

NEWS from CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs

Washington, DC 20207

FOR IMMEDIATE RELEASE

September 14, 1998

Release # 98-168

CONTACT: Mark Ross
(301) 504-0580 Ext. 1188

CPSC, First Choice Products Inc. Announce Recall of Power Strip Surge Protectors

WASHINGTON, D.C. - In cooperation with the U.S. Consumer Product Safety Commission (CPSC), First Choice Products Inc., of City of Industry, Calif., is voluntarily recalling about 194,200 power strip surge protectors. The power strips have undersized, cracked or corroded wiring and misaligned plugs, which present fire, shock and electrocution hazards. CPSC and First Choice Products Inc. are not aware of any injuries involving these power strips. This recall is being conducted to prevent the possibility of injury.

There are two models of power strips being recalled. Both models have six outlets, and there is no significant labeling on either power strip. One model is made of cream-colored plastic, is 4 feet long, and has black outlets and a black power cord. This model was sold in a striped black and silver box labeled in part, "6-OUTLET POWER STRIP...MADE IN CHINA." The other model is made of cream-colored plastic, is 4 feet long, and has flush, cream-colored outlets and a black power cord. This model was sold in a black, blue and orange box labeled in part, "6-OUTLET POWER STRIP...MADE IN CHINA."

Small independent hardware, salvage, specialty, discount and surplus stores sold the power strips from March 1995 through July 1998 for about \$2. The power strip in the striped black and silver box was sold nationwide. The power strip in the black, blue and orange box was sold in Arizona, California, Florida, Illinois and Texas.

Consumers should stop using the power strips immediately, and return them to the store where purchased for a refund. For more information about this recall, consumers should call First Choice Products Inc. at (800) 644-8277 between 8:30 a.m. and 5 p.m. PDT Monday through Friday.



COZEN AND O'CONNOR
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Facsimile No. (619) 234-7831

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FACSIMILE
TRANSMITTAL SHEET

Client/Matter Name: Investment/56835
Date: October 30, 1998
Time: 3:22pm

Please deliver the following pages to:

Name: Sheila Pugliese
Firm: Consumer Product Safety Commission
Phone: 301-504-0785
Fax No: 301-504-0127

From: Peter A. Lynch, Esq.

Comments:

We are transmitting a total of 4 pages, including this sheet.

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL US IMMEDIATELY.

ORIGINAL OF DOCUMENT

Mailed On _____ Original Retained in File X

Express Mailed On _____ Other _____

NOTE: The information contained in this facsimile document is confidential and is intended only for the use of the individual named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original document to us at the above address via U.S. Mail. We will reimburse you for postage. Thank you.

The U.S. Consumer Product Safety Commission protects the public from the unreasonable risk of injury or death from 15,000 types of consumer products under the agency's jurisdiction. To report a dangerous product or a product-related injury and for information on CPSC's fax-on-demand service, call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270. To order a press release through fax-on-demand, call (301) 504-0051 from the handset of your fax machine and enter the release number. Consumers can obtain this release and recall information via Internet gopher services at cpsc.gov or report product hazards to info@cpsc.gov.

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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. 2220
Fax: 301-504-0403
E-Mail: cpsc-gc@cpsc.gov

July 19, 1999

Grant Marylander, Esq.
Bogue Koury & Marylander LLC
1401 17th Street, Suite 320
Denver, Colorado 80202

Re: FOIA Appeal S9030041:
Playwell Toy Xylophone Mallet

Dear Mr. Marylander:

By letter dated July 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 document. 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 advice, recommendations, and opinions in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions.

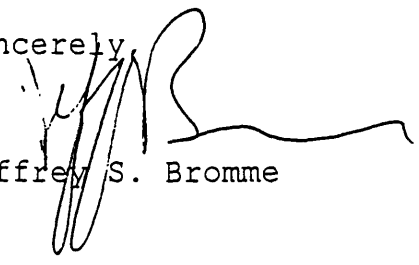
FOIA Exemption 7(E) provides for the withholding of investigatory records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions. 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 determination memorandum being withheld meets these criteria.

Grant Marylander, Esq.
July 19, 1999

Page 2

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

**BOGUE KOURY &
MARYLANDER LLC**

1401 17TH STREET, SUITE 320
DENVER, COLORADO 80202

LAWYERS THE SECRETARY
ASSOCIATION

1999 JUL -8 A 11: 02

JEFFREY A. BOGUE •
VICTORIA J. KOURY
GRANT MARYLANDER ••

FRED PAOLI, JR. •••
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* Also Licensed in Nebraska
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July 1, 1999

Via Facsimile and U.S. Mail

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

Re: FOIA Request S-9030041: Playwell Toy, Inc., Musical Toys

Dear Sir or Madam:

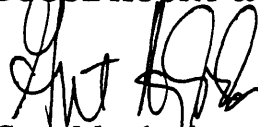
Pursuant to 16 C.F.R. 1 1015.7, we are appealing the CPSC's partial denial of access to certain records relevant to the above-referenced FOIA Request.

In his June 4, 1999 letter, Deputy Secretary Todd A. Stevenson indicated that certain portions of the law enforcement investigatory file (designated rp960141 Performance, Inc.) were withheld from production pursuant to 5 U.S.C. 11 552(b)(5) and (b)(7)(E). Specifically, certain internal notes and memoranda containing recommendations, opinions, suggestions and analyses were apparently omitted.

We recognized that, under § 552(b), the CPSC is entitled to deny access to certain materials. However, it is impossible to determine from Mr. Stevenson's letter whether the materials omitted from this request fall within the ambit of § 552(b)'s exclusions. Accordingly, we respectfully request that the omitted materials be identified with greater particularity to determine whether § 552's exclusions apply. If it is determined that some or all of these materials are not protected from disclosure, we further request that these materials be produced.

Sincerely,

BOGUE KOURY & MARYLANDER LLC


Grant Marylander

GM:wp

Officer (6a6b rel),
(wh 57e), chron,
2618
5004 playwell



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

~~April 16, 1999~~

6/4/99

Mr. Grant Marylander
BOGUE, KOURY & MARYLANDER, L.L.C.
401 17TH Street, Suite 320
Denver, Colorado 80202

U.S.P.M.

A large, stylized handwritten signature in black ink.

RE: FOIA Request S-9030041: Playwell Toy, Inc. Musical Toys

Dear Mr. Marylander:

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 CPSC RP 980149 (formerly FC980009) Playwell Toy, Inc. musical toys, and are identified as Establishment Inspection Reports, 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 this law enforcement investigatory file (designated rp960141 Performance, Inc.) pursuant to the Exemptions 5 and 7(E) of the FOIA, 5 U.S.C. §§ 552(b)(5) and (b)(7)(E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party in litigation with the agency. FOIA Exemption 7(E) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or

prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

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

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a 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 process this file and prepare it for release was \$100.00. In this instance, we have decided to waive the charges. Should you have 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

Handwritten signature/initials

**BOGUE KOURY &
MARYLANDER LLC**
LAWYERS

JEFFREY A. BOGUE -
VICTORIA J. KOURY
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FRED PAOLI, JR.***
of counsel

* Also Licensed in Nebraska
** Also Licensed in California
*** Also Licensed in Kansas, Missouri

Handwritten number: 19935021

March 2, 1999

Via Facsimile and U.S. Mail

Mr. Todd Stevenson
U.S. Consumer Product Safety Commission
Washington, DC 20207

Re: Compliance file - Playwell Xylophone Mallet

Dear Mr. Stevenson:

Handwritten: A/S

Our law firm represents Lindsay Mulford who suffered permanent brain damage when a toy xylophone mallet manufactured and/or distributed by Playwell Toys became lodged in her throat. In October 1998, Playwell Toys, in cooperation with the Consumer Product Safety Commission, recalled these toy mallets.

Handwritten: 5004

Pursuant to the Freedom of Information Act, we requesting a copy of the Consumer Product Safety Commission's compliance file regarding this recall. We will, of course, pay all fees incurred in copying this file. If you require advance payment of the copying charges, please let me know and a check will be immediately sent to the CPSC.

Handwritten: ER 4/3

Handwritten: D.Y

Thank you for your assistance in this matter.

Sincerely,

BOGUE KOURY & MARYLANDER LLC

Handwritten signature
Grant Marylander

GM:wp

Large handwritten number: 49030041

**BOGUE KOURY &
MARYLANDER LLC**
LAWYERS1401 17TH STREET, SUITE 320
DENVER, COLORADO 80202JEFFREY A. BOGUE *
VICTORIA J. KOURY
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July 1, 1999

Via Facsimile and U.S. MailFOIA APPEAL
General Counsel
Attn: Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, D.C. 20207Re: FOIA Request S-9030041: Playwell Toy, Inc., Musical Toys

Dear Sir or Madam:

Pursuant to 16 C.F.R. 11015.7, we are appealing the CPSC's partial denial of access to certain records relevant to the above-referenced FOIA Request.

In his June 4, 1999 letter, Deputy Secretary Todd A. Stevenson indicated that certain portions of the law enforcement investigatory file (designated rp960141 Performanc, Inc.) were withheld from production pursuant to 5 U.S.C. 11552(b)(5) and (b)(7)(F). Specifically, certain internal notes and memoranda containing recommendations, opinions, suggestions and analyses were apparently omitted.

We recognized that, under § 552(b), the CPSC is entitled to deny access to certain materials. However, it is impossible to determine from Mr. Stevenson's letter whether the materials omitted from this request fall within the ambit of § 552(b)'s exclusions. Accordingly, we respectfully request that the omitted materials be identified with greater particularity to determine whether § 552's exclusions apply. If it is determined that some or all of these materials are not protected from disclosure, we further request that these materials be produced.

Sincerely,

BOGUE KOURY & MARYLANDER LLC


Grant Marylander

GM:wp

Officer (6a6b rel),
(wh 57e), chron,
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5004 playwell



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

~~April 16, 1999~~

6/4/99

Mr. Grant Marylander
BOGUE, KOURY & MARYLANDER, L.L.C.
401 17TH Street, Suite 320
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We must withhold portions of this law enforcement investigatory file (designated rp960141 Performance, Inc.) 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

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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.

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Sincerely,

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

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March 2, 1999

Via Facsimile and U.S. Mail

Mr. Todd Stevenson
U.S. Consumer Product Safety Commission
Washington, DC 20207

Re: Compliance File - Playwell Xylophone Mallet

Dear Mr. Stevenson:

Handwritten: A/S

Our law firm represents Lindsay Mulford who suffered permanent brain damage when a toy xylophone mallet manufactured and/or distributed by Playwell Toys became lodged in her throat. In October 1998, Playwell Toys, in cooperation with the Consumer Product Safety Commission, recalled these toy mallets.

Handwritten: 5004

Pursuant to the Freedom of Information Act, we requesting a copy of the Consumer Product Safety Commission's compliance file regarding this recall. We will, of course, pay all fees incurred in copying this file. If you require advance payment of the copying charges, please let me know and a check will be immediately sent to the CPSC.

Handwritten: B243, D.Y

Thank you for your assistance in this matter.

Sincerely,

BOGUE KOURY & MARYLANDER LLC

Handwritten signature
Grant Marylander

GM:wp

Large handwritten number: 49030041

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: cpssc-gc@cpssc.gov

August 10, 1999

Michael A. Brown, Esq.
Brown & Freeston, P.C.
3201 New Mexico Avenue, N.W.
Suite 242
Washington, D.C. 20016

Re: FOIA Appeal S8110005: Fisher-Price Power Wheels

Dear Mr. Brown:

By letter dated July 23, 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 information. As explained below, I affirm the FOI Officer's decision to withhold the information pursuant to FOIA Exemptions 3, 4, 5, 7(A) and 7(E). 5 U.S.C. §§ 552(b)(3), (4), (5), 7(A) and (7)(E).

FOIA Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to the withheld information, I am relying on sections 6(a)(2), 6(b)(1) and 6(b)(5) of the Consumer Product Safety Act (CPSA). 15 U.S.C. §§ 2055(a)(2), (b)(1) and (b)(5).

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. Section 6(a)(2) incorporates Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information obtained from a person. Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain the necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was

Michael A. Brown, Esq.
August 10, 1999

Page 2

obtained. In addition, voluntarily-submitted information is confidential provided it is not customarily disclosed to the public by the submitter. The information being withheld pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4 consists of test data and other trade secret and confidential commercial information from Fisher-Price.

Section 6(b)(1) requires the Commission to take reasonable steps to assure that product-specific information is accurate and that its release would be fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. Since the Commission has not yet taken the necessary reasonable steps, we are withholding information that identifies the Fisher-Price Power Wheels. Such information includes test data and injury data generated by Fisher-Price and by the Commission staff, as well as correspondence between the company and the staff.

In applying Exemption 3, we are also relying on section 6(b)(5) of the CPSA, 15 U.S.C. § 2055(b)(5). This provision prohibits the Commission from disclosing information to the public that a company submits to the Commission pursuant to section 15 of the CPSA, 15 U.S.C. § 2064, unless: (1) the Commission has issued an administrative complaint concerning the product, (2) the Commission has accepted in writing a remedial settlement agreement dealing with the product, or (3) the company has agreed to the disclosure. See also 16 C.F.R. § 1101.61. In this case, none of the three exceptions applies. Under FOIA Exemption 3, relying on CPSA section 6(b)(5), we are therefore withholding injury/complaint information, test data, and other information submitted by Fisher-Price. Some of this information is also confidential commercial information, as discussed above.

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 intra- and inter-agency memoranda and internal staff notes. Exemption 5 also incorporates the attorney work-product doctrine, which protects documents prepared by an attorney, or someone supervised by an attorney, in anticipation of litigation. Some of the information withheld under Exemption 5 is also attorney work-product.

Michael A. Brown, Esq.
August 10, 1999

Page 3

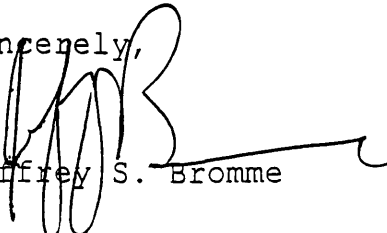
FOIA Exemption 7(A) provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings. We have determined that disclosure of information on potential expert witnesses, print-outs of complaint/injury information, and internal staff notes could be expected to interfere with ongoing law enforcement proceedings. However, when the investigation and file are closed, some or all of this information may be disclosed.

FOIA Exemption 7(E) provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such law enforcement information would disclose techniques and procedures for law enforcement investigations or prosecutions. This exemption also permits the withholding of such information if the disclosure of guidelines for law enforcement investigation or prosecutions could reasonably be expected to risk circumvention of the law. The staff's preliminary hazard determination is being withheld under FOIA Exemption 7(E).

Please note that some of the information described above is being withheld under more than one FOIA exemption.

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



July 23, 1999

FOIA APPEAL
General Counsel
ATTN: Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20207

***FOIA Request S-811005
Fisher-Price Power Wheels***

Dear Messrs. Stevenson and Shakin:

I have been retained by Frilot, Partridge, Kohnke & Clements, L.C. in connection with the information withheld by CPSC in response to the above-referenced request under the Freedom of Information Act ("FOIA"). By Mr. Stevenson's letter of July 8, 1999, the agency denied release of certain information that you admit falls within the request of my client. Accordingly, please treat this letter as a request for reconsideration by the Office of the Secretary and an appeal of your decision in accordance with the Consumer Product Safety Commission's ("CPSC") regulations (16 CFR Part 1015).

The agency has traditionally followed a policy favoring release of all materials in its possession, even materials subject to exemptions that the CPSC could invoke (see 16 CFR §1015.1(b)). Further, recent policy changes in the Office of Compliance have been implemented to simplify and speed release of materials in that office. As announced informally and implemented recently, these changes again favor release of all responsive material in the possession of that office.

With this background, and having usually been on the opposite side of the agency's liberal release policy, you can imagine my amazement at the contents of Mr. Stevenson's letter of July 8. Specifically, at the bottom of page 1 and top of page 2 of his letter, Mr. Stevenson now pronounces all documents involved in the negotiation of the final settlement and terms of a recall to be withheld and protected from release under 16 CFR §1101.33. If this is, in fact, the CPSC's current policy, I would appreciate having you confirm this in response to this appeal.

Specifically, my client is appealing denial of information in two other areas, the CPSC's technical analysis of the alleged hazard involved with this product and the complaints/claims involving this product:

1. Technical analyses – In Mr. Stevenson's reply, he states that "analyses of the Commission's technical . . . staffs" are being withheld under exemptions 5 and 7(A) of the Freedom of Information Act, 5 U.S.C. §§552(b)(5) and (b)(7)(A). No compelling explanation is given as to why otherwise factually neutral technical reports should now be protected by these exemptions in contradiction to CPSC's written and informal policies and certainly not in conformity with CPSC's past practices as to this type of technical data. Further, even if CPSC is now choosing to abandon its past practices, according to Mr. Stevenson's letter, the FOIA can be invoked by federal agencies only to the extent that release of the requested information "would not be available by law" other than in litigation and "could reasonably be expected to interfere with enforcement proceedings." A straightforward engineering measurement and analysis of a product is not something that becomes policy or strategy just because of the FOIA's exemptions. Even if the CPSC now asserts that such analyses cannot withstand the light of day, these activities were performed using public funds and formed the basis for action by CPSC. Therefore, the public is entitled to examine them. Further, since my client is not involved in any enforcement proceeding, it is unclear how any disclosure of factual, technical analyses and reports "could reasonably be expected to interfere with enforcement proceedings." These reports may have encouraged the CPSC staff to take enforcement action, but they stand alone and are not "inextricably entwined with exempt materials" and the disclosure of these materials has nothing to do with the agency's "deliberative process."

2. Complaints and claims – In the CPSC's press release announcing the Power Wheels recall, the agency states that

CPSC and Fisher-Price have received approximately 700 reports of electrical components failing and overheating while the cars and trucks were being ridden, charged, parked or stored. About 150 fires have been reported. Nine children suffered minor burns to the hands, legs, or feet; and up to \$300,000 in property damage to 22 houses and garages have been reported.

The agency had sufficient confidence in these facts to announce them to the world. When asked for records to support this claim, however, the CPSC now provides only 20 CPSC investigations. Mr. Stevenson's letter provides no explanation as to how the agency can reach the conclusions in its press release

and have only the paucity of materials provided to my client. Further, the attempted linking of the FOIA exemptions to whatever data support the agency's claims in its press release fails because the CPSC has already declared to the world what the data reveal. All my client is asking is for copies of the data upon which CPSC made its decision.

I am available to discuss this matter with either of you at your convenience. My client does not wish to cause inordinate problems for CPSC, but please be assured that my client will pursue its remedies to the full extent in obtaining this information.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael A. Brown", written in a cursive style.

Michael A. Brown



Off (6a6brel), Off(wh),
chron, 2618,

✓ 1330 FisherPrice
Power Wheels

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

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

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

July 8, 1999

Gailen Christian
Frilot, Partridge, Kohnke & Clements, L.C.
3600 Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163-3600

RE: FOIA S-811005: Fisher Price Power Wheels

Dear Mr. ~~Wahl~~ *Christian*

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 copies of a letter dated December 10, 1998 from the Commission's Director of Compliance, Alan Schoem, to Gary S. Baughman, President & Chief Executive Officer of Fisher Price, Inc., regarding the Power Wheel recall and a letter December 18, 1998, addressed to Mr. Schoem from Neil A. Goldberg responding. Portions of the December 18, 1998 letter are being withheld pursuant to exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552 (b)(3) and (b)(4), and section 6(a)(2) (as it relates to trade secrets and proprietary information) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2) and exemptions 3, 4, 6(b)(1) for fairness (See notes in margin of December 18th letter.) We must withhold from disclosure other records responsive to your request that are contained in the Commission's law enforcement investigatory files, RP970166 and RP970028, pursuant to the FOIA Exemptions 3, and 4, 5 U.S.C. §§ 552(b)(3), and (b)(4), and sections 6(a)(2), and 6 (b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. §§ 2055 (a)(2), and 6(b)(1).

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. The files contain proprietary and confidential information that we must withhold pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly

related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. We are also relying in part 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. It would not be fair in the circumstances to disclose a firm's notes, drafts or minutes of meetings to discuss and negotiate settlement agreements, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. § 1101.33.

The enclosed records include thirteen (13) Epidemiologic (In-Depth) Investigation Reports Limited Accidental Injury Investigation Reports with the underlying and supporting documentation and related product complaints or reported incidents where available. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incidents. Where possible, Commission staff have examined the products reportedly involved in the incidents. Although the Commission has investigated the incidents described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to seven (7) 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.

You will note that in the document 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.

We must withhold other records that may be responsive to your request, specifically, the records from the Commission's Office of Compliance's active law enforcement investigatory files concerning Fisher Price Power Wheels pursuant to the

Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both 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) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

According to the Commission's 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. The cost to the Commission to perform the searches and prepare this information was \$175.00. In this instance, we have decided to waive the charges. Should you have any questions, contact us by letter, facsimile or telephone.

Sincerely,

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

Enclosures

FRILOT, PARTRIDGE, KOHNKE & CLEMENTS, L.C.

ATTORNEYS AT LAW

3600 ENERGY CENTRE
BOYDAS STREET
NEW ORLEANS, LOUISIANA 70163-3600
TELEPHONE (504) 599-8000
FACSIMILE (504) 599-8100

1998 NOV -2 A 10 31

WRITER'S DIRECT
DIAL NUMBER

WRITER'S DIRECT
DIAL FAX NUMBER

(504) 599-8085

(504) 599-8100

October 26, 1998

FOIA REQUEST
Offices of the Secretary
U.S. CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

Re: FOIA Request: Ride-On Battery-Powered Vehicles

411

Dear Sir:

Under the Freedom of Information Act we would like to request all information available on the Fisher-Price Recall to Repair Power Wheels Ride-On Battery-Powered Vehicles. This request includes any and all pre-recall data on this product that is part of the CPSC review in deciding to recall this product. Any fees incurred in the processing of this request will be promptly paid.

1330

If you have any questions, please do not hesitate to contact me.

EX4c

Yours very truly,

D. Y

Gailen Christian
Paralegal

\glc

cc: David A. Olson
Mike North
Edie Koonce

5-81105



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

August 27, 1999

Michael Fanning, Esq.
Timby & Dillon, P.C.
The Barclay Building
330 South State Street
Post Office Box 99
Newtown, PA 18940

Re: FOIA Appeal S9010047
Black & Decker Toaster Ovens

Dear Mr. Fanning:

By letter dated July 27, 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 information. As explained below, I affirm the FOI Officer's decision to withhold the information pursuant to FOIA Exemptions 3, 4, 5, and 7(A). 5 U.S.C. §§ 552(b)(3), (4), (5), and 7(A).

FOIA Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to the withheld information, I am relying on sections 6(a)(2), 6(b)(1) and 6(b)(5) of the Consumer Product Safety Act (CPSA). 15 U.S.C. §§ 2055(a)(2), (b)(1) and (b)(5).

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. Section 6(a)(2) incorporates Exemption 4

Michael Fanning, Esq.
August 27, 1999

Page 2

of the FOIA. That exemption protects trade secrets and confidential commercial information obtained from a person. Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain the necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. In addition, voluntarily-submitted information is confidential provided it is not customarily disclosed to the public by the submitter. The information being withheld pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4 consists of test data and other trade secret and confidential commercial information from Black & Decker.

Section 6(b)(1) requires the Commission to take reasonable steps to assure that product-specific information is accurate and that its release would be fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. Since the Commission has not yet taken the necessary reasonable steps, we are withholding information that identifies Black & Decker. Such information includes test data and correspondence between the company and the staff.

In applying Exemption 3, we are also relying on section 6(b)(5) of the CPSA, 15 U.S.C. § 2055(b)(5). This provision prohibits the Commission from disclosing information to the public that a company submits to the Commission pursuant to section 15 of the CPSA, 15 U.S.C. § 2064, unless: (1) the Commission has issued an administrative complaint concerning the product, (2) the Commission has accepted in writing a remedial settlement agreement dealing with the product, or (3) the company has agreed to the disclosure. See also 16 C.F.R. § 1101.61. In this case, none of the three exceptions applies. Under FOIA Exemption 3, relying on CPSA section 6(b)(5), we are therefore withholding test data, and other information submitted by Black & Decker. Some of this information is also confidential commercial information, as discussed above.

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 intra-agency memoranda and internal staff notes. Exemption 5 also incorporates the attorney work-product doctrine, which protects documents prepared

Michael Fanning, Esq.
August 27, 1999

Page 3

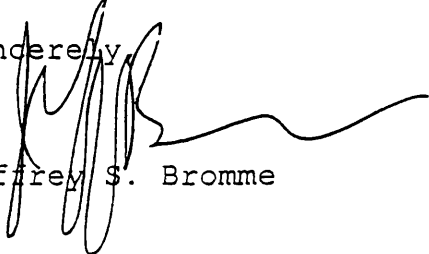
by an attorney, or someone supervised by an attorney, in anticipation of litigation. Some of the information withheld under Exemption 5 is also attorney work-product.

FOIA Exemption 7(A) provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings. The documents withheld under this exemption consist of the same documents being withheld under FOIA Exemption 5 as well as external correspondence that is included in the open investigatory file. We have determined that disclosure of these documents could be expected to interfere with ongoing law enforcement proceedings.

Please note that some of the information described above is being withheld under more than one FOIA exemption.

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

TIMBY AND DILLON

PROFESSIONAL CORPORATION

OFFICE OF THE SECRETARY

ATTORNEYS AT LAW

THE BARCLAY BUILDING

1999 JUL 30 330 SOUTH STATE STREET

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31 N. CHRISTOPHER COLUMBUS BLVD.

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THOMAS E. TIMBY
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TRACY A. TIMBY*
*ALSO ADMITTED IN NJ

DENISE M. O'DONNELL
LEGAL ASSISTANT
MARYANN LEWIS
LEGAL ASSISTANT

July 27, 1999

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

RE: **BLACK & DECKER TOASTER OVENS**
FOIA REQUEST S-9010047

*02/16
02/16
BCA*

Dear Sir or Madam:

By way of letter dated January 5, 1999 we formally requested under the FOIA any and all information concerning the following product:

Black and Decker Toaster Oven
Model No. TRO 200-TY2
Manufactured in Shelton, Connecticut
Rated at 1500 Watts

We also requested all information concerning **Black & Decker Toaster Oven Model TRO200-TRO300 Series**. The information sought was, but not limited to, claims, investigations, recalls, etc.

By way of letter dated June 29, 1999, and received on July 14, 1999, we were provided certain material. The letter also served as a partial denial of our request. We are respectfully appealing the partial denial.

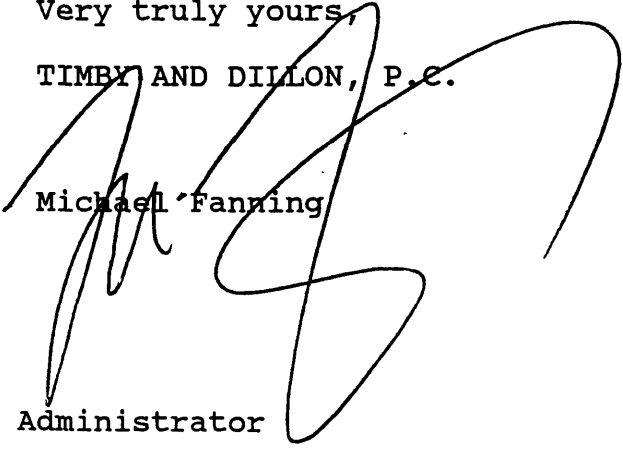
As we previously reported to Deborah Lewis, Esquire, U.S.C.P.S.C., our office has filed a Wrongful Death action against Black & Decker (U.S.), Inc. in reference to one of its toaster ovens. This matter is of great importance to the deceased's family and we are respectfully requesting reconsideration of the partial denial.

Thank you for your attention to this matter.

Very truly yours,

TIMBY AND DILLON, P.C.

Michael Fanning



MF/acf

cc: Mr. Michael P. Fanning, Administrator



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207
June 29, 1999

Mr. Michael Fanning
Timby and Dillon
The Barclay Building
330 South State Street
P.O. Box 99
Newtown, PA 18940

RE: FOIA Request S-9010047: Black & Decker Toaster Ovens

Dear Mr. Fanning:

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 fourteen (14) Epidemiologic (In-Depth) Investigation Reports Limited Accidental Injury Investigation Reports with the underlying and supporting documentation and related product complaints or reported incidents where available. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incidents. Where possible, Commission staff have examined the products reportedly involved in the incidents. Although the Commission has investigated the incidents described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Portions of the files where the manufacturer has requested confidentiality must be withheld 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.

We must withhold a portion of the records responsive to your request. Specifically, we are withholding portions that if disclosed would reveal **sensitive information between Black & Decker and the Commission** pursuant to the Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both 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) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter. According to the Commission's 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. The cost to the Commission to perform the searches and prepare this information was \$200.00. In this instance, we have decided to waive 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

Enclosures

TIMBY AND DILLON
OFFICE OF THE SECRETARY OF
FREEDOM OF INFORMATION ACT

1999 JAN 11 AM 11:30
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DENISE M. O'DONNELL
LEGAL ASSISTANT

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LARRY HAFT
THOMAS E. KOPIL
MICHAEL FANNING
WILLIAM T. DION
MICHAEL J. MCCARRIE
RUSSELL P. SACCO
TRACY A. TIMBY
*ALSO ADMITTED IN NEW JERSEY

January 5, 1999

Mr. Todd Stevenson, Freedom of Information Officer
United States Consumer Protection Safety Commission
Freedom of Information Office
Room 502
Washington, DC 20207

RE: **BLACK & DECKER TOASTER OVEN TRO-200**
FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Stevenson:

Today I spoke to Deborah Lewis, Esquire of the U.S.C.P.S.C. I advised that our office has filed a Wrongful Death action against Black & Decker (U.S.), Inc. in reference to a toaster oven. Ms. Lewis has requested that I provide her with certain information. I have enclosed a copy of my letter to Ms. Lewis in response to her request. If you would like the enclosures, please advise and I will forward the same to you immediately.

I requested information from Ms. Lewis. She advised that my request should be directed to your office pursuant to and under the Freedom of Information Act. Accordingly, kindly accept this letter as our formal request under the Act for any and all information concerning the following product:

Black and Decker Toaster Oven
Model No. TRO 200-TY2
Manufactured in Shelton, Connecticut
Rated at 1500 Watts

5-9010047

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EX45

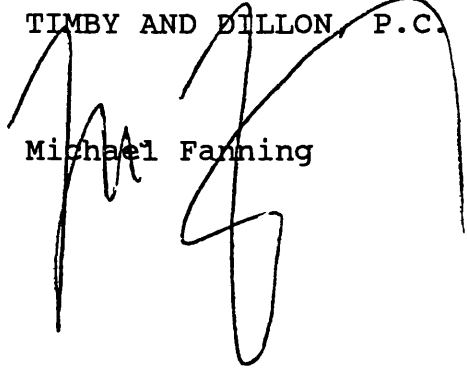
D.Y

Also, kindly provide any and all information concerning **Black & Decker Toaster Oven Model TRO200-TR0300 Series**. The information we are seeking is, but not limited to, claims, investigations, recalls, etc.

Thank you for your attention to this matter.

Very truly yours,

TIMBY AND DILLON, P.C.


Michael Fanning

MF/acf

Enclosure

cc: Deborah Lewis, Esquire, U.S.C.P.S.C.
Mr. Michael P. Fanning, Administrator



Off (6a6b rel), Off (wh),
chron, 2618
✓ 3277 ICON

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

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

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

November 26, 1999

Mr. Donald W. Edwards, P.A.
Attorney at Law
Union Planters Bank Building
633 N. E. 167th Street, Suite 912
North Miami Beach, FL 33162

**RE: FOIA Requests S-9060186: For CPSC
CA970073; Icon Health & Fitness, Inc.**

Dear Mr. Edwards:

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 CPSC CA970073 (Icon Health & Fitness, Inc.), 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.

Portions of this law enforcement investigatory file (designated CPSC CA970037) must be withheld 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 a memorandum 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.

Portions of the file where the manufacturer has requested confidentiality must be withheld 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 portions that if disclosed would reveal confidential financial and business relationships, sales figures, and customer lists.

Finally, we are withholding records from the files according to the Commission regulations at 16 C.F.R. §1101.33. We must withhold these records pursuant to Exemption 3 of the FOIA and section 6(b)(1) of the CPSA, 15 U.S.C. §2055(b)(1). In applying FOIA Exemption 3 to this material, 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. It would not be fair in the circumstances to disclose a firm's notes, drafts or minutes of meetings to discuss and negotiate settlements agreements, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. § 1101.33.

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. Donald W. Edwards, P.A.

Page 3

This completes the processing of your request. The cost to the Commission to perform the searches and prepare this information was \$150.00. In this instance, we have decided to waive 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

Enclosure



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

Jeffrey S. Bromme
General Counsel

September 8, 1999

Tel: 301-504-0980 ext. 2299
Fax: 301-504-0403
Email: jbromme@cpsc.gov

Office of the General Counsel

Donald W. Edwards, Esq.
Union Planters Bank Building
633 N.E. 167th Street, Suite 912
North Miami Beach, FL 33162

Re: FOIA Appeal S-9060186 (CPSC CA970073; Icon Health & Fitness, Inc.)

Dear Mr. Edwards :

By letter dated July 26, 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.

I affirm the FOI Officer's decision to withhold the Commission staff's preliminary determination as to whether Icon Health & Fitness, Inc.'s Pro Form R-930 space saver exercise equipment presents a substantial product hazard as defined by section 15(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2064(a). This document is being withheld under FOIA Exemption 7(E), which provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such law enforcement information would disclose techniques and procedures for law enforcement investigations or prosecutions. This exemption also permits the withholding of such information if the disclosure of guidelines for law enforcement investigations or prosecutions could reasonably be expected to risk circumvention of the law.

The FOI Officer may reconsider his decision as to the remaining responsive documents. However, he cannot finally decide whether to withhold or disclose them until after the Commission complies with sections 6(a) and (b) of the CPSA, 15 U.S.C. §§ 2055(a) and (b). Under these provisions, the Commission must provide the manufacturer the opportunity to mark information as confidential and to comment upon the disclosure of information that identifies a manufacturer. If the Commission decides to disclose information over the objection of the identified manufacturer, it must notify the manufacturer of the proposed disclosure at least 10 days in advance.

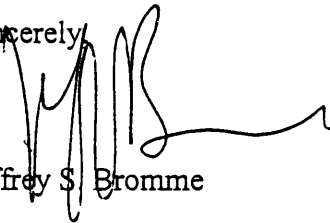
The FOI Officer has initiated the process of manufacturer comment, and he will notify you of his determination when it has been completed. If he decides to withhold any responsive information at that time, you may appeal his decision to me. While the manufacturer comment

Donald W. Edwards, Esq.
Page 2

process is underway, you may either await his decision or treat this letter as a denial of your FOIA appeal for that responsive information. We are currently withholding it under FOIA Exemption 3, in reliance on CPSA sections 6(a) and (b). Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute.

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

UNION BANK BUILDING
633 N.E. 167th STREET, SUITE 912
NORTH MIAMI BEACH, FL 33162
(305) 651-3149

July 26, 1999

Certified Mail

Return Receipt Requested: Z 378 617 356

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

Den

RE: FOIA S-9060186
CPSC CA 970073; Icon Health & Fitness, Inc.

To Whom It May Concern:

We are hereby appealing your denial of our request for information regarding the ProForm R930 Cardioglide Exercise Machine. Attached is a copy of our original request.

Sincerely,

Donald W. Edwards

Donald W. Edwards

DWE/chh

Enc.



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9069/86

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

July 16, 1999

CERTIFIED MAIL

Donald W. Edwards, P.A.
Union Planters Bank Building
633 N.E. 167th Street, Suite 912
North Miami Beach, FL 33162

RE: FOIA S-9060186: CPSC CA970073; Icon Health & Fitness, Inc.

Dear Mr. Edwards:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U. S. Consumer Product Safety Commission (Commission).

We must withhold the requested Commission file CA 970073 (**Icon Health & Fitness, Inc.**), pursuant to the Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

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

thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

According to the Commission's 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.

This completes the processing of your request. The cost to the Commission to perform the searches and prepare this information was \$75.00. In this instance, we have decided to waive 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

DONALD W. EDWARDS, P.A.
ATTORNEY AT LAW
UNION PLANTERS BANK BUILDING
633 N.E. 167TH STREET, SUITE 912
NORTH MIAMI BEACH, FL 33162
(305) 651-3149

June 22, 1999

C. P. S. Commission
Office of the Secretary
Freedom of Information
Washington DC 20207

11A
w/c
Excls

Attn: Mr. Todd Stevenson

RE: ProForm R930 Cardioglide Exercise Machine

3277

Dear Mr. Stevenson:

This shall serve as our written request for any and all information regarding safety related complaints, prior incidents, accidents and injuries, recall information or any other information associated with Icon Health & Fitness Inc.'s ProForm R930 Cardioglide Exercise Machine. Please include all dates prior to and including June 15, 1997.

D.5

If you have any questions or need any further information please do not hesitate to contact my office.

Sincerely,

Donald W. Edwards

Donald W. Edwards

DWE/chh

S-9060143
86

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

August 23, 1999

Scott C. Krist, Esq.
The Krist Law Firm, P.C.
17555 El Camino Real
Houston, Texas 77058

Re: FOIA Appeal 9070138 on Davidson Extension Ladders

Dear Mr. Krist:

On August 9, 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. I affirm the Freedom of Information Officer's decision to withhold an unconfirmed consumer complaint and the identity of the injured consumer in a second complaint, 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 complaint, 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 information that is being withheld pursuant to Exemption 3, relying on section 6(b)(1), consists of an unconfirmed consumer complaint. The Commission's regulations require that this information be confirmed as a reasonable step to assure the accuracy of the information. 16 C.F.R. § 1101.32(a)(3).

Scott C. Krist, Esq.
August 23, 1999

Page 2

When consumers submit 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 complaint being withheld was subjected to this process. However, because the submitter of this complaint did not respond to the Commission's request for confirmation, the Commission may not disclose it under the FOIA.

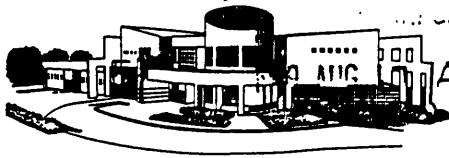
In applying Exemption 3 of the FOIA to the identity of the injured consumer in the second complaint, I am relying on section 25(c) of the CPSA, 15 U.S.C. § 2074(c). This provision prohibits the disclosure of such identities absent consent. In this case, the injured consumer has not provided the necessary consent.

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



OFFICE OF THE SECRETARY
U.S. CONSUMER PRODUCT SAFETY COMMISSION

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DEN
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Scott C. Krist

THE KRIST LAW FIRM, P.C.

August 9, 1999

VIA CERTIFIED MAIL

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

Re: **Appeal of Partial Denial of Access to Records**
FOIA Request S-9070138: Complaints and/or Recalls Associated with Davidson
Extension Ladders, Model #385-20

To Whom it May Concern:

Our office currently represents a gentleman seriously injured due the collapse of a Davidson aluminum ladder. On July 22, 1999 we requested release of any information the CPSC may have pertaining to these ladders. We were graciously provided with a prompt response which revealed one very similar complaint, yet withheld the complainants name, and a second complaint which was not provided due to the lack of investigation and verification of the complaint.

Pursuant to FOIA at C.F.R § 1015.7, I would request that the General Counsel of the Commission please grant exception and provide the first complainant's name and the second complaint including that complainant's name. This information would allow our firm to conduct detailed investigation into the complaints to verify validity and similarity to our complaint. The information when viewed with our complaint may reveal a dangerous pattern that needs further investigation by the CPSC. The pleasure of a response is requested.

Very truly yours,

SCOTT C. KRIST

SCK:rw

DEN
9070138

July 29, 1999

CERTIFIED MAIL

Wayne A. Sallee
The Krist Law Firm, PC
17555 El Camino Real
Houston, TX 77058-3097

Re: FOIA Request S-9070138: Complaints and/or Recalls associated with Davidson Extension Ladders, Model # 385-20

Dear Mr. Sallee:

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. In this case, we have removed the identity of the complainant at his or her request.

The other records from the Commission files responsive to your request relate to one product complaint and reported incident that the Commission has obtained from consumers. The Commission has not received confirmation of the accuracy of the information in the complaint and reported incident. 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 complaint and reported incident.

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 this particular consumer complaint and reported incident 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 reported incidents that the Commission obtained before that date or where a consumer has not responded to our request for confirmation of the information in a complaint.

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



◆ THE KRIST LAW FIRM, P.C. ◆

Ronald D. Krist
Kevin D. Krist
Scott C. Krist

July 22, 1999

Mr. Todd Stevenson
Consumer Product Safety Commission
FOIA, Rm 502
Washington, DC 20207

1/A

Re: Davidson Ladders, Inc. Md# 385-20
Sent Via Fax To (301) 504-0127

Dear Mr. Stevenson:

0688

Per the Freedom Of Information Act, please advise if your office has ever had any complaints and/or recalls pertaining to the Davidson Extension Ladder Md# 385-20. If so, then please advise what this firm needs to do in order to obtain certified copies of any and all available information pertaining to this ladder. Further, please advise what you need in order for the CPSC to prove up these records.

Also, please advise of any other complaints and/or recalls pertaining to other Davidson Ladders. Please provide this information ASAP. Your assistance in this matter is greatly appreciated. If you should have questions, then please call.

*1c
EPLS
D-4*

Very truly yours,

Wayne A. Sallee

Wayne A. Sallee

S-9070138

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

August 23, 1999

Ms. Susan Schneider Thomas
Berger & Montague, P.C.
1622 Locust Street
Philadelphia, PA 19103

Re: FOIA Appeal 8110069: Fisher-Price Power Wheels

Dear Ms. Thomas:

By letter dated August 5, 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 information. As explained below, I affirm the FOI Officer's decision to withhold the information pursuant to FOIA Exemptions 3, 4, 5, 7(A) and 7(E). 5 U.S.C. §§ 552(b)(3), (4), (5), 7(A) and (7)(E).

FOIA Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to the withheld information, I am relying on sections 6(a)(2), 6(b)(1) and 6(b)(5) of the Consumer Product Safety Act (CPSA). 15 U.S.C. §§ 2055(a)(2), (b)(1) and (b)(5).

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. Section 6(a)(2) incorporates Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information obtained from a person. Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain the necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was

Ms. Susan Schneider Thomas
August 23, 1999

Page 2

obtained. In addition, voluntarily-submitted information is confidential provided it is not customarily disclosed to the public by the submitter. The information being withheld pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4 consists of test data and other trade secret and confidential commercial information from Fisher-Price.

Section 6(b)(1) requires the Commission to take reasonable steps to assure that product-specific information is accurate and that its release would be fair in the circumstances and reasonably related to effectuating the purposes of the CPSA. Since the Commission has not yet taken the necessary reasonable steps, we are withholding information that identifies the Fisher-Price Power Wheels. Such information includes test data and injury data generated by Fisher-Price and by the Commission staff, as well as correspondence between the company and the staff.

In applying Exemption 3, we are also relying on section 6(b)(5) of the CPSA, 15 U.S.C. § 2055(b)(5). This provision prohibits the Commission from disclosing information to the public that a company submits to the Commission pursuant to section 15 of the CPSA, 15 U.S.C. § 2064, unless: (1) the Commission has issued an administrative complaint concerning the product, (2) the Commission has accepted in writing a remedial settlement agreement dealing with the product, or (3) the company has agreed to the disclosure. See also 16 C.F.R. § 1101.61. In this case, none of the three exceptions applies. Under FOIA Exemption 3, relying on CPSA section 6(b)(5), we are therefore withholding injury/complaint information, test data, and other information submitted by Fisher-Price. Some of this information is also confidential commercial information, as discussed above.

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 intra- and inter-agency memoranda and internal staff notes. Exemption 5 also incorporates the attorney work-product doctrine, which protects documents prepared by an attorney, or someone supervised by an attorney, in anticipation of litigation. Some of the information withheld under Exemption 5 is also attorney work-product.

Ms. Susan Schneider Thomas
August 23, 1999

Page 3

FOIA Exemption 7(A) provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings. We have determined that disclosure of information on potential expert witnesses, print-outs of complaint/injury information, and internal staff notes could be expected to interfere with ongoing law enforcement proceedings. However, when the investigation and file are closed, some or all of this information may be disclosed.

FOIA Exemption 7(E) provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such law enforcement information would disclose techniques and procedures for law enforcement investigations or prosecutions. This exemption also permits the withholding of such information if the disclosure of guidelines for law enforcement investigation or prosecutions could reasonably be expected to risk circumvention of the law. The staff's preliminary hazard determination is being withheld under FOIA Exemption 7(E).

Please note that some of the information described above is being withheld under more than one FOIA exemption.

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

ADRIAN MONTAGUE
HERRIE S. DAVIDOFF**
SHERRIE RAIKEN SAVETT
DANIEL BERGER**
TODD S. COLLINS**
JAY ROBERT STIEFEL
GARY E. CANTOR
STEPHEN A. WHINSTON
MARTIN I. TWERSKY
CAROLE A. BRODERICK
PETER R. KAHANA
RUTHANNE GORDON
STEPHEN D. RAMOS
KAREN S. ORMAN
JEANNE A. MARKEY**
RUSSELL D. HENKIN**
PETER B. NORDBERG
LAWRENCE DEUTSCH**
LAWRENCE J. LEDERER§
JEROME M. MARCUS
DAVID F. SORENSEN
ARTHUR STOCK

KENNETH FOX**
SHERIDAN LEVY**
THOMAS P. HUGHES**
BART D. COHEN
MICHAEL T. FANTINIS
STUART J. GUBER
MICHAEL L. BLOCK*
JONATHAN AUERBACH**
EDWARD W. MILLSTEIN
BRET P. FLAHERTY
GENNA DRISCOLL KIDD
CHARLES PEARSALL GOODWIN**
KENDALL S. ZYLSTRA
NEIL F. MARA
JACOB A. GOLDBERG
JOEL M. SWEET**
ERIC L. CRAMER*
LEAH R. STOLKER**
DANIEL M. COHEN**
LAURA S. STEIN**
PHYLLIS M. PARKER**
JILL E. STERBAKOV

FOIA PA 9103-6365

PHONE (215) 875-3000

FAX (215) 875-4604

http://home.bm.net

OF COUNSEL:
STANLEY R. WOLFE

*ALSO ADMITTED IN NY
**ALSO ADMITTED IN FL
§ALSO ADMITTED IN DE
§ALSO ADMITTED IN NJ
†ALSO ADMITTED IN MO
§ALSO ADMITTED IN DC

WRITER'S DIRECT DIAL NUMBER:
(215)875-5711

WRITER'S DIRECT FAX NUMBER:
(215) 875-4636

WRITER'S DIRECT E-MAIL ADDRESS:
stthomas@bm.net

August 5, 1999

FOIA General Counsel
Attention: Office of the Secretary
United States Consumer Product
Safety Commission
Washington, DC 20207

Re: FOIA S-810069: Fisher Price Power Wheels

Dear Counsel:

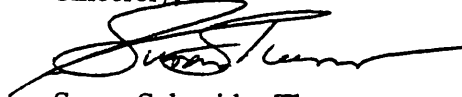
I am writing to appeal from the partial denial of access to records, specifically investigatory files and communications with Fisher Price that were withheld pursuant to 5 U.S.C. §§552(b)(2), (b)(4), and (b)(7). There has been no indication that there is any pending law enforcement proceeding nor specific assertions that release of information would reasonably be expected to interfere with enforcement proceedings. Given the strong policy favoring disclosure and the failure of the CPSC to articulate some specific harm to its enforcement abilities, see, e.g., NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 224 (1978); Wichlacz v. U.S. Dep't of Interior, 938 F. Supp. 325, 331 (E.D. Va. 1996), aff'd, 1997 U.S. App. LEXIS 13906 (4th Cir. 1997), I do not believe the CPSC's denial of access was appropriate. At a minimum, a specific articulation of how disclosure would be likely to interfere with an ongoing proceeding must be made.

It is difficult to specify in this letter what documents appear to have been wrongly withheld because the CPSC's letter to me did not identify what was withheld. I am particularly interested in Fisher Price's communications with the CPSC and any agreements reached with the CPSC, as well as information detailing what Fisher Price undertook to do as part of the voluntary

FOIA General Counsel
Attention: Office of the Secretary
August 5, 1999
Page 2

recall. Assuming Fisher Price voluntarily cooperated with the investigation, even its internal, otherwise-privileged documents that were submitted to the CPSC should be available because any privilege was waived by voluntary production. Westinghouse Elec. Corp. v. Republic of the Philippines, 951 F.2d 1414 (3d Cir. 1991).

Sincerely,



Susan Schneider Thomas

/ccg

cc: Peter L. Masnik, Esq.

301204



Off (6a6brei), Off(wh),
chron, 2618,

1330 FisherPrice
Power Wheels

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

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

Tel: 301 504 0785
Fax: 301 504 0127
Email: t Stevenson@cpsc.gov

July 8, 1999

Ms. Susan Schneider Thomas
Berger & Montague, P.C.
1622 Locust Street
Philadelphia, P.A. 19103-6365

RE: FOIA S-8110069: Fisher Price Power Wheels

Dear Ms. Schneider:

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 for Fisher Price Power Wheels have been processed and copies of the releasable responsive records are enclosed. This is a partial release.

Enclosed are copies of a letter dated December 10, 1998 from the Commission's Director of Compliance, Alan Schoem, to Gary S. Baughman, President & Chief Executive Officer of Fisher Price, Inc., regarding the Power Wheel recall and a letter December 18, 1998, addressed to Mr. Schoem from Neil A. Goldberg responding. Portions of the December 18, 1998 letter are being withheld pursuant to exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552 (b)(3) and (b)(4), and section 6(a)(2) (as it relates to trade secrets and proprietary information) of the Consumer Product Safety Act (CPSA, 15 U.S.C. § 2055(a)(2) and exemptions 3, 4, 6(b)(1) for fairness (See notes in margin of December 18th letter.) We must withhold from disclosure other records responsive to your request that are contained in the Commission's law enforcement investigatory files, RP970166 and RP970028, pursuant to the FOIA Exemptions 3, and 4, 5 U.S.C. §§ 552(b)(3), and (b)(4), and sections 6(a)(2), and 6 (b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. §§ 2055 (a)(2), and 6(b)(1).

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. The files contain proprietary and confidential information that we must withhold pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure

could give a substantial commercial advantage to a competitor. We are also relying in part 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. It would not be fair in the circumstances to disclose a firm's notes, drafts or minutes of meetings to discuss and negotiate settlement agreements, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. § 1101.33.

The enclosed records include thirteen (13) Epidemiologic (In-Depth) Investigation Reports Limited Accidental Injury Investigation Reports with the underlying and supporting documentation and related product complaints or reported incidents where available. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incidents. Where possible, Commission staff have examined the products reportedly involved in the incidents. Although the Commission has investigated the incidents described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to seven (7) 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.

You will note that in the document 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.

We must withhold other records that may be responsive to your request, specifically, the records from the Commission's Office of Compliance's active law enforcement investigatory files concerning Fisher Price Power Wheels pursuant to the

Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both 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) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

According to the Commission's 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. The cost to the Commission to perform the searches and prepare this information was \$175.00. In this instance, we have decided to waive the charges. Should you have any questions, contact us by letter, facsimile or telephone.

Sincerely,

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

Enclosures

LAW OFFICES

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November 13, 1998

Todd Stevenson, FOIA Office
Consumer Product Safety Commission
FOI
Room 502
Washington, DC 20207

A/1
1330

Re: FOIA Request

Dear Mr. Stevenson:

Pursuant to the Freedom of Information Act, I request copies of all documents relating to Fisher Price's Power Wheels vehicles, including, without limitation, any complaints received, proceedings before the commission, hearings, orders or other communications by the commission, and information pertaining to any recall of any Power Wheels vehicles and any repair program offered by Fisher Price.

EXC/C
SATS
IC/S

We are representing clients who purchased these vehicles and who have concerns about the implementation of the repair program.

D.S

Thank you for your assistance.

Sincerely,

Susan Thomas/ccg

Susan Schneider Thomas

/ccg

208333

6-811069