed in the chamber. Even if a shooter has failed to observe the loading of a BB and believes that pulling the trigger will result in a "dry fire," an injury will occur only if the shooter points the gun at another person at close range and pulls the trigger, an action violating every known rule of shooting safety and common sense.

The first three points of Daisy's "Take Aim at Safety" campaign address precisely the behavior that results in injury when a BB lodged in the magazine is inadvertently loaded into the

chamber. If the muzzle is kept pointed in a safe direction and never allowed to point in the direction of a person, if the gun is treated as if were loaded (projectile in the chamber and propellant energy ready for discharge) and if guns were only loaded when shooting, no injuries would occur. I recognize that no information and education campaign is completely effective, and that not all shooters follow all rules of shooting safety all of the time. Nevertheless, Daisy's campaign will address whatever risk of injury may exist from the magazine characteristics of the Model 880 air rifle and previously-produced Model 856 air rifles now in the hands of consumers.

It is an axiom of jurisprudence that the law favors settlement of disputes. Prior to the transmission of the Daisy settlement offer, this matter had been set for a two-week trial in Washington DC and Arkansas. Trial of this matter will be very resource intensive for both the Commission and for Daisy. The Commission must be especially sensitive to the expenditure of resources, both because it spends taxpayer dollars, and because it must constantly balance its resources in light of the wide range of product hazards against which Congress has charged it to protect the public. Daisy's settlement offer is adequate to protect the public against whatever hazard may be represented by the Models 856 and 880 air rifles, on the state of the record now before the Commission. If the matter proceeds to trial and a different record emerges, I will base my decision on that record. But I believe that the Daisy settlement offer is in the public interest and I vote to approve it.