

November 16, 1998

W KIRK TURNER
NEWTON OCONNOR TURNER AND AUER
2700 NATIONSBANK CENTER
FIFTEEN WEST SIXTH STREET
TULSA, OK 74119-5423

RE: FOIA Request No. S-811022: CPSC's investigation of AMF, Inc.'s bowling ball returns

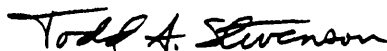
Dear Mr. Turner:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request seeking records from the Consumer Product Safety Commission.

Due to the heavy volume of FOIA requests we have received, and because of certain procedural steps we are required to take under our statute, there may be substantial delays in responding to many requests. Please be assured that every effort is being made to process each request as equitably as possible and that the records you requested which can be released will be made available to you at the earliest possible date.

If you have any questions concerning your request, feel free to contact this office at (301) 504-0785.

Sincerely,



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

2



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

Jeffrey S. Bromme
General Counsel

Tel: 301-504-0980 ext.
Fax: 301-504-0403
E-Mail: cpssc-gc@cpssc

April 27, 1999

Peter A. Lynch, Esq.
Cozen & O'Connor
Suite 1610
501 West Broadway
San Diego, CA 92101

Re: FOIA Appeal S-9030040
Extension Cords, Power Strips and Surge Protectors

Dear Mr. Lynch:

By letter dated March 29, 1999, 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. The FOI Officer has reconsidered his decision to withhold a page of staff notes, so a copy of it is enclosed. As explained below, I affirm the FOI Officer's decision to withhold other documents pursuant to FOIA Exemptions 5 and 7(E). 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 and incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the agency. 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. The information being withheld pursuant to FOIA Exemption 5 consists of two memos from the CPSC's Compliance staff that concern industry conformance to voluntary standards and staff e-mails that discuss enforcement strategies.

The two memos being withheld under FOIA Exemption 5, as discussed above, are also being withheld under FOIA Exemption 7(E). FOIA Exemption 7(E) provides for the withholding of investigatory records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations

Peter A. Lynch, Esq.
April 27, 1999

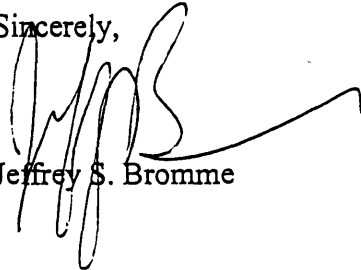
Page 2

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 two memos being withheld meet this criterion.

While we have not provided a Vaughn index (and need not provide one at this time), I hope that you understand from the description of the withheld documents why they fall within FOIA exemptions.

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 black ink, appearing to read 'J. Bromme', with a long horizontal flourish extending to the right.

Jeffrey S. Bromme

Enclosure

4081
EXT

PHILADELPHIA, PA
ATLANTA, GA
CHARLOTTE, NC
COLUMBIA, SC
DALLAS, TX
LONDON, UK

COZEN AND O'CONNOR
PROFESSIONAL CORPORATION
FREEDOM OF THE SECRETS
501 WEST BROADWAY
SAN DIEGO, CA 92101
1999 APR -7 A 11:03
(619) 234-1700
(800) 782-3366
FACSIMILE
(619) 234-7831
WWW.COZEN.COM

LOS ANGELES, CA
NEW YORK, NY
NEWARK, NJ
SEATTLE, WA
WEST CONSHOHOCKEN, PA
WESTMONT, NJ

PETER A. LYNCH

PLYNCH@COZEN.COM

March 29, 1999

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

Re: Appeal of Denial of FOIA Request Pursuant to
5 U.S.C. Section 552(a)(6) for
Request No.: S-9030040
Extension Cords, Power Strips
and Surge Protectors
Our File No.: 56835

Dear General Counsel:

This is an appeal under the Freedom of Information Act. I requested documents under the Freedom of Information Act. My request was assigned identification No. S-9030040. On March 26, 1999, I receive a response to my request in a letter signed by Mr. Todd A. Stevenson, Deputy Secretary and Freedom of Information Act Officer. Attached is a copy of that denial letter.

I appealed the denial of part of my Freedom of Information Act request. I want to thank Mr. Stevenson and his staff for their efforts. However, I respectfully disagree with the decision to withhold documents.

We do not believe exemptions 5 and 7(e) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(5) and (b)(7)(e) apply as indicated in the denial letter. Moreover, we believe that there has been a failure to substantiate the claimed exemptions. We would request a privilege log be provided to include identification of the document, author, addressee, general subject matter, the identity of the specific privilege claimed for each separate document and all facts upon which the specific claim of privilege

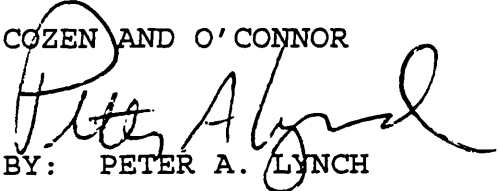
General Counsel
U.S. CONSUMER PRODUCT SAFETY COMMISSION
March 29, 1999
Page 2

is based. As you are aware, a Vaughn index will be required if this matter is litigated.

I respectfully submit that the claimed exemptions do not apply in light of our request. The exemptions are narrowly construed in light of the Freedom of Information Act's dominant objective of disclosure and non-secrecy. Department of the Air Force v. Rose, 425 U.S. 352, 361 (1976). Pursuant to the Act's requirements on administrative appeals, I request for response to the appeal within twenty (20) working days. I remain,

Very truly yours,

COZEN AND O'CONNOR


BY: PETER A. LYNCH

PAL:am

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MAR 26 1999

REC'D



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207
March 22, 1999
CERTIFIED MAIL

Mr. Peter A. Lynch
COZEN AND O'CONNOR
501 West Broadway, Suite 1610
San Diego, CA 92101

**RE: FOIA S-9030040: Extension Cords, Power Strips and Surge Protectors
Your File No.: 56835**

Dear Mr. Lynch:

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.

Enclosed are press releases, video, a fact sheet and correspondence. 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.

We must withhold some of the documents responsive to your request 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.

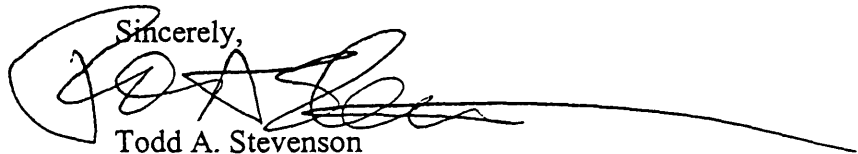
The records being withheld consist of internal memoranda containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that

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 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.

This completes the processing of your request. Thank you for your interest in product safety. The cost to the Commission to perform the file searches and copy this information for you was \$100.00. In this instance we have decided to waive the charges. If you have questions, contact us by letter, telephone (301) 504-078

Sincerely,

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", with a long horizontal line extending to the right.

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

Enclosure

4061
EXTENSION
CORDS



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207
March 22, 1999
CERTIFIED MAIL

A large, stylized handwritten mark or signature in the right margin of the document.

Mr. Peter A. Lynch
COZEN AND O'CONNOR
501 West Broadway, Suite 1610
San Diego, CA 92101

**RE: FOIA S-9030040: Extension Cords, Power Strips and Surge Protectors
Your File No.: 56835**

Dear Mr. Lynch:

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.

Enclosed are press releases, video, a fact sheet and correspondence. 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.

We must withhold some of the documents responsive to your request 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 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 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.

This completes the processing of your request. Thank you for your interest in product safety. The cost to the Commission to perform the file searches and copy this information for you was \$100.00. In this instance we have decided to waive the charges. If you have questions, contact us by letter, telephone (301) 504-078

Sincerely,

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

Enclosure

COZEN AND O'CONNOR

A PROFESSIONAL CORPORATION

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WEST CONSHOHOCKEN, PA

WESTMONT, NJ

CPSC/OFC OF THE SECRETARY
FREEDOM OF INFORMATION

1999 MAR -2 P 2:44

PETER A. LYNCH

PLYNCH@COZEN.COM

February 24, 1999

**VIA CERTIFIED MAIL-
RETURN RECEIPT REQUESTED**

Todd A. Stevenson
Deputy Secretary and
Freedom of Information Officer
Office of the Secretary
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

Re FOIA Request Related to Feb. 24, 1999 Release
#99069 "CPSC Warns Consumers About Faulty
Extension Cords, Power Strips and Surge Protectors
Our File No.: 56835

411

Dear Mr. Stevenson:

Pursuant to 5 U.S. Code §552(a)(3) and 16 C.F.R. §1015.3, I, Peter A. Lynch of the law offices of COZEN & O'CONNOR, 501 West Broadway, Suite 1610, San Diego, California 92101, for myself and Fireman's Fund Insurance Company, hereby request one copy of the following records of the C.P.S.C.:

(1) All records of any kind that refer, relate to or concern extension cords, power strips and surge protectors electric surge suppressors which was subject to warning noted as release No. 99-069 dated February 24, 1999.

4061

EXPATC

EXTM

I am amenable to paying the cost for the standard document search and duplication. Please advise of the cost and the fee will be forwarded. Please mail a copy of the requested documents to me at COZEN & O'CONNOR, 501 West Broadway, Suite 1610, San Diego, California 92101.

D.Y

5-9030040

Todd A. Stevenson
February 24, 1999
Page 2

I look forward to hearing from you. Should you have any questions, my telephone number is 1-800-782-3366, fax number (619) 234-7831, and e-mail at plynch@cozen.com. I remain,

Very truly yours,

COZEN AND O'CONNOR


BY: PETER A. LYNCH

PAL:am

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

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme
General Counsel
Tel: 301-504-0980 ext. 2299
Fax: 301-504-0403
E-Mail: jrbromme@cpsc.gov

May 6, 1999

Mr. Rick Dellacorino
4505 S. Hardy Drive -- apt. # 1179
Tempe, Arizona 85282

RE: FOIA Appeal 9020029
Iron Out, Inc. products

Dear Mr. Dellacorino:

By letter dated April 29, 1999, you appealed the decision of the Commission's Freedom of Information 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 Freedom of Information (FOI) Officer's decision to withhold two unconfirmed consumer complaints, based on FOIA Exemption 3. 5 U.S.C. § 552(b)(3).

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 complaints, I am relying on section 6(b)(1) of the Consumer Product Safety Act (CPSA). 15 U.S.C. § 2055(b)(1).

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's regulations require that an unconfirmed consumer complaint be confirmed as a reasonable

Mr. Rick Dellacorino
May 6, 1999

Page 2

step to assure the accuracy of the information. 16 C.F.R. § 1101.32(a)(3). Commission regulations also describe steps to assure that disclosure of the information is fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. 16 C.F.R. §§ 1101.33 and 1101.34. If the Commission has not taken reasonable steps to assure the accuracy of the information, section 6(b)(1) prohibits its release.

When consumers submit consumer complaints to the Commission, the Commission sends them forms requesting that they confirm the information as accurate to the best of their knowledge and belief. We also send each submitter a franked return envelope for mailing back the confirmation. This process, which is voluntary on the part of the submitter, has been in place since 1983. The two complaints being withheld were subjected to this process, but the submitters of the complaints did not respond to the Commission's request for confirmation. Therefore, the Commission may not disclose the complaints under the FOIA.

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

Sincerely,


Jeffrey S. Bromme

AX TO # (301) 504-0127.

APRIL 29, 1999

FAXED COVER SHEET...

OF PAGES SENT. (4)...

TO: EVA M. GRADY--PARALEGAL SPECIALIST.

FOIA APPEAL,

GENERAL COUNSEL,

ATTN: OFFICE OF THE SECRETARY,

U. S. CONSUMER PRODUCT SAFETY COMMISSION,

WASHINGTON, D. C. 20207

FOIA REQUEST S-9020029. company; IRON OUT, INC. .

FROM: RICK DELLACORINO

4505 S. HARDY DRIVE

APT. # 1179, TEMPE, ARIZONA 85282.

PH. # (602) 839-8947. FAX # (602) 820-9648.

SUBJECT: AN APPEAL TO A PARTIAL DENIAL OF ACCESS TO RECORDS
PERTAINING TO THE COMPANY "IRON OUT, INC" ..

Sincerely,
21

Rick Dellacorino

April 29, 1999

0101 IRON
4/22

Attn: Eva M. Grady,
Paralegal Specialist,
FOTA Appeal,
General Counsel,
Attn: Office of the Secretary,
U.S. Consumer Product Safety Commission,
Washington, D. C. 20207

Rick Dellacorino
4505 S. Hardy Dr.
Apt. # 1179
Tempe, Arizona 85282
Ph. # (602) 839-8947

General Counsel of the Commission:

This is an appeal to a partial denial of access to records pertaining to FOIA REQUEST S-9020029; INFORMATION ON "IRON OUT, INC" THE COMPANY. SEARCH COVERS 1990 TO PRESENT. Please keep in mind that it is very important that this information be released...

Since there is a law suit filled against Iron Out, Inc. time is of the essence in this case. Please note that the \$35.00 fee has BEEN WAIVED BY YOUR OFFICE...

Thank you for your time and cooperation in this very important matter.

Sincerely,



RICK DELLACORINO

Code 0101: Firm Iron Out, Inc., Chron, Officer 6b Release, Sp/EG



0101
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U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D. C. 20207
April 22, 1999

Rick Dellacorino
Individual
4505 S. Hardy Drive,
Apt. #1179
Tempo, Arizona 85282

**RE: FOIA Request S-9020029: Any Information on "Iron Out, Inc. Company"
Search Covers 1990 to Present**

Dear Mr. Dellacorino: :

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.

Enclosed are records pertaining to three product complaints and reported incidents that were submitted to the Commission by consumers and others. The consumers or submitters have confirmed the accuracy of the information in the complaints and reported incidents. The Commission has neither investigated the incidents nor conducted or obtained any evaluations of the products that corroborate the substance of the information contained in the complaints and reported incidents. In some of the complaints and reported incidents we have removed the identities of the complainants at their request.

The other records from the Commission files responsive to your request relate to two product complaints and reported incidents that the Commission has obtained from consumers, attorneys for consumers and others. The Commission has not received confirmation of the accuracy of the information in the complaints and reported incidents. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, we are relying on 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. See Commission regulation, 16 C.F.R. § 1101.32. The Commission's policy is to withhold each consumer complaint and reported incident unless: (1) the Commission has conducted an investigation of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; (2) the Commission has conducted or obtained a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and evaluation corroborates the substance of the information contained in the complaint and reported incident; or (3) the consumer or person reporting or submitting the incident confirms the accuracy of the information. The Commission did not take any of these steps with regard to these certain consumer complaints and reported incidents responsive to your request. While it has been Commission practice since June 1983 to seek confirmation of incoming consumer complaints and incidents, the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information.

You will note that in the documents disclosed information that could identify injured parties and persons treating them has been deleted, because section 25(c) of the Consumer Product Safety Act, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals. In some cases the parties have denied consent or consent has not otherwise been obtained.

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.

Processing this request, performing the file searches and preparing the information, cost the Commission \$35.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. 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
Deputy Secretary and
Freedom of Information Officer
Office of the Secretary

Enclosures

"Process A.S.A.P..."

(301) 504-0127

Rec'd 11/27/99



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

FREEDOM OF INFORMATION ACT (FOIA)
Request for Information

Date: _____ Received By: _____

3/C

REQUESTER: Rick DELLACORINO
FIRM: Individual
ADDRESS: 4505 S. Hardy Dr. Apt. #1179
Tempe, Arizona 85282
Telephone: (602) 839-8947

DOCUMENTS REQUESTED: Requesting ANY
INFORMATION ON A COMPANY CALLED
IRON OUT Inc.
1515 dividend Rd.
FL. WAYNE, FL 33408-1126
Pl. # 1-800-654-0791

NO AT date 1/27/99

Obtain the following information from the requester:

Have you submitted a written request for the records? Yes

WAS IT PRODUCT 0101

We want to avoid duplicate work and written requests are given priority (by our regulations) and are processed more efficiently.

Will you pay any fees incurred by processing your request? Yes

But, please waiver fees because I have not worked in over 1 year.

Can we sent the materials by MAIL? Yes

Or Call for pick-up at our office? N/A.

Please indicate the purpose of your organization or your need for the requested information for the purposes of assessing any applicable fee waivers: Currently in

A MAJOR Law suit with IRON OUT Inc + want to know if there are ANY OTHER complaints filed with your office

Fees charges are different for commercial use requesters, non-commercial educational or scientific institutions, the news media or "others," including consumers and plaintiff attorneys. The Commission's FOIA regulations at 16 C.F.R. § 1015.9 provide for the charging of fees resulting from the processing of FOIA requests. The FOIA regulations and fee schedule allow for the charges for file search time at \$12.00 an hour for clerical personnel and \$19.60 an hour for professional personnel, \$19.60 an hour for review time to determine whether records were permitted to be withheld, \$0.10 a page for duplication services and for computerized records: central processing unit (CPU) time, \$0.32 a second, \$10.00 for 1,000 lines printed. If you have questions, please contact the Commission's Office of the Secretary Freedom of Information Division by letter, facsimile (301) 504-0127, or call (301) 504-0785.

9020029



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

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme
General Counsel
Tel: 301-504-0980 ext. 2299
Fax: 301-504-0403
E-Mail: jbromme@cpsc.gov

May 13, 1999

Jeffrey K. Jayson, Esq.
Wasserman Comden & Casselman
5567 Reseda Boulevard
Suite 330
Tarzana, California 91357-7033

RE: FOIA Appeal 9030017

Dear Mr. Jayson:

By letter dated May 6, 1999, you appealed the decision of the Commission's Freedom of Information 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 -- two unconfirmed consumer complaints.

I affirm the Freedom of Information (FOI) Officer's decision to withhold the complaints responsive to your FOIA request, based on FOIA Exemption 3. 5 U.S.C. § 552(b)(3).

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 complaints, I am relying on section 6(b)(1) of the Consumer Product Safety Act (CPSA). 15 U.S.C. § 2055(b)(1).

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's regulations require that an unconfirmed consumer complaint be confirmed as a reasonable

Jeffrey K. Jayson, Esq.
May 13, 1999

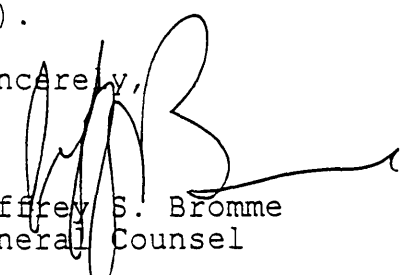
Page 2

step to assure the accuracy of the information. 16 C.F.R. § 1101.32(a)(3). Commission regulations also describe steps to assure that disclosure of the information is fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. 16 C.F.R. §§ 1101.33 and 1101.34. If the Commission has not taken reasonable steps to assure the accuracy of the information, section 6(b)(1) prohibits its release.

Upon receiving a consumer complaint, the Commission sends the submitter of the complaint a form requesting that they confirm the information as accurate to the best of their knowledge and belief. Each submitter also receives a franked return envelope in which to mail the confirmation. This process, which is voluntary on the part of the submitter, has been in place since 1983. The complaints we are withholding were subjected to this process, but the submitters of the complaints did not respond to the Commission's request for confirmation. Therefore, the Commission may not disclose these complaints under the FOIA.

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

Sincerely,



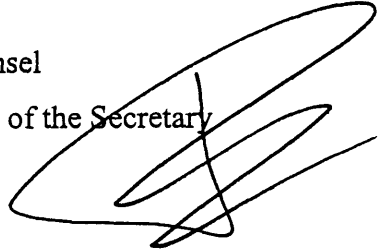
Jeffrey S. Bromme
General Counsel

Memorandum

To: Jeffrey Bromme, General Counsel

Through: Alan Shakin, Assistant General Counsel

From: Todd A. Stevenson, FOI Officer, Office of the Secretary



Date: May 12, 1999

Re: FOIA Request S9030017 Jayson / Wasserman, Comden Seeking Air compressors Campbell Hausfeld Unconfirmed complaints
FOIA Exs. 3 and CPSA 6(b)(1)
4/29 5/6 5/11 DUE June 9

The FOIA Appeal dated May 6 1999, of our denial dated April 29, attached was received in the Office of the Secretary on May 11. Mr. Jayson is appealing the withholding of two unconfirmed complaints about Campbell Hausfeld air compressors pursuant to FOIA Exemptions Ex 3 and CPSA 6(b)(1). Attached are the correspondence, our processing notes and printouts of the complaints. Should you need to discuss the materials or our processing, please see or call me X1239 or Robbie Perry X1265.

Date of Appeal: 5/6/98

Received in OS: 5/11/98

Time Limit on

Appeal Decision: Wednesday June 9, 1999

GLENN A. BROWN, JR.
RICHARD A. BROWNSTEIN
DAVID B. CASSELMAN
LEONARD J. COMDEN
CATHERINE S. GARCIA
DANIEL E. LEWIS
NORMAN L. PEARL
CLIFFORD H. PEARSON
JAY N. ROSENWALD
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GARY S. SOTER
ROGER L. STANARD
STEVE K. WASSERMAN
CECILIA S. WU
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L. STEPHEN ALBRIGHT
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ELSA H. JONES
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JEFFREY F. KAGAN
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JOHN A. RAYMOND
CALVIN S. ROSE
SIMA R. SALEK
CHERYL D. SHAW
MARINA N. VITEK
DANIEL L. WARSHAW

4/29/99 0823 CAM
Law Offices
WASSERMAN, COMDEN & CASSELMAN L.L.P.

OFFICE OF THE SECRETARY
FREEDOM OF INFORMATION
1999 MAY 11 11:21 AM
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(818) 705-6800 (323) 872-0995
FAX (818) 996-8266
FAX (818) 345-0162

INTERNET HTTP://WWW.WCCLAW.COM

May 6, 1999

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OF COUNSEL

STEPHEN D. ADLER
EDWARD A. DE BUYS
MARK S. GOTTLIEB
CHRISTOPHER N. LEE
DAVID POLINSKY

ALSO ADMITTED

*WASHINGTON

WRITER'S DIRECT CONTACT

JJAYSON@WCCLAW.COM

Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Re: FOIA Request S-9030017: Injuries and/or Complaints associated with Air Compressors manufactured by Campbell Hausfeld
Our File No. : 49-4

To Whom It May Concern:

Pursuant to 16 C.F.R. Section 1015.7, this office appeals the Commission's decision to deny access of two reported incidents and complaints involving the subject product as outlined in the April 29, 1999, letter from the Commission. The applicant believes these reported incidents may be important and relevant to its current claim against Campbell Hausfeld.

Accordingly, applicant request the Commission to reconsider its decision and release the two reported incidents relating to this matter.

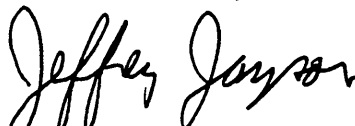
~~WASSERMAN, COMDEN & CASSELMAN L.L.P.~~

Office of the Secretary
May 6, 1999
Page 2

Thank you for your consideration in this matter.

Very truly yours,

WASSERMAN, COMDEN & CASSELMAN L.L.P.

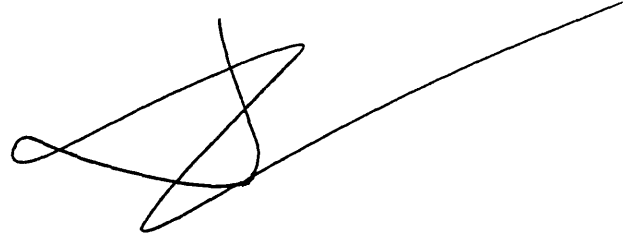

JEFFREY K. JAYSON

JKJ:238220.1

April 29, 1999

CERTIFIED MAIL

Jeffrey K. Jayson
Wasserman Comden & Casselman
5567 Reseda Boulevard
Suite 330
Tarzana (Los Angeles) CA 91357-7033



Re: FOIA Request S-9030017: Injuries and/or Complaints associated with Air Compressors manufactured by Campbell Hausfeld

Dear Mr. Jayson:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission. The record from the Commission files responsive to your request has been processed and a copy of the releasable responsive record is enclosed. We have searched the Commission's injury information files covering calendar year 1990 through the current year for information responsive to your request. If you want us to search into other records, please send in a new request and specify the time period.

Enclosed are records pertaining to one product complaint and reported incident submitted to the Commission by a consumer; his or her attorney; or others. The consumer or submitter has confirmed the accuracy of the information in the complaint and reported incident. The Commission has neither investigated the incident nor conducted or obtained any evaluations of the product that corroborates the substance of the information contained in the complaint and reported incident.

The other records from the Commission files responsive to your request relate to two product complaints and reported incidents that the Commission has obtained from consumers, attorneys for consumers and others. The Commission has not received confirmation of the accuracy of the information in the complaints and reported incidents. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, we are relying on 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. See Commission regulation, 16 C.F.R. § 1101.32. The Commission's policy is to withhold each consumer complaint and reported incident unless: (1) the Commission has conducted an investigation of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; (2) the Commission has conducted or obtained a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and evaluation corroborates the substance of the information contained in the complaint and reported incident; or (3) the consumer or person reporting or submitting the incident confirms the accuracy of the information. The Commission did not take any of these steps with regard to these certain consumer complaints and reported incidents responsive to your request. While it has been Commission practice since June 1983 to seek confirmation of incoming consumer complaints and incidents, the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information.

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
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 \$35.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. Should you have any questions, contact us by letter, facsimile (301) 504-0127 or telephone (301) 504-0785.

Sincerely,

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

Enclosure

Rec'd 2/12/99

Law Offices

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CHRISTOPHER N. LEE

ALSO ADMITTED
WASHINGTON

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SIMA R. SALEK
CHERYL D. SHAW
ALBERT G. TURNER, JR.
MARINA N. VITEX
DANIEL L. WARSHAW

February 5, 1999

VIA FACSIMILE ONLY
(301) 504-0124

Consumer Products Safety Commission
Office of Secretary
4330 East - West Highway
Bethesda, MD 20297

Re: Our Client : Oregon Mutual Insurance Co.
Date of Loss : 10-12-98
Location of Loss : Sigla Furniture, 354 West 132 St.,
Los Angeles, California
Type of Loss : Fire
Product : Campbell Hausfeld Four Cylinder Quad
Air Compressor
Model No. : CIQ71083V
Serial No. : L7/24/97-09562
Our File No. : 49-4

0523

D.Y.

TO WHOM IT MAY CONCERN:

Please be advised that we represent Oregon Mutual Insurance Company, insurer of Sigla Furniture, in connection with the above-entitled matter.

We are interested in obtaining information regarding any accidents or accident investigations concerning the above-referenced product.

5-90300 '7

Low Office

WASSERMAN, COMDEN & CASSELMAN L.L.P.

February 5, 1999
Page 2

Thank you for your anticipated courtesy and cooperation.

Very truly yours,

WASSERMAN, COMDEN & CASSELMAN L.L.P.

Jeffrey Jayson
JEFFREY K. JAYSON

JKJ/fvs:229339.1



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

Jeffrey Bromme
General Counsel

Office of the General Counsel

Tel: (301) 504-0980
Fax: (301) 504-0403
Email: cpsc-gc@cpsc.gov

May 25, 1999

Peter A. Lynch, Esq.
Cozen & O'Connor
501 West Broadway
Suite 1610
San Diego, CA 92101

Re: FOIA Appeal S9010094
Electronic Resources Limited Power Strips Corrective Action/Recall File

Dear Mr. Lynch:

By letter dated May 3, 1999, 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. As explained below, I affirm the FOI Officer's decision to withhold the preliminary determination memorandum pursuant to FOIA Exemptions 5 and 7(E). 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 and incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the agency. 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.

FOIA Exemption 7(E) provides for the withholding of investigatory records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions. This exemption also permits withholding of such records if guidelines for law enforcement investigations or prosecutions are disclosed, but only if such disclosure could reasonably be expected to risk circumvention of the law. The preliminary determination memorandum being withheld meets these criteria.

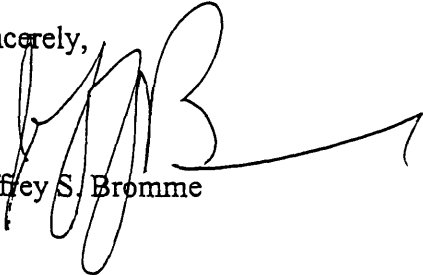
Peter A. Lynch, Esq.
May 25, 1999

Page 2

While we have not provided a Vaughn index (and need not provide one at this time), I hope that you understand from the description of the withheld document why it falls within these FOIA exemptions.

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

Sincerely,



Jeffrey S. Bromme

Y061 ELE

COZEN AND O'CONNOR

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NEW YORK, NY
NEWARK, NJ
SEATTLE, WA
WEST CONSHOHOCKEN, PA
WESTMONT, NJ

PETER A. LYNCH

PLYNCH@COZEN.COM

May 3, 1999

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

Re: Appeal of Denial of FOIA Request Pursuant to
5 U.S.C. Section 552(a)(6) for
Request No.: S-9010094
Electronics Resources Limited
Our File No.: 56835

Dear General Counsel:

This is an appeal under the Freedom of Information Act. I requested documents under the Freedom of Information Act. My request was assigned identification No. S-9010094. On April 23, 1999, I received a response to my request in a letter signed by Mr. Todd A. Stevenson, Deputy Secretary and Freedom of Information Act Officer. Attached is a copy of that denial letter.

I appealed the denial of part of my Freedom of Information Act request. I want to thank Mr. Stevenson and his staff for their efforts. However, I respectfully disagree with the decision to withhold documents.

We do not believe exemptions 5 and 7(e) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(5) and (b)(7)(e) apply as indicated in the denial letter. Moreover, we believe that there has been a failure to substantiate the claimed exemptions. We would request a privilege log be provided to include identification of the document, author, addressee, general subject matter, the identity of the specific privilege claimed for each separate document and all facts upon which the specific claim of privilege is based. As you are aware, a Vaughn index will be required if this matter is litigated.

General Counsel
U.S. CONSUMER PRODUCT SAFETY COMMISSION
May 3, 1999
Page 2

I respectfully submit that the claimed exemptions do not apply in light of our request. The exemptions are narrowly construed in light of the Freedom of Information Act's dominant objective of disclosure and non-secrecy. Department of the Air Force v. Rose, 425 U.S. 352, 361 (1976). Pursuant to the Act's requirements on administrative appeals, I request for response to the appeal within twenty (20) working days. I remain,

Very truly yours,

COZEN AND O'CONNOR


BY: PETER A. LYNCH

PAL:am
Enclosure
M:\400\56835\letters\foia.13



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

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

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

April 23, 1999

501 Broadway, Suite 1610
San Diego, CA 92101

Re: FOIA Request S9010094: Electronic Resources Limited Power Strips / Corrective Action or Recall File FW980006

Dear Mr. Lynch:

Thank you for your Freedom of Information Act (FOIA) request to the Commission. . The records from the Commission files responsive to your request have been processed and copies 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 file FW980006 and are identified as memoranda 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 other records responsive to your request, specifically, the preliminary determination form, from the Commission's Office of Compliance's active law enforcement investigatory file designated RP940177, 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

Mr. Peter A. Lynch, Cozen and O'Connor
Page 2

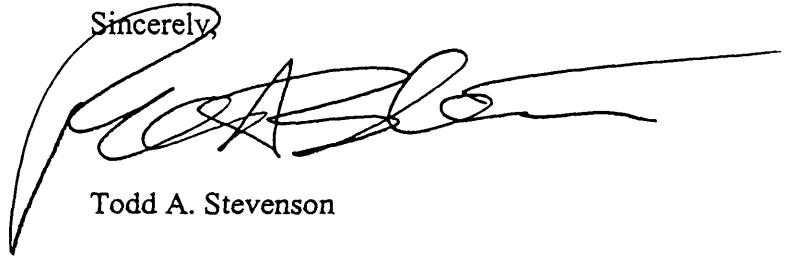
production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

The records being withheld consist of an internal 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 between 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.

You may want to resubmit your request in a few months upon completion of the case. 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

Enclosures



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

April 23, 1999

CERTIFIED MAIL

Mr. Peter A. Lynch
Cozen and O'Connor
501 West Broadway • Suite 1610
San Diego, CA 92101

Re: FOIA Request S9010094: Electronic Resources Limited Power Strips / Corrective Action or Recall File FW980006

Dear Mr. Lynch:

Thank you for your Freedom of Information Act (FOIA) request to the Commission. . The records from the Commission files responsive to your request have been processed and copies 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 file FW980006 and are identified as memoranda 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 other records responsive to your request, specifically, the preliminary determination form, from the Commission's Office of Compliance's active law enforcement investigatory file designated RP940177, 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 an internal 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.

You may want to resubmit your request in a few months upon completion of the case. 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

Enclosures

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NEWARK, NJ

SEATTLE, WA

WEST CONSHOHOCKEN, PA

WESTMONT, NJ

PETER A. LYNCH

PLYNCH@COZEN.COM

January 12, 1999

Todd A. Stevenson
Deputy Secretary and
Freedom of Information Officer
Office of the Secretary
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

Re: Electronic Resources Ltd. of San Diego
FOIA Request S806122/File Search 1993 to Present
Our File No.: 56835

1/A

Dear Mr. Stevenson:

Pursuant to 5 U.S. Code §552(a)(3) and 16 C.F.R. §1015.3, I, Peter A. Lynch of the law offices of COZEN & O'CONNOR, 501 West Broadway, Suite 1610, San Diego, California 92101, for myself and Fireman's Fund Insurance Company, hereby request one copy of the following records of the C.P.S.C.:

(1) All records of any kind that refer, relate to or concern electric surge suppressors distributed by Electronic Resources Ltd. of San Diego which was subject to recall noted as release No. 98-117.

Ads

I am amenable to paying the cost for the standard document search and duplication. Please advise of the cost and the fee will be forwarded. Please mail a copy of the requested documents to me at COZEN & O'CONNOR, 501 West Broadway, Suite 1610, San Diego, California 92101.

D.Y

Our previous FOIA request S806122 was denied pursuant to FOIA Exemptions 5 and 7(A), 5 U.S.S. §§552(b)(5) and (b)(7)(A). (See attached denial letter, dated October 2, 1998.) We are now renewing our request.

9010084

Todd A. Stevenson
January 12, 1999
Page 2

I look forward to hearing from you. Should you have any questions, my telephone number is 1-800-782-3366, fax number (619) 234-7831, and e-mail at plynch@cozen.com. I remain,

Very truly yours,

COZEN AND O'CONNOR

Handwritten signature of Peter A. Lynch, consisting of stylized initials 'PL' followed by the word 'FOR'.

BY: PETER A. LYNCH

PAL:am

Enclosure

M:\400\56835\letters\foia.08



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

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

Tel: (301) 504-0785 ext. 1239
Fax: (301) 504-0127
Email: tstevenson@cpsc.gov

June 28, 1999

Mr. T.E. McFarlan
McDermott & Hansen
1890 Gaylord Street
Denver, CO 80206-1211

FOIA Appeal S-9040082; Cigarette Lighter Subpoenas

Dear Mr. McFarlan:

This concerns your appeal for information responsive to your above referenced Freedom of Information Act Request. By letter dated June 23, 1999, the Commission's General Counsel informed you that the subpoenas issued to the cigarette lighter manufacturers and/or distributors will be released to you at the earliest possible date.

Enclosed are copies of the subpoenas issued to Wilkinson-Sword, Inc., BIC Corporation, Colibri Division of Park Lane Associates, Inc., Ronson Corporation, Scripto/Tokai, Inc., and Westco Products Corporation.

As you will note, the General Counsel affirmed my decision to withhold information provided by the companies in response to the subpoenas: The information is being withheld pursuant to FOIA Exemptions 3 and 4. 5 U.S.C. §§ 552(b)(3) and (4).

Should you have any questions, please contact Alberta Mills, Paralegal Specialist, by letter, facsimile (301) 504-0127 or telephone (301) 504-0785 ext. 1299.

Sincerely,

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

Enclosures



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

Jeffrey Bromme
General Counsel

Office of the General Counsel

Tel: (301) 504-0980
Fax: (301) 504-0403
Email: cpsc-gc@cpsc.gov

June 23, 1999

Mr. T.E. McFarlan
McDermott & Hansen
1890 Gaylord Street
Denver, Colorado 80206-1211

Re: FOIA Appeal S9040083
Cigarette Lighter Subpoenas

Dear Mr. McFarlan:

By letter dated May 21, 1999, 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.

I affirm the FOI Officer's decision to withhold the information provided by the companies in response to the subpoenas. (For your information, the Commission staff took no depositions that were authorized by the subpoenas.) As to the subpoenas themselves, the FOI Officer has reconsidered his decision to withhold them.

FOIA Exemptions 3 and 4 apply to the information received from manufacturers or distributors of cigarette lighters in response to subpoenas issued by the Commission. 5 U.S.C. §§ 552(b)(3) and (b)(4). Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute. In applying Exemption 3 to the withheld information, the Commission is relying on section 6(a)(2) of the Consumer Product Safety Act (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 that contains or relates to trade secrets or other confidential commercial information. Such 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. National Parks & Conservation Association v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974). In addition, CPSA section 6(a)(2) incorporates Exemption 4 of the FOIA which protects trade secrets and confidential commercial information obtained from a person.

Mr. T.E. McFarlan
June 23, 1999

Page 2

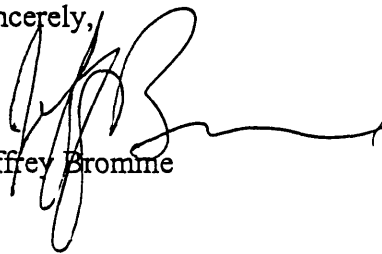
In applying FOIA Exemption 3, the Commission is also relying on CPSA section 6(b)(1). 15 U.S.C. § 2055(b)(1). Section 6(b)(1) requires that before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable 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]." It would not be fair in the circumstances to reveal the information submitted pursuant to the subpoenas. 16 C.F.R. §1101.33(b)(1) and (2).

Because the Commission is bound by section CPSA section 6(b)(1), the FOI Officer cannot finally decide whether to withhold or disclose the subpoenas themselves until he complies with this provision. Under this provision, the FOI Officer must provide the manufacturer the opportunity to comment upon the disclosure of information that identifies a manufacturer. If the FOI Officer decides to disclose information over the objection of the identified manufacturer, he must notify the manufacturer of the proposed disclosure at least 10 days in advance.

The FOI Officer will notify the manufacturer of its opportunity to comment on disclosure of the subpoenas, and he will notify you of his determination when this process has been completed. If he decides to withhold them, you may appeal his decision to me. While the manufacturer comment process is underway, you may either await his decision or treat this letter as a denial of your FOIA appeal for the subpoenas.

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 black ink, appearing to read "Jeffrey Bromine", written over a horizontal line.

Jeffrey Bromine

CPSC/OPS
McDERMOTT AND HANSEN
ATTORNEYS AT LAW
1999 MAY 26 A 9:41

GERALD P. McDERMOTT
WILLIAM J. HANSEN

1890 GAYLORD STREET
DENVER, COLORADO 80206-1211

(303) 399-6037
FAX: (303) 322-3423

May 21, 1999

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

Re: FOIA Request S-9040083, Materials relating to CPSC Media Release
91-66, May 13, 1991, Cigarette Lighter Subpoenas

Sir:

As you may be aware, our firm and several others, are presently involved in litigation involving a utility lighter manufacturer, Scripto-Tokai Corporation. In that this letter may provide information concerning our preparation in that litigation, you are requested not to provide copies of this letter to anyone.

We are appealing the commission's decision not to release the above referenced documents. In the denial of our original request the CPSC referenced Section 6(a)(2) which concerns the release of "trade secrets" obtained by the CPSC.

We request that you review what trade secrets are involved in the actual subpoena issued by the commission for testimony before the commission in connection with rulemaking, i.e., the Child-Resistant Cigarette Lighter Standards. We minimally, believe that the subpoenas and the identities of the recipients became public record during the rulemaking hearings. Even the responses likely contain little, if any, true trade secrets.

We also request reconsideration of our FOIA request since it appears from the media release that all of Scripto-Tokai's competitors were also subpoenaed at the same time. It would appear that any "trade secrets or substantial commercial advantage" between the various companies evaporated during their testimony unless testimony before the commission is done in secret.

Finally, we request reconsideration based on deposition testimony, patents filed with the United States Patents and Trademark Office, and the five plus years that the

various child-resistant lighter designs have been on the market, and the re-designing of the original child-resistant devices incorporated in 1994 products, that any "trade secret or commercial advantage" that might have been available to a competitor eight years ago when the subpoenas were issued has long since disappeared.

Should you have any questions or suggestions concerning our request for the reconsideration of our requests, please contact me at the above telephone number. Your assistance in the matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'T.E. McFarlan', written in a cursive style.

T.E. McFarlan
Investigator

Enclosure

TMF/nds

FOR RELEASE: MONDAY, MAY 13, 1991

Release #91-66

CPSC Issues Subpoenas:

TESTIMONY, EVIDENCE SOUGHT FROM CIGARETTE LIGHTER FIRMS
FOR CHILD-RESISTANT LIGHTER RULEMAKING PROCEEDING

WASHINGTON, DC -- The U.S. Consumer Product Safety Commission (CPSC) last Friday issued subpoenas to six manufacturers and/or distributors of cigarette lighters in order to obtain information needed by the Commission to proceed with rulemaking addressing the risk of fires started by children operating cigarette lighters. The Commission voted unanimously to issue the subpoenas.

The Commission issued subpoenas to BIC Corporation of Milford, CT; Wilkinson-Sword, Inc. of Atlanta, GA; Scripto/Tokai, Inc. of Fontana, CA; Ronson Corporation of Woodbridge, NJ; Colibri Division of Park Lane Associates, Inc. of Providence, RI; and Westco Products Corporation of Yorba Linda, CA; to obtain this information.

The Commission instructed recipients of the subpoenas to appear before a Commission official to provide testimony, produce documents relating to child-resistant cigarette lighters, and furnish samples of prototype child-resistant cigarette lighters, including "surrogate" lighters used to test child-resistant lighters with children. Surrogate lighters are modified to produce a signal, instead of a flame, to test the effectiveness of child-resistant features in actual use by children.

On Thursday, May 2, 1991, the CPSC voted unanimously to postpone publication of a Notice of Proposed Rulemaking (NPR) requiring certain cigarette lighters to be child resistant. The Commission based its decision in part on the need to complete testing being conducted by the Canadian government. Also, the Commission needs child-resistant lighters to test, test data and other information concerning such lighters.

The information requested from the six companies will assist the Commission in evaluating the technical feasibility of the test protocol and any changes to the test protocol that might increase its effectiveness.

The Commission is considering rulemaking to require child-resistant cigarette lighters because an average of 180 persons die in fires each year started by children with disposable lighters. About 170 of these deaths result from fires started by children under age five and an estimated 140 of the deaths are children under five.

The CPSC is taking these actions as part of its mission to protect the public from unreasonable risks of injury and death associated with consumer products. The CPSC is the Federal agency responsible for consumer product safety. Some 15,000 different kinds of products fall within the Commission's jurisdiction and each year these products are involved in an estimated 29 million injuries and 22,000 deaths.

#

NOTE: To report an unsafe consumer product or product-related injury, consumers may call the U.S. Consumer Product Safety Commission's toll-free hotline at 1-800-638-2772. A teletypewriter for the hearing impaired is available at 1-800-638-8270; the Maryland TTY number is 1-800-492-8104.

1604 Subpoenas (cig. lighters),
Off(Denial) Ex. 3,4,6a2,
Chron, spec. 3285



1604
JTB

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

May 3, 1999

T.E. McFarlan
McDermott and Hansen
Attorneys at Law
1890 Gaylord Street
Denver, CO 80206-1211

A large, stylized handwritten signature in black ink, appearing to be "JTB".

Re: FOIA Request S-9040083: Materials relating to CPSC Media Release 91-66 May 13, 1991

Dear Mr. McFarlan:

This responds to your Freedom of Information Act (FOIA) request seeking information from the Consumer Product Safety Commission.

We must withhold the records responsive to your request 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). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 in this instance we are applying in part 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. Confidential commercial information is 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 documents that if disclosed would reveal confidential financial and business relationships and design specifications.

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.

Mr. McFarlan, S9040083

Page 2

Processing your request, including searching files and preparing this information, cost \$50.00. In this instance, we waived the charges. Thank you for your interest in consumer product safety. Should you have any questions, please contact Alberta Mills, Paralegal Specialist, by letter, facsimile (301) 504-0127 or telephone (301) 504-0785 ext. 1299.

Sincerely,

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

Enclosures

McDERMOTT AND HANSEN

ATTORNEYS AT LAW

GERALD P. McDERMOTT
WILLIAM J. HANSEN

1890 GAYLORD STREET
DENVER, COLORADO 80206-1211

April 19, 1999

(303) 399-6037
FAX: (303) 322-3423

VIA FAX TO: (301) 504-0127

Ms. Alberta Mills
Paralegal Specialist
Freedom of Information Office
Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Re: Materials relating to CPSC Media Release 91-66
May 13, 1991

1/1
*CR LIGHTER
SUBPOENAS
1604*

Ms. Mills:

I would like to request copies of the documents relating to the above referenced CPSC media release. I believe this will include copies of the subpoenas issued and the documents produced in response to those subpoenas.

D. Z

Hopefully, since these materials were used by the Commission in the rulemaking process for child-resistant cigarette lighters they can be released on an expedited basis.

AM 3/25

If you have any comments or suggestions in connection with this request, please contact me directly at the above telephone number. As always, your cooperation and assistance are greatly appreciated.

Sincerely,

T.E. McFarlan
Investigator

TMF/nds

5-9040083

FOR RELEASE: MONDAY, MAY 13, 1991
Release #91-66

CPSC Issues Subpoenas:

TESTIMONY, EVIDENCE SOUGHT FROM CIGARETTE LIGHTER FIRMS
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-

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McDERMOTT AND HANSEN

ATTORNEYS AT LAW

GERALD P. McDERMOTT
WILLIAM J. HANSEN

1890 GAYLORD STREET
DENVER, COLORADO 80206-1211

(303) 399-6037
FAX: (303) 322-3423

FAX COVER SHEET

TO: Ms. Alberta Mills

FOIA office - US CPSC

FAX Number: (301) 504-0127

DATE: 4-19-99 TIME: 9:58 AM

There are 1 pages to follow this cover sheet.

If transmission is not clear, or you do not receive all pages, please call the following person at (303) 399-6037.

[Signature]

Originals will:

 follow by regular mail

 follow by overnight mail

 not be sent

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

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme
General Counsel
Tel: 301-504-0980 ext. 2299
Fax: 301-504-0403
E-Mail: cpsc-gc@cpsc.gov

June 25, 1999

Peter A. Lynch, Esq.
Cozen & O'Connor
501 West Broadway
Suite 1610
San Diego, California 92101

Re: FOIA Appeal S8110002:
First Choice Surge Protectors

Dear Mr. Lynch:

By letter dated June 1, 1999, 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. As explained below, I affirm the FOI Officer's decision to withhold the preliminary determination memorandum pursuant to FOIA Exemptions 5 and 7(E). 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 and incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the agency. 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.

FOIA Exemption 7(E) provides for the withholding of investigatory records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions. This exemption also permits the withholding of such records if guidelines for law enforcement investigations or prosecutions are disclosed, but only if such disclosure could reasonably be expected to risk circumvention of the law. The preliminary

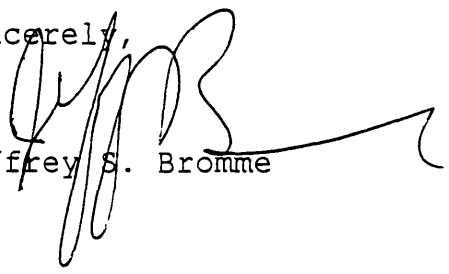
Peter A. Lynch, Esq.
June 25, 1999

Page 2

determination memorandum being withheld meets these criteria.

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

Sincerely,


Jeffrey S. Bromme

1999 JUN -8 P 2:45

COZEN AND O'CONNOR

PHILADELPHIA, PA

ATLANTA, GA

CHARLOTTE, NC

COLUMBIA, SC

DALLAS, TX

LONDON, UK

A PROFESSIONAL CORPORATION

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NEW YORK, NY

NEWARK, NJ

SEATTLE, WA

WEST CONSHOHOCKEN, PA

WESTMONT, NJ

PETER A. LYNCH

PLYNCH@COZEN.COM

June 1, 1999

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

Yob²
FIR

Re: Appeal of Denial of FOIA Request Pursuant to
5 U.S.C. Section 552(a)(6) for
Request No.: S-811002
First Choice Products, Inc.,
Surge Protectors
CPSC File No.: FW98-0017
Our File No.: 56835

Dear General Counsel:

This is an appeal under the Freedom of Information Act. I requested documents under the Freedom of Information Act. My request was assigned identification No. S-811002. I received a response to my request by letter dated May 24, 1999, signed by Mr. Todd A. Stevenson, Deputy Secretary and Freedom of Information Act Officer. Attached is a copy of that denial letter.

I hereby appeal the denial of part of my Freedom of Information Act request. I wish to thank Mr. Stevenson and his staff for their efforts. However, I respectfully disagree with the decision to withhold documents.

We do not believe exemptions 5 and 7(e) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(5) and (b)(7)(e) apply as indicated in the denial letter. Moreover, we believe that there has been a failure to substantiate the claimed exemptions. We would request a privilege log be provided to include identification of the document, author, addressee, general subject matter, the identity of the specific privilege claimed for each separate document and all facts upon which the specific claim of privilege

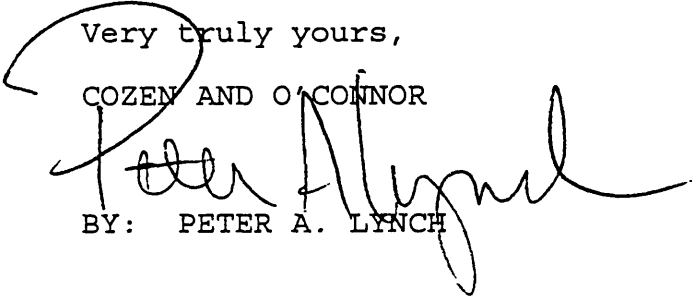
General Counsel
U.S. CONSUMER PRODUCT SAFETY COMMISSION
June 1, 1999
Page 2

is based. As you are aware, a Vaughn index will be required if this matter is litigated.

I respectfully submit that the claimed exemptions do not apply in light of our request. The exemptions are narrowly construed in light of the Freedom of Information Act's dominant objective of disclosure and non-secrecy. Department of the Air Force v. Rose, 425 U.S. 352, 361 (1976). Pursuant to the Act's requirements on administrative appeals, I request for response to the appeal within twenty (20) working days. I remain,

Very truly yours,

COZEN AND O'CONNOR


BY: PETER A. LYNCH

PAL:am
Enclosure
M:\400\56835\letters\foia.14



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207
May 24, 1999

COTEN & O'CONNOR

JUN - 1 1999

REC'D

Mr. Peter A. Lynch
Cozen and O'Connor
501 West Broadway, Suite 1610
San Diego, CA 02101

**RE: FOIA Requests S-811002: First Choice Products, Inc., Surge
Protectors – File Number FW98-0017**

Dear Mr. Lynch:

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 file FW98-0017 (First Choice Products, Inc., power strips) and are identified as Laboratory Summaries, Hazard Assessment memoranda, Preliminary Determination Sheet 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.

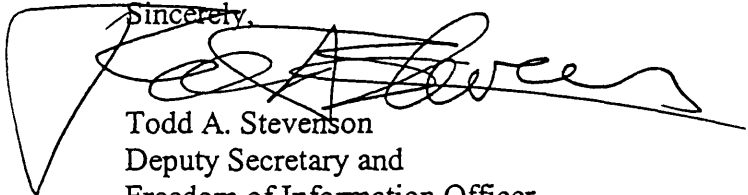
We must withhold portions of file FW98-0017 pursuant to the Exemptions 5 and 7(E) of the FOIA, 5 U.S.C. §§ 552(b)(5) and (b)(7)(E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party in litigation with the 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 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 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.

This completes the processing of your request. Thank you for your interest in product safety. The cost to the Commission to perform the file searches and copy this information for you was \$100.00. In this instance we have decided to waive the charges. If you have questions, contact us by letter, telephone (301) 504-078

Sincerely,

A handwritten signature in black ink, appearing to read "Todd A. Stevenson", is written over a large, irregular scribble or stamp.

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

Enclosure



Off (wh 5,7a), Off
(wh), chron, 2618

✓ 4062 First Choice

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207
May 24, 1999

Mr. Peter A. Lynch
Cozen and O'Connor
501 West Broadway, Suite 1610
San Diego, CA 02101

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

**RE: FOIA Requests S-811002: First Choice Products, Inc., Surge
Protectors – File Number FW98-0017**

Dear Mr. Lynch:

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 file FW98-0017 (First Choice Products, Inc., power strips) and are identified as Laboratory Summaries, Hazard Assessment memoranda, Preliminary Determination Sheet 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 portions of file FW98-0017 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 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 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.

This completes the processing of your request. Thank you for your interest in product safety. The cost to the Commission to perform the file searches and copy this information for you was \$100.00. In this instance we have decided to waive the charges. If you have questions, contact us by letter, telephone (301) 504-078

Sincerely,

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

Enclosure

LAW OFFICES
COZEN AND O'CONNOR
A PROFESSIONAL CORPORATION

PHILADELPHIA, PA

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(619) 234-7831

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LOS ANGELES, CA

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PETER A. LYNCH

October 30, 1998

Via Telecopier

Sheila Pugliese
Paralegal Specialist
Freedom of Information Office
Office of the Secretary
Consumer Products Safety Commission
Washington, D.C. 20207

Re: FOIA Request S809087: First Choice Products, Inc.
Surge Suppressors/Injury Information
Our File No.: 56835 4062

Dear Mr. Pugliese:

Thank you very much for your letter dated October 27, 1998. Enclosed please find a notice from the Consumer Product Safety Commission concerning First Choice Products, Inc. and a recall of power strip surge protectors related to it. In your letter dated October 27, 1998, you indicated the search of your files did not find any documents or records pertaining to our request.

Can you explain why there are no records related to the recall which is the enclosure? I look forward to hearing from you at your convenience. I remain,

Very truly yours,

COZEN AND O'CONNOR

Peter A. Lynch
BY: PETER A. LYNCH

PAL:am
Enclosure
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Exc/c

D.Y

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