



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

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

November 14, 2003

I voted to approve the proposed Consent Agreement and Order (“the Settlement Offer”) submitted by Daisy Manufacturing Company (“Daisy”) on November 5, 2003, to settle CPSC Docket No: 02-2, *In the matter of Daisy Manufacturing Company*, because it is in the public interest and represents an adequate resolution of this case. This case remains, however, one that should never have been brought and a case that should have been settled much earlier. The Commission’s actions have done serious and unjustified damage to the reputation and business prospects of a company whose product represents no substantial product hazard.

OVERVIEW

I opposed the filing of this case when it was presented to the Commission approximately two years ago and issued a public statement setting forth my reasons.¹ 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 a settlement offer from Daisy.² The Commission voted to refer the case to mediation, but the mediator was unable to induce the parties to resolve the case. The Commission then voted to reject the Daisy settlement offer. I dissented. Daisy asked the Commission to reconsider its decision and both Daisy and Complaint Counsel waived the ordinary *ex parte* regulations that govern communications to the Commissioners while a case is pending before a Presiding Officer. Based on my meetings with Complaint Counsel and Daisy, and on other materials in the record, I have concluded:

1. There is very little credible evidence that the Model 856 or Model 880 air rifles, in either their present or past configurations, represent a “substantial product hazard” within the meaning of Section 15(a) of the Consumer Product Safety Act

¹ “Statement of the Honorable Mary Sheila Gall in Opposition to Issuance of Administrative Complaint Against Daisy Manufacturing Company,” attachment to Commission Press Release #02-029, “CPSC Files Lawsuit Against Daisy Manufacturing Co. To Recall Two Models of Daisy’s Powerline Airguns Due to Defects,” October 30, 2001.

² Although this Daisy settlement made in May 2003 was the first settlement offer transmitted by the Presiding Officer to the Commission, it was, in fact, the third settlement offer that Daisy had made. The Presiding Officer decided not to transmit Daisy’s first settlement offer to the Commission for its consideration. Daisy withdrew the second settlement offer and submitted the May settlement offer about two weeks later. The settlement offer submitted on November 5, 2003 and presently before the Commission is a modification of the May settlement offer.

(CPSA), or constitute a “banned hazardous substance” within the meaning of Section 2(q) (1) of the Federal Hazardous Substances Act (FHSA).³

2. The Settlement Offer submitted by Daisy will materially improve the safety of shooters using Model 856 and Model 880 air rifles, air guns in general, and even firearms. Approval of the Daisy Settlement Offer is, therefore, in the public interest both because it resolves this case and because it will improve the safety of shooters.

THE DAISY MODEL 856 AND 880 AIR RIFLES ARE NOT SUBSTANTIAL PRODUCT HAZARDS

Allegations and Theories of Defect and of Substantial Product Hazard

The Complaint as filed contained allegations that the Model 856 and 880 air rifles were substantial product hazards on a number of grounds: (1) BBs lodging in the magazine; (2) the lack of an automatic safety; (3) the color of the feed ramp; (4) the capability to mount a telescopic sight, which restricts visibility into the loading port; and (5) Daisy’s marketing practices. After discovery, the case of Complaint Counsel had devolved essentially to the allegations concerning BBs lodging in the magazine, and the lack of an automatic safety. But even these allegations do not persuade me that these air rifles constitute a substantial product hazard.

Analysis

Magazine Lodging

The central feature in Complaint Counsel’s case is the allegation that BBs lodge in the magazine of the Model 856 and 880 air rifles and remain there without the shooter being aware of their presence.⁴ A shooter ought to be able to unload a BB gun with a reasonable assurance that nothing remains in the magazine. I concede, therefore, that a propensity of BBs to lodge in the magazine of a BB gun and remain there without the shooter’s knowledge is an undesirable characteristic. But this Commission only has authority to require a manufacturer to conduct a recall when a product contains a “defect” that constitutes a “substantial product hazard.”⁵ It is unlikely that the magazine lodging characteristics of the Model 856 and the Model 880 rise even to the level of a defect and they certainly do not constitute a substantial product hazard.

The Model 880

The magazine lodging characteristics of the Model 880 are the easiest claims of Complaint Counsel to dispose of. Even Complaint Counsel’s expert could induce lodging in the magazine of the Model 880 air rifle only by using BBs that were grossly out of specification in

³ For simplicity throughout the rest of this statement I will refer to the phrase “substantial product hazard” as including the phrase “banned hazardous substance.”

⁴ Magazines are desirable features in air rifles since they cut down on reloading time and eliminate the need to extract a tiny pellet or steel air rifle shot out of a pocket or container after every shot.

⁵ CPSA §15(a).

their dimensions⁶ or by loosening a screw in the receiver of the Model 880. The first example is simply irrelevant to the issue of a defect in the *gun*. If there are *BBs* that are so out of specification that they create a magazine-lodging problem, the Commission should consider whether the *BBs* themselves contain a defect that creates a substantial product hazard. But the existence of such *BBs* would not justify a finding of substantial product hazard in the rifles into which they were loaded.

Similarly, a laboratory modification to a gun in order to induce lodging is of interest only if the modification is reasonably likely to occur when such guns are in the hands of consumers. Even Complaint Counsel's expert concluded that the experiment in screw loosening that led to *BB* lodging in the laboratory was unlikely to occur in the hands of consumers. Therefore, like the issue of out-of-specification *BBs*, the laboratory example of *BB* lodging is simply irrelevant in the Commission's determination over whether the Model 880 is a substantial product hazard. Without evidence of *BBs* lodging in the magazine in a manner likely to be encountered by consumers, the Commission cannot find that this characteristic of the Model 880 constitutes a substantial product hazard.

The Model 856

The situation is more complicated in the case of the Model 856. It does appear that even in-specification *BBs* can lodge in the magazine and that this lodging can occur in rifles in the hands of consumers. But there are aspects of this magazine lodging characteristic that lead me to conclude that it is not a substantial product hazard.

A lodged *BB* presents no hazard *in and of itself*. 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 repeatedly pumping the forend.⁷ The shooter can be under no illusion that the 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. I am aware that some shooters involved in accidents claim that they looked and observed no *BB* in the loading port when they went through the loading procedure prior to accident. But how much credence should this Commission put in an assertion that a shooter carefully checked to make

⁶ The standards for *BBs* are set by ASTM Subcommittee F15.06 on Safety Standards for Nonpowder Gun Products and are Designation F590-92 (Reapproved 2000). The dimensional requirements are found in Section 4.1 and Tables 1 and 2. The *BBs* found to be out of dimensional specification were not manufactured by Daisy. Complaint Counsel made no representation and appears to have done no testing to determine whether the out-of-specification *BBs* would pose a lodging or other hazard in other Daisy *BB* guns, or in other manufacturers' *BB* guns.

⁷ The shooter does not provide the propellant force in those versions of the Model 856 and 880 in which the propulsive force is provided by a CO2 cartridge. Complaint Counsel has not, however, sought to distinguish those versions of these rifles from the more common versions using air compressed by the action of the shooter.

certain that no BB was in the loading port, and then seconds later committed a grossly reckless act? An individual inclined to such gross recklessness is very unlikely to have observed with any care whatsoever whether a BB was moving into the loading port, let alone whether BBs were present in the magazine. Shooter recklessness, not BB lodging characteristics, is the cause of the alleged “lodging” accidents and associated injuries and deaths.

Use by Children and Youths

Another important aspect of Complaint Counsel’s case is that that the Models 856 and 880 are higher-powered BB guns than the BB guns produced by Daisy prior to 1972. Low-velocity BB guns, such as the classic Daisy “Red Ryder” can injure people, but not nearly as badly as higher velocity air rifles. According to Complaint Counsel’s theory, shooters who believe that they are using low velocity air rifles might be inclined to conduct that they would forego if they realized that the rifle was capable of inflicting considerable injury or even killing another person. Such conduct, also according to the theory, constitutes reasonably foreseeable abuse within the meaning of Section 2(s) of the FHSA. This theory is not, however, supported by the evidence.

Daisy introduced the Model 880 in 1972 and the Model 856 in 1984. Whatever surprise the shooting community might have experienced at the introduction of Daisy high-velocity air rifles has had ample opportunity to dissipate, and shooters have had well over a quarter century to adjust their behavior to the characteristics of the rifles that they hold in their hands. Whatever justification the “Daisy is and always has been associated with low-velocity air rifles,” argument might have had in the early 1970s, it clearly has no merit now.

There is also a voluntary standard addressing how the packaging of air rifles capable of the velocities achieved by the Model 856 and Model 880 must be labeled.⁸ The label required by that voluntary standard states clearly that the air rifle is for ages 16 years and older and is not a toy. It goes on to inform the prospective purchaser that adult supervision is required, misuse or careless use may cause serious injury or death and that the air rifle is dangerous to 333 yards (304 meters). Prospective purchasers who even glance at the label can be under little illusion that what they are buying has the capability to injure or kill a person.⁹ While these age recommendations and the labeling required by the voluntary standard have changed over the years, Complaint Counsel does not allege that Daisy has failed to comply with whatever voluntary standard in force at the time that Daisy made and sold its rifles. In addition to the labeling required by the voluntary standard, some major retailers¹⁰ have “bar-coded” these rifles so that they cannot be sold to persons less than 18 years old.

I recognize that packaging is usually discarded after the rifle is removed from it and will not, therefore, be available for perusal by subsequent users of the rifle. But even a subsequent

⁸ The voluntary standard for air rifles is set by Subcommittee F15.06 on Safety Standards for Nonpowder Gun Products and is Designation F589-00. The labeling requirements are set forth in Section 10.

⁹ The Daisy settlement offer proposes to supplement the existing labeling with: (1) a “Take Aim at Safety” label to the face of all Daisy brand and Powerline brand long gun packages; (2) a tape band around Model 856 and 880 gun boxes which will include additional warnings; and (3) a hang tag, zip tie, or sticker that will be attached to the Model 856 and 880 guns themselves with an additional warning. As a part of its settlement offer, Daisy will also provide an insert or package label to all boxes of BBs containing warnings.

¹⁰ Wal-Mart and K-Mart are two stores that Daisy asserts have such procedures in place.

user of a Model 856 or Model 880 is not likely to be confused between a Daisy low-velocity air rifle and either the Model 856 or the Model 880. I have prepared a chart that compares three aspects of the Model 856 and Model 880 with the Daisy Youthline model air rifles, and with some .22 rimfire and centerfire rifles and shotguns, and attached it to this Statement. The chart ranks the list of these rifles and shotguns in ascending order of “length of pull,”¹¹ which is probably the most relevant dimension in the sizing of a rifle or shotgun for younger shooters. I have also included the overall length and the weight of the rifle or shotgun. This chart shows that the Model 856 and Model 880 have dimensions that are more consistent with firearms than with the Daisy Youthline Model air rifles. It is, therefore, implausible to assert that these two model air rifles are “masquerading” as low-velocity air rifles.

Finally, this Commission must address issues of safety in air rifles in light of the fact that these model air rifles are *weapons*. The reckless abuse of a *weapon* is simply not a risk against which this Commission can reasonably ask manufacturers to guard. This type of risk is inherent in the nature of the instrument.¹² The Commission must rely on individual and parental responsibility in limiting the adverse consequences of BB gun use. One of the most important decisions that a parent will ever make is when to entrust a young person with a BB gun or a firearm without supervision, and one of the most consequential decisions any individual can make is to pull a trigger on BB gun or firearm. When tragedies happen with reasonably safe products such as the Model 856 and 880 air rifles, they result from the irresponsibility of the user, or poor parental and caregiver judgment, not the inherent nature of the instrument.

Daisy Marketing Practices

Part of Complaint Counsel’s case contains allegations that Daisy marketed the Model 856 and 880 for use by persons younger than the age recommended for high-velocity air rifles. Such claims are highly implausible in the light of Daisy’s product line. Even if they are true, it is unlikely that Daisy marketing practices actually resulted in any use of its air rifles by persons younger than the recommended ages. Age recommendations for air rifles capable of certain velocities are governed by the voluntary standard and are displayed on the packaging.¹³ At the present time, that age recommendation for air rifles capable of the muzzle velocities achieved by the Model 856 and the Model 880 is 16. Daisy has had age-appropriate recommendations on the packaging of its Model 880 rifles since 1973 and on the Model 856 rifle since it was introduced in 1984.

¹¹ Length of pull is the distance between the front of the trigger and the back of the buttplate, which lies at the rear of the stock and is braced against the shoulder of the shooter when firing. The longer the length of pull, the longer a shooter’s arms must be to hold the rifle or shotgun comfortably.

¹² Many states have adopted laws concerning the minimum age at which a person may purchase or possess a BB gun in the absence of supervision. For example, Delaware makes it unlawful for a person to transfer a BB or air gun to child under 16 unless that person has the permission of the minor’s guardian. *Del. Code Ann.* Tit. 11, 1445(2)(2000). New York makes it unlawful for a person under age sixteen to possess an airgun or spring gun. *N.Y. Penal Law* 265.05 (McKinney 2001). Pennsylvania makes selling or transferring an air rifle to a person under 18 unlawful. 18 *Pa. Cons. Stat.* 6304(a)(2001). For a discussion of various U.S. state restrictions on BB gun possession and sales, see S.K. Presnell, “Comment: Federal Regulation of BB Guns: Aiming to Protect Our Children,” 80 *N.C.L.Rev.* 975, 1001, fn 162-173. (2002). Canada classifies high velocity air rifles as firearms. *Firearms Act*, Part III, §84(3)(d)(1995)

¹³ ASTM F 589-00, §§10.1.1 and 10.2.6.

I find it highly implausible that Daisy would deliberately try to induce purchasers to buy Model 856 and 880 rifles for shooters who are younger than 16. In addition to its Powerline series of air rifles, of which the Model 856 and 880 are examples, Daisy offers a “Youthline” series of rifles, with an age recommendation of 10 and older.¹⁴ Daisy’s clear marketing scheme is to sell the Youthline Models for use by consumers between 10 and 16, and then sell the Powerline Models for use by consumers 16 years and older. To the extent that consumers purchase Powerline models for use by shooters younger than 16, Daisy is likely to have lost an opportunity to sell that consumer a Youthline Model. Daisy has no economic incentive to sell Model 856 and Model 880 air rifles for use by shooters younger than 16 and a considerable economic incentive to avoid such sales.

Even if Daisy engaged in the economically irrational practice of marketing Model 856 and Model 880 air rifles for use by shooters younger than 16, I doubt that it would have any measurable impact on sales. As I discussed in a previous section, the decision of when to permit a young person to be instructed in, and be permitted the unsupervised use of guns, whether air rifle or firearm, is one of the important and difficult decisions that parents or caregivers can make.¹⁵ The marketing program of a single air rifle manufacturer is unlikely to make much difference to consumer attitudes about the appropriate ages at which young people should be introduced to guns and shooting, and the age at which they can be trusted with the unsupervised use of a high-velocity air rifle.

Automatic Safeties

Some air guns incorporate automatic safeties in their design.¹⁶ The deposition testimony indicates that some designers and experts think such a feature is a good thing, and other, equally qualified designers and experts, believe that it is undesirable. *At most* an automatic safety might qualify as a “nice to have” feature. Its absence can hardly be termed to be a *defect*, especially when the voluntary standard covering BB guns contains specifications for the safety that include no requirement that it reset automatically.¹⁷ As I said in my statement opposing the issuance of this complaint, the issue of automatic safeties is an industry-wide one, and should not be the subject of an action seeking to force the recall of two discrete products on that basis. For these reasons I conclude that the fact that the Daisy Model 880 and 856 contain no automatic safety is not a defect and certainly does not constitute a substantial product hazard.

¹⁴ The labeling requirements for such air rifles are governed by ASTM F 589-00 §§10.1.1 and 10.2.1.1.

¹⁵ A poll conducted by *American Rifleman* magazine in May and June, 2003 showed that 83% of the respondents said that they had been introduced to shooting as “preteens.” While I recognize that this is not a scientifically valid survey, it is an indication that parents frequently children younger than 13 to be instructed in shooting.

¹⁶ By automatic safety I mean a mechanical device that interposes itself the “On” position after each shot, and which must be manually moved by the shooter to the “Off” position to discharge the rifle again.

¹⁷ ASTM Designation F 589-00 recognizes the existence of automatic safeties (§3.1.2.17), but requires only that most non-powder guns have a “safety mechanism” (*id.* §§3.1.2.19 and 4.4.1). The test of the safety mechanism is set forth in *id.* §9.4. There is no requirement in such a test that the safety mechanism reset automatically after a shot is fired. Air guns classified as match precision guns, adult guns and training guns are exempt from the requirement to have any kind of safety mechanism. *Id.* §§4.4.1 and 8.

THE DAISY SETTLEMENT OFFER IS IN THE PUBLIC INTEREST AND RESOLVES THE CASE ADEQUATELY

As the preceding portions of this statement have made clear, there is very little evidence that the Daisy Models 856 and 880 air rifles constitute substantial product hazards. The action has, however, been brought and Daisy and Complaint Counsel have prepared their cases for trial. Daisy has, moreover, made a settlement offer showing what it is prepared to do to resolve the case.

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. For the reasons set forth below, I believe that it is in the public interest for the Commission to accept this Settlement Offer and end the case on those terms.

Technical Issues Generic to Air Guns

The Daisy Settlement Offer proposes to refer to the voluntary standards setting process the two issues remaining in the case:

1. The appropriate age recommendations for airguns with a muzzle velocity exceeding 350 feet per second.
2. The possibility of a voluntary standard governing the loading and feeding of BBs.

These issues are neither unique to the Daisy 856 or 880 model air rifles, nor to Daisy air guns. Rather, they are industry-wide concerns appropriately resolved in the voluntary standards setting process. The pertinent subcommittees of ASTM Committee F15 have long experience in evaluating the nature of air rifles and developing standards that balance safety concerns with utility considerations. Commission staff have been consistent participants in that process. 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. 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. As I noted previously, there is no lodging problem associated with the Model 880 apart from the use of grossly out-of-specification BBs or laboratory experiments that have never been observed in field use of the air rifle. What little problem may exist in the magazine arrangement 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, although as noted earlier, that tendency to lodge does not constitute a substantial product hazard. Nevertheless, 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. Daisy’s campaign, moreover, will assist in educating consumers using not only Daisy air rifles, but also consumers using other manufacturers’ air guns, and even consumers using firearms. Hence the Daisy campaign will be far more effective in overall shooter and public safety than a program limited to one characteristic of one or two particular models of air rifle. It is in the public interest and I am pleased to vote to accept it.

DISSATISFACTION WITH CASE AND COMMISSION PROCEDURES

Although I am pleased to vote to accept the Daisy Settlement Offer and to end this case, I would be remiss if I did not express my extreme dissatisfaction with the way that this case was brought and the manner in which it has been conducted. In my nearly twelve years of service with this Commission, and indeed, in my over thirty years of government service, I have never seen a more outrageous miscarriage of justice and abuse of the processes of public policy than this case. The case was brought in 2001 in circumstances that I described in my dissent to the filing of the administrative complaint. Some of the deposition testimony given by Commission employees show clearly that the previous Chairman ordered that the case be removed from the ordinary processes of Commission staff review because she did not like the conclusions that the career staff were reaching about the hazards associated with the Model 856 and 880 air rifles.

But the unfairness to Daisy continued beyond the decision to commence the case. On September 9, 2002 Daisy sought to settle the case and transmitted the offer to the Presiding Officer for transmission to the Commission. Complaint Counsel opposed that transmission. The Presiding Officer, ignoring the clear statutory mandate to transmit settlement offers to the Commission,¹⁸ elected not to transmit the offer. Daisy sought an interlocutory appeal of the Presiding Officer’s decision, which Complaint Counsel also opposed, and which the Presiding Officer also denied. All of this effort kept the Commission from even considering Daisy’s Settlement Offer.

¹⁸ In declining to transmit the first settlement offer the Presiding Officer ignored Section 15(f) of the CPSA: “Any settlement offer which is submitted to the presiding officer at a hearing under this subsection *shall be transmitted* by the officer to the Commission for its consideration *unless* the offer is clearly frivolous or is duplicative of offers previously made” (emphasis added).

On May 1, 2003 Daisy submitted another settlement offer to the Presiding Officer, which the Presiding Officer did transmit to the Commission.¹⁹ The May settlement offer is very similar to the settlement offer upon which the Commission is voting today; it is seven pages long with a one-page attached order. Attachments consist of the Complaint, Daisy's Answer, and descriptions of Daisy's "Take Aim at Safety" information and education campaign. It took the Commission approximately four and a half months to reject this settlement offer (including the time for a failed effort at mediation) and it did so without stating why the offer was being rejected or indicating what might be an acceptable offer.²⁰ I dissented and voted to accept the settlement offer.

On October 1, 2003, Daisy asked this Commission to reconsider its decision rejecting the settlement offer, citing a financial situation that made it unlikely that Daisy could undertake any substantial corrective action program. Both Daisy and Complaint Counsel waived the Commission's *ex parte* communications restrictions and Daisy submitted the Settlement Offer that I am voting to accept. The record shows that this is a case that should not have been brought in the first place, and which has now been settled on terms substantially similar to those that Daisy proposed over fourteen months ago.²¹ Students of government who wish to see how the regulatory enforcement process can be used to harass a small company to no good purpose need look no further than this action for a splendid case study. I hope that in the future, the Commission will take much greater care in deciding which actions to bring, and exercise greater oversight of pending actions, in its effort to protect the public from genuine product hazards.

¹⁹ Both Complaint Counsel and the Presiding Officer opposed the Commission's accepting the settlement offer. Complaint Counsel's position for withdrawing its opposition to transmitting the settlement offer to the Commission was that the Commission was "differently constituted" than when it voted to file the complaint and initiate the action. The Commission's membership is, however, exactly the same as it was when Complaint Counsel opposed the transmission of Daisy's first settlement offer in September 2002.

²⁰ I recognize that Daisy did not waive restrictions on *ex parte* communications in connection with the settlement offer transmitted to the Commission in May, despite a request that it do so. While the lack of the ability of the Commissioners to communicate with Daisy and Complaint Counsel on a *ex parte* basis may have hampered the Commission in its ability to assess the merits of the May settlement offer fully, there is no reason why it should have resulted in a delay.

²¹ Daisy's first settlement offer was never transmitted to the Commission because of an interpretation of the Commission's adjudicative regulations dealing with Commissioner access to *in camera* materials (16 CFR §1025.45(c)(2000)) with which I do not agree.

| Firearm or Air Rifle | Length of Pull | Overall Length | Weight | Remarks |
|--|-----------------------|-----------------------|---------------|-------------------------|
| Daisy 105 Youthline | 10 3/4" | 29 7/8" | 1.6 lbs | Low-Velocity Air Rifle |
| Henry Repeating Arms Minibolt .22 rimfire H&R/NEF Topper | 11 1/2" | 30 1/4" | 3.25 lbs | Intended for Children |
| Junior Shotgun | 12 1/2 " | 36" | 5-6 lbs | Intended for Youths |
| Remington Model 7 Youth Centerfire Rifle | 12 1/2" | 38 1/4" | 6.5 lbs | Intended for Youths |
| Daisy 95 Youthline | 12 3/4" | 35 1/8" | 2.4 lbs | Low-Velocity Air Rifle |
| Daisy 840 Youthline | 12 3/4" | 36 7/8" | 2.25 lbs | Low-Velocity Air Rifle |
| Winchester Model 70 Compact centerfire rifle | 13" | 39 1/2" | 6 lbs | Intended for Youths |
| Winchester Ranger Compact shotgun | 13" | 44" | 7 lbs | Intended for Youths |
| Daisy 856 | 13 3/8" | 37 3/8" | 2.7 lbs | High Velocity Air Rifle |
| Remington 7400 Centerfire Rifle | 13 3/8" | 42 5/8" | 7.5 lbs | Intended for Adults |
| Daisy 880 | 13 5/8" | 37 5/8" | 3.7 lbs | High Velocity Air Rifle |
| Daisy 1938 Red Ryder | 13 5/8" | 35 3/8" | 2.2 lbs | Low-Velocity Air Rifle |
| Remington Model 597 .22 rimfire | 14" | 40" | 5.5 lbs | Intended for Adults |