

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of )	
Briggs & Stratton Corporation )	CPSC Docket No. 02-
a corporation )	
)	

SETTLEMENT AGREEMENT AND ORDER

1. This Settlement Agreement, made by and between the staff (“the staff”) of the U.S. Consumer Product Safety Commission (the “Commission”) and Briggs & Stratton Corporation (“Briggs & Stratton” or “Respondent”), a corporation, in accordance with 16 C.F.R. § 1118.20 of the Commission’s Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (“CPSA”), is a settlement of the staff allegations set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. §§ 2051-2084.

3. Briggs & Stratton is a corporation organized and existing under the laws of the State of Wisconsin with its principal corporate offices located in Wauwatosa, Wisconsin.

STAFF ALLEGATIONS

4. Between 1992 and 1995, Briggs & Stratton manufactured and sold nationwide

approximately 133,000 series 1352 engines for use on fun karts. Between December 1994 and May 1995, Briggs & Stratton manufactured and sold approximately 29,000 series 1362 engines with vented gas caps for use on fun karts.

5. Both the series 1352 engines and the series 1362 engines with vented gas caps (“engines”) are “consumer products” and Respondent is a “manufacturer” of “consumer products”, which were “distributed in commerce” as those terms are defined in sections 3(a)(1),(4),(11) and (12) of the CPSA, 15 U.S.C. § 2052(a)(1),(4),(11), and (12).

6. The engines are defective because when tipped over or inverted they spill gasoline that can result in fires. If a fun kart equipped with the subject engine(s) should overturn, fun kart riders could suffer serious burn injuries or death.

7. In early 1994, Briggs & Stratton became aware of an incident where a fun kart equipped with a series 1352 engine tipped over, spilled gasoline and caught fire.

8. Between January 1994 and sometime in 1999, Briggs & Stratton received at least eight reports of incidents, where fun karts with 1352 engines tipped over, spilled gasoline and caught fire, causing severe burn injuries to four fun kart riders ages 10-16.

9. In response to the fuel spillage problem manifested by the series 1352 engines, Briggs & Stratton attempted a number of design changes beginning in 1994. This included the production of the subject 1362 engines with vented gas caps from December 1994 through May 1995. These design changes failed to eliminate the gasoline spillage problem.

10. Between January 1995 and the present, Briggs & Stratton received at least nine reports of incidents, where fun karts equipped with 1362 engines with vented gas caps

caught fire. No fire related injuries have been reported involving the 1362 engines.

11. In May 1995, Briggs & Stratton in an attempt to remedy the gasoline spillage problem redesigned the 1362 series engine to include a check valve in the gas tank.

12. Despite being aware of the information set forth in paragraphs 6 through 11, Briggs & Stratton did not report to the Commission about the subject engines until March 17, 1999, when it responded to an earlier request from Commission staff for information about the engines.

13. Briggs & Stratton obtained information which reasonably supported the conclusion that the engines described in paragraph 6 contained a defect which could create a substantial product hazard and created an unreasonable risk of serious injury or death, but failed to report such information to the Commission as required by sections 15(b)(2),(3) of the CPSA, 15 U.S.C. § 2064(b)(2), (3).

14. Briggs & Stratton also failed to report to the Commission information about lawsuit settlements concerning the subject engines as required by section 37 of the CPSA, 15 U.S.C. § 2084.

15. By failing to provide information as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), and section 37 of the CPSA, 15 U.S.C. 2084, Briggs & Stratton violated sections 19(a)(4), (11) of the CPSA, 15 U.S.C. § 2068(a)(4), (11).

16. Respondent committed these failures to report to the Commission “knowingly” as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), and Respondent is subject to civil penalties under section 20 of the CPSA.

## RESPONSE OF BRIGGS & STRATTON

17. Briggs & Stratton denies all of the allegations of the staff set forth in paragraphs 4-16 above.

18. Briggs & Stratton denies that the engines contain any defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death pursuant to section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

19. Briggs & Stratton denies that a particular model of an engine manufactured by Briggs & Stratton was the subject of at least three civil actions alleging the involvement of grievous bodily or death and resulting in a final settlement involving Briggs & Stratton or a court judgment in favor of the plaintiff within a 24-month period pursuant to section 37 of the CPSA, 15 U.S.C. § 2084.

20. Respondent denies that it violated the CPSA Reporting Requirements of section 15(b) of the CPSA, 15 U.S.C. § 2064(b) and section 37 of the CPSA, 15 U.S.C. § 2084. Briggs & Stratton states that no other violation of law occurred warranting imposition of a civil penalty. In settling this matter, Briggs & Stratton does not admit any fault, liability or statutory or regulatory violation.

21. Briggs and Stratton further states that it designed and implemented product improvements to address the risk of gasoline spillage; it considered the reporting requirements of the CPSA and made, based on its understanding of the law, good faith judgments about reporting; and it did not knowingly violate any reporting requirements.

22. With respect to the allegations of incidents of severe burn injuries referenced in paragraph 8 above, Briggs & Stratton denies that a defect in the engines was the cause

of the injuries and states that each incident involved either an alternate cause of fire or injury, misuse of the product or changes made to the product after Respondent's manufacturing of the product.

#### AGREEMENT OF THE PARTIES

23. The Commission has jurisdiction over this matter and over Briggs & Stratton under the CPSA, 15 U.S.C. §§ 2051-2084.

24. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the CPSA Reporting Requirements.

25. Briggs & Stratton agrees to pay to the order of the U.S. Treasury a civil penalty in the amount of four hundred thousand dollars (\$400,000.00), in settlement of this matter, payable within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement.

26. Briggs & Stratton knowingly, voluntarily and completely waives any rights it may have in the above captioned case (i) to the issuance of a Complaint in this matter; (ii) to an administrative or judicial hearing with respect to the staff's allegations cited herein; (iii) to judicial review or other challenge or contest of the validity of the Settlement Agreement or the Commission's Order; (iv) to a determination by the Commission as to whether a violation of Sections 15(b) or 37 of the CPSA, has occurred, (v) to a statement of findings of fact and conclusions of law with regard to the staff's allegations; and (vi) to any claims under the Equal Access to Justice Act.

27. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the *Federal Register* in accordance with the procedure set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

28. This Settlement Agreement and Order becomes effective after its final acceptance by the Commission and service upon Respondent.

29. Upon final acceptance of this Settlement Agreement by the Commission, the Commission may publicize the terms of the Settlement Agreement and Order.

30. Respondent agrees to the entry of the attached Order, which is incorporated herein by reference, and agrees to be bound by its terms.

31. This Settlement Agreement and Order is binding upon Briggs & Stratton, its parent and each of their assigns and successors.

32. This Settlement Agreement and Order fully resolves the matters set forth in paragraphs 4 through 16 above.

33. If, after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Briggs & Stratton determine that severing the provision materially impacts the purpose of the Settlement Agreement and Order.

34. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced, and approved by the Commission.

35. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

BRIGGS & STRATTON CORPORATION

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Thomas R. Savage, Vice President

THE CONSUMER PRODUCT SAFETY COMMISSION

Alan H. Schoem, Director  
Office of Compliance

Eric L. Stone, Director  
Legal Division  
Office of Compliance

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Ronald G. Yelenik, Trial Attorney  
Legal Division  
Office of Compliance