



United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

MEMORANDUM

DATE : December 28, 2003
TO : CE
Through: Todd A. Stevenson, Secretary
FROM : Martha Kosh
SUBJECT: Daisy Settlement - CPSC Docket No 02-2

ATTACHED ARE COMMENTS ON THE CH 04-1

<u>COMMENT</u>	<u>DATE</u>	<u>SIGNED BY</u>	<u>AFFILIATION</u>
CH04-1-1	11/17/03	Grady Fort	wgf2@hctc.net
CH04-1-2	12/12/03	Jess Galan	P.O. Box 7513 Miami, FL 33255
CH04-1-3	12/17/03	Jock Elliott	29 Pickering Lane Troy, NY 12180
CH04-1-4	12/17/03	Martin Edmondson Manager, Youth	USA Shooting National Governing Body for the Olympic Shooting Sports
CH04-1-5	12/17/03	Robert Beeman Ph.D	Airgun Information International P.O. Box 516 Healdsburg, CA 95448
CH04-1-6	12/17/03	Peter DeRose Publisher	Daily Hampshire Gazette 115 Conz St. Northampton, MA 01060
CH04-1-7	12/17/03	John Nibler	<u>Nibler@asapnet.net</u>
CH04-1-8	12/17/03	Dennis Baker	9219 Lake Riley Blvd. Chanhassen, MN 55317
CH04-1-9	12/17/03	Daniel Neidinger	98 Round Top Road Middletown, PA 17057

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CH04-1-10	12/17/03	John Groenewold	P.O. Box 830 Mundelein, IL 60060
CH04-1-11	12/17/03	Harold Utley	Toy Gun Collectors of America Newsletter Editor
CH04-1-12	12/18/03	David Fulton	36029 Lake Unity Nursery Rd. Fruitland Park, FL 34731
CH04-1-13	12/19/03	Steve Schultz Boys Camps/ Productions Coordinator	National Royal Ranger Office 1445 N Boonville Ave. Springfield, MO 65802
CH04-1-14	12/23/03	Chad Mickelson Director of Membership	Rocky Mountain Elk Foundation 2291 West Broadway Missoula, Motana 59808
CH04-1-15	12/23/03	Joe Ferg	952 N. Sonoita Ave. Tucson, AZ 85711
CH04-1-16	12/23/03	Alan Polansky	2969 Meadow Wood Drive Clearwater, FL 33761
CH04-1-17	12/24/03	J.W. Wood	<u>customersvc@jwwoodandsons.com</u>
CH04-1-18	12/24/03	R. David Pittle Sr vice President Sally Greenberg Sr Product Safety Counsel Jannell Duncan Legislative and Regulatory Counsel	Consumers Union 1666 Connecticut Ave. NW Suite 310 Washington, DC 20009
CH04-1-19	12/24/03	Rachel Weintraub Asst General Counsel	Consumer Federation of America 1424 16 th St, NW Suite 604 Washington, Dc 20036
CH04-1-20	12/26/03	Jeffrey Siling	6410 Deer Run Ct. Spring Grove, PA 17362

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CH04-1-21	12/26/03	Tom Mounsdon, DDS	201 East 1 st St. Leon, IO 50144
CH04-1-22	12/22/03	Jerome Mahoney Rebecca Mahoney	5968 Sheffield Dr Doylestown, PA 18901
CH04-1-23	12/26/03	Christine Rolka Education Coordinator	National Wild Turkey Federation P.O. Box 530 770 Augusta Rd. Edgefield, SC 29824

*DAISY
DAISY
Comment*

Stevenson, Todd A.

From: Information Center
Sent: Monday, November 17, 2003 4:43 PM
To: 'wgf2@hctc.net'
Subject: Commissioner Thomas Moore

Hello,

We have forwarded your information to the appropriate agency personnel. If additional information is needed, a representative will contact you directly.

Please be advised that you may obtain CPSC publications, recalls and general safety-related information via our web site at www.cpsc.gov. Click on the "Search" icon and type in your topic. You may also file an incident report via the web site mentioned above. If you have additional inquiries, you may call our hotline toll-free at 1-800-638-2772. Press 1 to begin and then press 3 to speak with a representative. A representative is available to assist you Monday - Friday, 8:30am to 5:00pm, Eastern time.

tm

-----Original Message-----

From: Grady Fort [mailto:wgf2@hctc.net]
Sent: Friday, November 14, 2003 6:54 PM
To: Information Center
Subject: Commissioner Thomas Moore

Please pass this on to Commissioner Thomas Moore, who apparently has no email address available to the public.

Sir,

To paraphrase Mark Twain, first God made idiots for practice, then he made board members like yourself.

Sincerely,

Grady Fort
Mason, Texas

*Daisy
comment***Stevenson, Todd A.**

From: Galan, Jess I. (MDPD) [jigalan@mdpd.com]**Sent:** Friday, December 12, 2003 2:57 PM**To:** Stevenson, Todd A.

Sirs: I support the agreement reached between the CPSC and the Daisy company. Frankly, I never saw a valid reason for the CPSC's actions, as the Daisy company's airguns are not responsible for injuries which may have been caused by their misuse at the hands of un-trained and/or un-supervised minors. The fact is that airguns, even low-power BB guns, are not toys and must be handled with the same care as firearms. Irresponsible, reckless behavior on the part of mostly un-supervised minors pointing and deliberately shooting airguns at other minors has accounted for the vast majority of senseless injuries blamed on airguns. Daisy does not market their PowerLine airguns to minors. Adults purchase these airguns and give them to their children, allowing them to play without any responsible supervision in most cases that have ended up in someone being injured by a projectile fired from those airguns. Gun safety education is extremely important and it can play a big part in reducing or even eliminating airgun injuries, particularly among minors. Airguns are great training devices and play a significant part in the shooting sports in general. But shooting safety education should also be a key component that will go a long way towards making the shooting public aware of the fact that the same safety rules that apply to firearms must also apply to airguns. Sincerely, Jess I. Galan, P.O. Box 7513, Miami, FL 33255

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Daisy

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Stevenson, Todd A.

From: Jock Elliott [lightkpr@nycap.rr.com]
Sent: Wednesday, December 17, 2003 9:48 AM
To: Stevenson, Todd A.
Subject: Comment on CPSC/Daisy Settlement
Importance: High

Mr. Stevenson,

My comment is below. If you need to reach me by telephone, my number is 518-271-1761.

Jock Elliott

CPSC settlement comment

As a fulltime writer who has tested and written extensively about airguns over the past several years, I find the CPSC/Daisy settlement (indeed, the entire action) an affront to human reason and a travesty of what the CPSC is supposed to do. This settlement flies in the face of common sense, personal responsibility and the fundamental issues of product safety.

1. Common sense. No one would argue for even a moment that it is a tragedy that a young man has been disabled for life. But the root cause for the injury was not that the airgun malfunctioned. The airgun did exactly what it is supposed to do: launch a projectile. The root cause of this misfortune is that the other individual involved violated the first law of gun safety: never point a gun (airgun or otherwise) at anything that you don't want perforated, broken or destroyed. (The second law of gun safety is that all guns are loaded. The third: even unloaded guns are loaded.) This individual not only pointed the gun in an unsafe direction (at his friend), but further chose to pull the trigger when doing so. His intent – to make a joke by "poofing" his friend's hair – is irrelevant. He performed a wantonly unsafe act. He should not be surprised by the results.

To assert that "... Children will be children. They grow up pointing toy guns at each other. To expect them not to point BB guns at each other when they believe they are empty of BB's is to expect too much" raises four key issues. First, airguns are, emphatically, not toys. They are guns and should be treated with all the respect due any firearm. Children who do not understand the difference should not be allowed to use them. That brings us to the second point, responsible parents, guardians or caretakers will assess their children's ability to understand and deal with the responsibility of properly handling airguns. Very often adult supervision is necessary to make sure that a child understands and observes proper gun safety. Daisy is specific in its age recommendations for its products. Third, (see above) the rules of gun safety dictate that all guns are to be treated as if they are loaded, even when everyone "knows" that a gun is unloaded. There are no exceptions. If a child or teenager doesn't understand this, it would be inappropriate to allow them to use an airgun. Fourth, let's apply this same line of reasoning to another type of product. Have you ever watched teenaged boys playing automobile-related video games? Spectacular crashes and reckless driving are common. Is it too much to expect them to do otherwise when they get their driver's licenses? I think not.

2. Personal responsibility. The proper use of products is the responsibility of the individual using them. People who wish to drive automobiles are expected to learn how – through various means such as parents, driving schools, or driver's education. If you choose to run over your spouse, as a woman in New York did, it is scarcely the fault of the automobile manufacturer. It is a blatant misuse of the product. Pointing a gun at someone whom you do not intend to injure is likewise a blatant misuse of the product.

3. The fundamental issues of product safety. According to its website, "The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction." The key word is unreasonable. An airgun is a projectile launcher. If you point it at someone and pull the trigger, you should expect that a projectile will be launched at that person. Serious injury or death may result. It is completely unreasonable to expect that

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anything else will happen. Protecting against this sort of incident – in which the product functioned properly but was unconscionably misused – is not within the purview of the CPSC. Further, it is a waste of the Commission's scarce resources and the taxpayer's money.

Respectfully submitted,

Jock (John) Elliott
29 Pickering Lane
Troy, NY 12180

~~Stevenson, Todd A.~~

Daisy 4

From: Martin Edmondson [martin.edmondson@usashooting.org]
Sent: Wednesday, December 17, 2003 10:41 AM
To: Stevenson, Todd A.
Subject: Letter of Support

December 17, 2003

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

Ref: CPSC Docket No. 02-2

Dear Mr. Stevenson,

I have been involved in shooting sports for the past 40 plus years and have seen first hand that shooting education works. It started when my parents bought me my first rifle and continued through 20 years of military service and 20 more years of international and Olympic shooting and coaching. During that whole period I have never seen or heard of an injury or death caused by someone who had received proper gun safety training. Education is the key element to making it safe and fun to participate in the shooting sports. There is no excuse great enough to cover a parent's negligence in providing that education to a child before giving or allowing that child to handle a gun of any kind, air powered or cartridge firearm.

Our safety rules are explicit; there can be no deviations. They are simple and to the point. Treat every gun as if it were loaded and never point it in an unsafe direction. Airguns are not toys and adult supervision is required. If these simple rules had been followed the accident in question would never have happened, safety training would have prevented it. Daisy safety instructions which are enclosed in every individual airgun package points this out and if the instructions had been followed the incident would never have happened. The intentional disregard for standard safety rules does not make an airgun defective either. The intentional pointing/misuse of a loaded air rifle or air pistol at another person can and will cause accidents including serious injury and even death. It is never reasonable to point a loaded or unloaded gun at anyone. The small minority who choose to ignore the rules should be responsible for their actions, not the manufacturer of the gun.

I see this lack of safety education comparable to parents allowing their kids to drive an automobile alone without driver's education. That act is committed all the time with no public outcry toward the automakers when the child is killed in a car wreck. There should also not be any blame toward Daisy for making and selling quality airguns to adults only with safety instructions and warnings and then that adult allowing the child to handle the gun with no safety instructions (driver's education). That child or someone else nearby is very likely to get seriously injured or killed by his or her own making, surely not the fault of Daisy Outdoor Products.

Sincerely,

Martin D. Edmondson
Manager, Youth Program
USA Shooting
National Governing Body for the Olympic Shooting Sports 719-866-4881

Danny

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Stevenson, Todd A.

From: DrAirgun@Beemans.net
Sent: Wednesday, December 17, 2003 3:21 PM
To: Stevenson, Todd A.
Subject: Airgun Safety - please accept Daisy settlement!!
Importance: High

Dear CPSC -

please accept the proposed settlement with Daisy! I have studied the Daisy models 856 and 880 on a detailed, professional basis and have found them to be without design defect!

The design of these airguns, which allows the BB to be plainly seen just before entering the firing chamber, is one of the most safety oriented designs that I have ever seen - and our airgun collection numbers over 3000 different airguns!!

Virtually all airgun injuries are due to improper handling, which can only be improved by better shooter education and training!!

Robert Beeman Ph.D.

Airgun Information International

PO Box 516

Healdsburg, California 95448-0516

USA

Fax 707-431-7500

email: DrAirgun@Beemans.net

Please see our website at www.Beemans.net

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Daisy

Stevenson, Todd A.

From: Sweetwater@Beemans.net
Sent: Wednesday, December 17, 2003 3:13 PM
To: Stevenson, Todd A.
Subject: Daisy settlement at CPSC
Importance: High

I urge that you accept the proposed settlement with Daisy concerning their model 856 and 880 airguns.

In California we have had a unique opportunity to see that education is the main key to reducing injuries and problems with guns. After the state started a program which required a Shooter Safety Class before issuing a hunting license, the rate of shooting accidents went down over 90%!!

Robert Beeman

Sweetwater Valley Ranch

PO Box 516 (Postal Use ONLY)

1600 Sweetwater Springs Road (Non-Postal ONLY)

Healdsburg, California 95448

USA

Voice 707-431-7075

Fax 707-431-7500

email: Sweetwater@Beemans.net

Daisy

Stevenson, Todd A.

From: robert@beemans.net
Sent: Wednesday, December 17, 2003 3:33 PM
To: Stevenson, Todd A.
Subject: Daisy settlement - please support it!
Importance: High

For fruitless years the NRA and the American Association of Ophthalmologists fought each other about banning BB guns until they realized that they wanted the same thing: a reduction in airgun injuries. They found that by working together on a Shooting Education program they could achieve a great decrease in such injuries - but trying to ban the airguns themselves was hopeless and counter-productive!

SHOOTING EDUCATION WORKS - and this is where everyone can get the most results for their efforts!! Daisy has been the world leader in airgun shooter education for decades - a very expensive and commendable program!!

Robert Beeman Ph.D.

Airgun Information International

PO Box 516

Healdsburg, California 95448-0516

USA

Fax 707-431-7500

email: DrAirgun@Beemans.net

Please see our website at www.Beemans.net

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*Daisy
Committee*
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Stevenson, Todd A.

From: PDeRose@gazettenet.com
Sent: Wednesday, December 17, 2003 4:16 PM
To: Stevenson, Todd A.
Subject: CPSC Docket No. 02-2.

Todd Stevenson
Office of the Secretary, Consumer Product Safety Commission,

Dear Mr Stevenson,


I am writing to support the Commission's action in accepting the settlement of this case.

The facts at hand support the inevitable conclusion that the Daily airguns involved are, by any reasonable judgement, safe when used properly, and that the claimed safety issues are due to improper use of the guns, rather than to any defects.

While Daisy has been responsive and reacted properly to the situation, a blatant misuse of process has exposed this manufacturer to excessive and unnecessary expenses and to wrongful charges of producing faulty goods.

It is good to see the matter settled.

Yours truly,
Peter DeRose, Publisher
Daily Hampshire Gazette
115 Conz St.
Northampton, MA 01060

*Daisy
comment* 

Stevenson, Todd A.

From: John Nibler [Nibler@asapnet.net]
Sent: Wednesday, December 17, 2003 8:03 PM
To: Stevenson, Todd A.
Subject: Fw: We were one of these

THIS IS WHAT LIFE WAS REALLY ALL ABOUT, WITHOUT GOVERNMENT INTERVENTION, CONTROL, REGULATIONS, AD NASUEM!

YOU PARENTS GAVE YOU GUIDELINES, YOU LISTENED AND OBEYED!

WE USED TO HAVE ACTUAL BB GUN FIGHTS WITHOUT GLASSES, AND I HAVE YET TO MEET ANY KID FROM LINCOLN NEBRASKA WHO EVER HAD HIS 'EYE SHOT OUT BY A BB GUN'!!

aFTER HIGH SCHOOL WE BECAME SOME OF THE MOST RESPONSIBLE PARENTS AND CITIZENS EVER.

AND WHAT FOLLOWS IS HOW IT WAS AND HOW IT SHOULD BE.

DAISY BB GUN SHOULD NEVER HAVE TO GO THROUGH THIS BIT...NEVER!

THANKS FOR READING

SINCERELY

JOHN C. NIBLER-- Original Message -----

From: Zilchdb@aol.com
To: Dsbnib@aol.com ; Minnearby@aol.com ; toygun@earthlink.net ; sterlyng@hotmail.com ; DaisyBBgunner@aol.com ; florak@mail.wcresa.k12.mi.us ; Pumpkinplj@aol.com ; KenJ95357@aol.com ; lojo@sprynet.com ; nibler@asapnet.net ; wtpo@peoplepc.com ; RJSterk3@wmconnect.com ; chrisamtram@charter.net ; osainc@provide.net ; Mewaiker11@wmconnect.com
Sent: Tuesday, December 09, 2003 10:37 PM
Subject: We were one of these

Subject: We were one of these

According to today's regulators and bureaucrats, those of us who were kids in the 30's, 40's, 50's, 60's, 70's or even the early 80's,

probably shouldn't have survived.

Our baby cribs were covered with bright colored **lead-based paint**.

We had **no childproof** lids or locks on medicine bottles, doors, or cabinets, and when we rode our bikes, we had no helmets.

Not to mention the risks we took **hitchhiking**.

As children, we would ride in cars with **no seat belts or air bags**.

Riding in the back of a pickup truck on a warm day was always a special treat.

We drank water from the garden hose and not from a bottle. **Horrors!**

We ate cupcakes, bread and butter, and drank soda pop with sugar in it, but **we were never overweight** because we were always outside playing.

We shared one soft drink with four friends, from one bottle, and no one actually died from this.

We would spend hours building our go-carts out of scraps and then rode down the hill, only to find out we forgot the brakes. After running into the bushes a few times, **we learned to solve the problem**.

We would leave home in the morning and **play all day**, as long as we

were back when the street lights came on. **No one was able to reach us all day**. No cell phones. Unthinkable!

We did not have Playstations, Nintendo 64, X-Boxes, no video games at all, no 99 channels on cable, video tape movies, surround sound, **personal cell phones, personal computers, or Internet chat rooms.**

We had friends! We went outside and found them.

We played dodge ball, and sometimes, the ball would really hurt.

We fell out of trees, got cut and broke bones and teeth, and there were **no lawsuits from these accidents.** They were accidents. No one was to blame but us. **Remember accidents?**

We had fights and punched each other and got black and blue and **learned to get over it.**

We made up games with sticks and tennis balls and, although we were told it would happen, **we did not put out any eyes.**

We rode bikes or walked to a friend's home and knocked on the door, or rang the bell or just walked in and talked to them.

Little League had tryouts and **not everyone made the team.** Those who didn't had to learn to deal with disappointment.

Some students weren't as smart as others, so they failed a grade and were held back to repeat the same grade.

Horrors!

Tests were not adjusted for any reason.

Our actions were our own. Consequences were expected.

The idea of parents bailing us out if we got in trouble in school or broke a law was unheard of. They actually sided with the school or the law. Imagine that!

This generation has produced some of the best risk-takers, problem solvers, and inventors, ever.

We had freedom, failure, success, and **responsibility** --- and we learned how to deal with it.

And you're one of them!
Congratulations.

Please pass this on to others who were blessed to grow up as "kids" before lawyers and government regulated our lives "for our own good" !!!

*Daisy
comment
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Stevenson, Todd A.

From: Zilchdb@aol.com
Sent: Wednesday, December 17, 2003 8:28 PM
To: Stevenson, Todd A.
Subject: Airgun Safety issue. CPSC Docket No. 02-2

Dear Mr. Stevenson:

I'd like you to know that I support the commission's decision to accept Daisy Outdoor Products' position on the safety of airguns. It's a great step forward towards our need in this country to be more responsible for our own (and our children's) actions.

Thanks you, Dennis

Dennis Baker
9219 Lake Riley Blvd.
Chanhassen, MN. 55317

952-445-2933

*Daisy
Committee* 9

Stevenson, Todd A.

From: Dan Neidinger [bb4guns@paonline.com]
Sent: Wednesday, December 17, 2003 9:16 PM
To: Stevenson, Todd A.
Subject: support for settlement proposed by Daisy Mfg.

I support the settlement proposed by Daisy and accepted by the CPSC.

CPSC Docket No. 02-2.

Shooting education works

There were no defects in the guns. Each injury or death resulted from someone intentionally opening the bolt, pumping the gun, closing the bolt (at which point the BB or pellet can be seen - even by all the CPSC attorneys), aiming the gun, taking the gun off "safe", and firing the gun. The shooter's intentional actions, whether careless or criminal, was what caused the injuries. All injuries were preventable by the shooter.

Thank you

Daniel Neidinger

98 Round Top Road

Middletown, PA 17057

717-944-4212

*Daisy
comment
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Stevenson, Todd A.

From: jgairguns [jgairguns@direcway.com]
Sent: Wednesday, December 17, 2003 9:57 PM
To: Stevenson, Todd A.
Subject: public comment period for CPSC settlement with Daisy Outdoor Products.

I am writing to urge you to accept the proposed settlement with Daisy Outdoor Products related to BB guns for the following reasons.

1. This settlement puts more responsibility on the user which is where it belongs.
2. Many years of shooter education has been proven to work by such organizations as school shooting teams, the military, the Boy Scouts of America, the Jaycee's, etc.
3. There were no defects in any of the Daisy products. Any damage resulting from them was due to misuse or improper handling.
4. Daisy markets and sells air guns to adults. All boxes, manuals, advertisements, website, etc., say repeatedly that these guns are for ages 16 and up, **with adult supervision**. IT is against the law in most if not all states to sell airguns to minors. Retailers will not sell minors these guns.
5. Same as number 1. just to make the point that adults have to be held responsible for minors. One thing that is wrong with some aspects of the American society is, in certain instances people will not accept responsibility for their actions and are always ready to blame some one else, this is your chance to move society in a more responsible direction..

Thank you.

John Groenewold, PO Box 830, Mundelein, IL 60060-0830
visit us on the web at: <http://jgairguns.tripod.com/airgunparts/>
e-mail: jgairguns@direcway.com
phone 847-566-2365, fax 847-566-4065

12/19/2003

*Daisy
Comment*
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Stevenson, Todd A.

From: harold utley [tgca@vci.net]
Sent: Thursday, December 18, 2003 9:53 AM
To: Stevenson, Todd A.
Subject: CPSC Docket No 02-2

Sir:

By this e-mail I am lending my support of the commission's decision to accept Daisy's settlement offer of this matter.

As a retired federal employee I have witnessed many actions by employees, using the resources of the federal government, to further their own agendas. This is just another example of the misuse of power.

J Harold Utley
Toy Gun Collectors of America
Newsletter Editor

Daisy
Comment

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Stevenson, Todd A.

From: BIKE2FUN@aol.com
Sent: Thursday, December 18, 2003 10:16 AM
To: tstevenson@cpsc.gov.
Subject: Daisy Settlement Comment

Good morning Mr. Stevenson:

It has turned out to be a sad day in our busy world that everyone wants to blame everyone else for their own negligence. We have burglars suing because a homeowner wounded them for breaking into their houses, gun manufacturers being sued for producing a gun that was used in a crime, and the worst offenders are people who cannot read. You know the ones I am referring to. A man buys a BB or Pellet gun for their child and does not read the safety information or the recommended ages for the child. Then he wants to sue Daisy for his own negligence when his child gets hurt or hurts another child. When are we as citizens of a free country going to take responsibility for our own actions and not try to blame others who are innocent of just producing an item? The saying that "guns kill" really gets me upset. "People kill" others using the gun as a tool. Amazing that a gun or any type of weapon can set for a thousand years until a human picks it up and hurts or kills someone. Daisy has been manufacturing BB guns since the late 1800s and as a collector I hope they have a healthy future. I personally got my first BB Gun when I was 5 years old. I still have the same gun today, a Daisy Model 98, and in January I will be 55 years old. I think that all gun manufacturers from real to BB guns are stressing safety more and more. A great thing, but we get back to the same problem, an uneducated person that cannot follow simple directions that are clearly labeled on the package and buys these products without thinking of the consequences. The aftermath is to sue the manufacturer because they cannot deal with their own ignorance.

Thanks for letting me have a comment. The settlement is good for Daisy and the public to teach our kids gun safety. Unfortunately, this will not be the end because people will not be responsible for their own actions.

Sincerely,

David Fulton
36029 Lake Unity Nursery Rd.
Fruitland Park, FL 34731

352-326-8225

12/19/2003

Stevenson, Todd A.

From: Schultz, Steve [SSchultz@ag.org]
Sent: Friday, December 19, 2003 11:52 AM
To: Stevenson, Todd A.
Cc: 'MMcBeth@daisy.com'
Subject: Response to case settlement

Please see attached letter in response to CPSC settlement with Daisy outdoor Products.

Steve Schultz
National Royal Ranger Office
Boys Camps/Productions Coordinator
1445 N Boonville Ave.
Springfield, MO 65802-1894
(417) 862-2781 ext. 4193

12/19/2003

*Daisy
Commitment*

Todd Stevenson
Office of the Secretary
Consumer Product Safety Commission
Washington, D.C. 20207

Dear Mr. Stevenson,

Upon review of the settlement by the CPSC and Daisy® Outdoor Products please accept the following comments.

The Royal Rangers program is a non-profit youth scouting organization comprised of boys grades K-12 and affiliated with the General Council of the Assemblies of God. We currently report a membership of 140,000 throughout the United States. We strive to meet the needs of our membership by offering a well-rounded program of activities including shooting sports.

Beginning in April 2000, we began developing a national Youth Shooting Safety Program. While researching for the best possible safety education material we discovered that Daisy® had already developed an outstanding program. Daisy® allowed us unrestricted use of their safety education materials and they were adapted into a format to fit our merit advancement program. Subsequently every Royal Ranger shooting merit developed is accompanied by a matching safety education merit as a prerequisite. It is clear that Daisy® Outdoor Products holds safety education as a primary goal of their company. We agree with Daisy® that safety education is the key to preventing injuries and recognize how this settlement reinforces this fact.

The safety rules outlined by Daisy® in their education materials are followed at all national Royal Rangers shooting events. They are also the recommended rules to be used at any district or local shooting events. These rules are very concise and easy to understand by both youth and adults.

We have been recommending and using Daisy® air rifles for several years now and have not been made aware of any defects or safety problems. We plan to continue to recommend their air rifles to our members.

Upon a full reading of the actions taken by the CPSC our office finds it regrettable that this case has taken so long to be resolved.

The Royal Ranger National Office commends Daisy® for their commitment to Shooting Safety Education.

Respectfully,

Steve Schultz
National Royal Rangers Office
Boys Camps Coordinator

Daisy
14**Stevenson, Todd A.**

From: Chad Mickelson [CHAD@RMEF.ORG]
Sent: Tuesday, December 23, 2003 4:44 PM
To: Stevenson, Todd A.
Subject: Support for the Settlement Agreement in the Matter of Daisy Manufacturing Company



2291 West Broadway
Missoula, Montana 59808
800-CALL ELK
www.elkfoundation.org

December 23, 2003

Mr. Todd Stevenson
Office of the Secretary
Consumer Product Safety Commission
Washington, DC 20207

Dear Mr. Stevenson:

I am writing on behalf of the Rocky Mountain Elk Foundation in support of the recently approved settlement agreement in the matter of Daisy Manufacturing Company. The Rocky Mountain Elk Foundation is a member-based habitat conservation organization whose mission is to ensure the future of elk, other wildlife and their habitat. A large majority of our 140,000 members practice time-honored hunting traditions, and most own guns. We believe that people who practice those traditions have a strong appreciation of wildlife and wildlife habitat, and are therefore more supportive of our mission. The Rocky Mountain Elk Foundation strongly supports safe, ethical hunting and gun ownership and recognizes their tie to our mission of habitat conservation.

Conservation education is an important tool in our habitat conservation toolbox. We know that promoting an understanding of wildlife, habitat and conservation ultimately results in more people who support conservation activities. Likewise, we know that shooting education works. If everyone was taught and adhered to the shooting safety rules, there would be very few if any gun accidents.

In summary, we support safe, ethical hunting and gun ownership. We recognize and appreciate the value of shooting education as the best way to reduce shooting accidents. And, we support the settlement agreement in the matter of Daisy Manufacturing Company.

Sincerely,



Chad Mickelson
Director of Membership
Rocky Mountain Elk Foundation

12/29/2003

Daisy
/5

Stevenson, Todd A.

From: Joe Ferg [joe_ferg@att.net]
Sent: Tuesday, December 23, 2003 3:59 PM
To: Stevenson, Todd A.
Subject: CPSC Docket No. 02-2

Please support the settlement of this CPSC action. There are no defects in the Daisy guns but there are a few persons who will abuse or misuse these airguns.

Joe R. Ferg
952 N. Sonoita Ave.
Tucson, AZ 85711
Phone (520) 745-1833

Daisy
1/6

Stevenson, Todd A.

From: Alan Polansky [alanpo7@alanpolansky.com]
Sent: Tuesday, December 23, 2003 12:08 AM
To: Stevenson, Todd A.
Subject: In support of Daisy Airgun settlement proposal for CPSC Docket No. 02-2

CPSC:

In reference to CPSC Docket No. 02-2 (discussed at the CPSC URL <http://www.cpsc.gov/cpscpub/prerel/prhtml04/04033.html>), I am in support of the Daisy settlement proposal to enhance safety education in order to to help prevent misuse of airguns.

Sincerely,

Alan Polansky
2969 Meadow Wood Drive
Clearwater, FL 33761

727-535-8966 x351

Davis
*17***Stevenson, Todd A.**

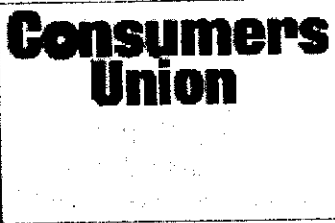
From: customersvc [customersvc@jwoodandsons.com]
Sent: Wednesday, December 24, 2003 7:24 AM
To: Stevenson, Todd A.
Subject: loss of air guns, loss of freedom

Dear Mr. Stevenson

Once again we are asked to forfeit our rights because of the ignorance of some people. Abuse of any product including airguns will usually result in damage of some sort. But the cost of freedom is responsibility. The people who are negligent of their responsibility are the ones who are at fault for the damages they cause. Please let them assume the cost for those damages. Do not penalize the responsible use of airguns by enacting blanket legislation that affects those who obey the rules and use common sense. It is my firm belief that these people are living examples of Darwins' theory. I also beleive that if they are punished by denying them and ONLY them the use of air rifles because of their past negligence then they would soon once again be in possession of the items they are denied. They are people who simply do not obey the rules or practice common sense. Do not make the people who obey te rules and read the directions suffer for them!

MCT

Daisy 18



Office of the Secretary
Consumer Product Safety Commission
Washington, D.C. 20207
cpsc-os@cpsc.gov
Docket No. 02-2

**Comments of Consumers Union of the U.S. Inc., to the
Consumer Product Safety Commission
Urging the Commission to Reconsider the
Provisionally-Accepted Settlement Agreement with Daisy Manufacturing Co., Inc.
Under Federal Hazardous Substances Act and Consumer Product Safety Act
(66 Fed. Reg. 68876)**

Introduction

These comments are submitted by Consumers Union¹ (CU), non-profit publisher of *Consumer Reports* magazine. They are in response to the Consumer Product Safety Commission's ("CPSC" or "Commission") request for comment on a provisionally-accepted Settlement Agreement with Daisy Manufacturing Co., Inc. ("Daisy Manufacturing"). CU urges the Commission to reconsider its provisional acceptance of the Settlement Agreement ("Settlement Agreement") because (i) the Commission failed

¹ Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with approximately 4.5 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

to follow the procedural requirements governing the settlement of such cases by removing the case from review by the Administrative Law Judge ("ALJ" or "Presiding Officer"); and (ii) separate and apart from procedural requirements, the Settlement Agreement is not in the best interest of advancing consumer safety. If in fact Daisy Powerline Airguns contain a hazardous product defect, the Settlement Agreement lacks an adequate corrective action plan (incorporating repair or replacement measures) to ensure that consumers are protected from these dangerous products.

Of additional concern is the fact that, although it did not require a finding as to whether Powerline Airguns contain a defect that constitutes a substantial product hazard, the Commission limited the remedy in this case to a mere information and education ("I&E") campaign. I&E campaigns are notoriously ineffective in reducing injuries and deaths. There is no clearer demonstration of this in the record than the I&E campaign conducted to address the dangers associated with the use of All Terrain Vehicles ("ATVs").

The ATV industry assumed a voluntary approach to safety in 1998, relying almost exclusively on recommendations to dealers not to sell large ATVs for use by children, warning labels on the ATVs, tiny print in advertisements intended to communicate critical safety information, and optional safety training for purchasers of new ATVs. Earlier this year, CPSC issued the latest in a long line of studies documenting the dramatic increase in ATV injuries and deaths. In assessing trends since the voluntary approach began (1997 through 2001), the Commission provides compelling evidence that the I&E campaign for ATVs fails to protect consumers.

The CPSC's study concluded the following:

- ATV-related injuries requiring emergency room treatment increased 104 percent from 54,700 to 111,700;
- Injuries suffered by children under 16 increased 56 percent to more than 33,000 in 2001;
- Injuries caused by bigger and more powerful ATVs, defined by the Commission as machines with engines bigger than 400 cc, shot up 567 percent from 3,662 to 24,437; and
- The ATV industry's contention that rising injuries can be explained by the significant growth in the number of ATVs, hours driven, and drivers is not supported by the evidence.

While the above findings speak for themselves, the Consumer Federation and Natural Trails performed additional analysis of data from 2001 - not previously released by the Commission - which cements the conclusion that core elements of the industry's voluntary approach are ineffective. For example:

- Less than four percent of injured ATV drivers received formal safety training from a dealer, salesperson or organized training program. This proportion is unchanged since 1997;
- More than 40 percent of drivers injured in 2001 stated that their ATV did not have warning labels or they did not know if it did at the time of the accident; and
- Nearly 90 percent of children under 16 were injured while riding adult-size ATVs in spite of the industry's voluntary policy not to sell these machines for use by children. This proportion is also unchanged since 1997.

One major reason the Commission reportedly limited the remedy in the Settlement Agreement to an I&E campaign was Daisy Manufacturing's assertions of financial harm to itself. Because the Commission apparently did not allow full

participation by Complaint Counsel,² it is inappropriate for it to consider the unchallenged assertions of financial harm to Daisy, without a full and rigorous examination of the potential harm to consumers posed by these products. In sum, the Commission has considered the asserted risks to this company without properly examining the risk of injury to consumers. This is particularly egregious in this case because those most likely to be at risk of injury are children.

Background

On November 6, 2001, the Commission, then headed by Chairman Ann Brown, published in the *Federal Register* a Complaint, dated October 31, 2001, issued against Daisy Manufacturing Co., pursuant to section 15 of the FHSA, 15 U.S.C. § 1274, and section 15 of the CPSA, 15 U.S.C. § 2064. 66 Fed. Reg. 56062 (November 6, 2001). The Complaint alleged that the approximately 7,279,151 Daisy Powerline Airgun models 880 and 856 sold at the time the Complaint was filed contained defects that represent a substantial product hazard defect because BBs can become lodged in gun barrels, creating a "virtual magazine." Consequently, a BB may be in the gun, but may not be visible to users of the guns -- often children -- who may believe the gun to be empty and fire it, causing injury or death. (See *CPSC v. Daisy Manufacturing Co.*, CPSC Docket No. 02-02).

On October 14, 2003, with the CPSC under a new Chairman, Harold Stratton, Daisy Manufacturing made a request directly to the CPSC asking the Commission to

² Under 16 C.F.R. § 1025.26(d), "any party may object to the transmittal to the Commission of a proposed consent agreement by filing a response opposing the motion." 16 C.F.R. § 1025.26(d) Therefore, the failure to allow Complaint Counsel the opportunity to review, and to object to the transmittal of a proposed consent agreement also is a violation of the regulations governing Commission actions.

reconsider Daisy Manufacturing's earlier settlement offer, "based primarily upon Daisy's financial condition and its inability to obtain liability insurance at a reasonable price."

(Id.) In response to Daisy Manufacturing's request, Commissioner Gall and Chairman Stratton voted to stay the proceeding, and removed the case from the Presiding Officer.

(See Statement of The Honorable Thomas H. Moore in the Matter of *Daisy Manufacturing Company.*, CPSC Docket No. 02-02, November 14, 2003). The Commission then proceeded to consider Daisy Manufacturing's request, and ultimately chose to provisionally accept the proposed settlement agreement addressed by these comments.

Acceptance of the Provisionally-Accepted Agreement by the Commission Would Violate Commission Regulations

Such a direct transmission of a settlement offer by Daisy Manufacturing to the Commission violated regulations requiring the settlement offer to be submitted directly to the ALJ accompanied by a motion for the offer to be transmitted to the Commission. Consideration of a Settlement Offer circumventing review by the Presiding Officer constitutes a clear violation of the Commission's regulations.

The regulations state that, "Any party shall have the opportunity to submit an offer of settlement to the Presiding Officer." 16 C.F.R. § 1025.26. The regulations further state that, "Each offer of settlement shall be accompanied by a motion to transmit the proposed agreement and order to the Commission."

Under these regulations, Presiding Officer has the authority to decide whether or not to transmit the offer of settlement to the Commission for its consideration. The regulations specify that:

The Presiding Officer may transmit to the Commission for decision all offers of settlement and accompanying memoranda that meet the requirements enumerated in paragraph (c) of this section. The Presiding Officer shall consider whether an offer of settlement is clearly frivolous, duplicative or offers previously made and rejected by the Commission or contrary to establish [sic] Commission policy. The Presiding Officer may, but need not recommend acceptance of offers. 16 C.F.R. § 1025.26(d).

Therefore, under the clear language of the regulations governing procedures for settlement of cases by the Commission, a settlement offer may not be considered by the Commission directly -- such an offer must be transmitted by the Presiding Officer -- and the transmission of such a settlement offer is within the sole discretion of the Presiding Officer. Because the Daisy Manufacturing provisionally-accepted Settlement Offer was not properly presented to the Commission by the Presiding Officer, the Commission cannot consider it. Such a departure not only violates the Commission's regulations, but it also sets a bad precedent for the effective and orderly process of Section 15 cases.

No Determination Has Been Made as To Whether the Guns Present a Substantial Product Hazard

Separate and apart from procedural reasons, we believe that the Commission should reject this provisionally-accepted Settlement Agreement. If in fact Daisy Powerline Airguns are potentially hazardous products under section 15 of the FHSA, 15 U.S.C. § 1274, and section 15 of the CPSA, 15 U.S.C. § 2064, the provisionally-accepted Agreement is woefully inadequate because it lacks measures for Daisy Manufacturing to recall or repair the Powerline Airguns.

We believe that these issues must be returned to the ALJ for a determination of whether the Airguns are potentially hazardous products. The Commission's record in this case suggests that these are dangerous products.

In its Complaint, the agency noted: CPSC's staff has learned of at least 15 deaths and 171 serious injuries that have been attributed to alleged design and manufacturing defects in Daisy's Powerline Airguns. About eighty percent of those who have been killed or injured by the airguns were children under the age of 16. Children have been killed after being shot in the head or chest. Other children have been seriously injured after BBs punctured their heart, spinal cord, or skull, causing paralysis and brain damage.

One of the many tragic incidents that CPSC learned about involved John "Tucker" Mahoney, of New Hope, Pa. On May 24, 1999, Tucker and his friend were shooting a model 856 Powerline, two days after he had received the airgun as a gift for his 16th birthday. CPSC staff contends that as a result of a defect within the airgun, a BB remained lodged inside of the airgun's magazine, unbeknownst to Tucker or his friend. Believing the airgun was unloaded, Tucker's friend pointed and fired the airgun at close range. The hidden BB became dislodged, chambered, and struck Tucker in the head. Tucker was severely injured and is now in a near vegetative state. In February 2001, Daisy settled Tucker's product liability lawsuit for approximately \$18 million dollars. CPSC staff believes that it would cost \$2 per airgun to correct the defect that causes BBs to become lodged in the loading mechanism and to put an automatic safety device on the airgun.

We believe that, due to the serious nature of the injuries that can be inflicted by these products, the question of whether they contain a dangerous defect should be returned to the Presiding Officer for his or her examination. Such a proceeding should include a full exploration of the facts, as well as the full participation of Complaint

Counsel -- who is tasked with advocating for the protection of consumers from dangerous products. He or she can fully evaluate and counter any assertions made by Daisy Manufacturing that the product is safe, or any assertion that the financial state of the company should impact any corrective action plan. For the Commission to consider a Settlement Agreement, as it apparently did in this case, without the full and active participation of Complaint Counsel leaves the Commission inadequately informed to make any decision regarding the Agreement.

Conclusion

For the reasons stated herein, we request that the Commission reconsider its provisional Settlement Agreement with Daisy Manufacturing Co., Inc., and return the case to the Presiding Officer who can make a determination of whether the Daisy Powerline Airguns present a substantial product hazard. It is only after such a determination that an assessment can be made of whether, and to what extent Daisy Manufacturing should implement a corrective action plan -- including a recall or repair program.

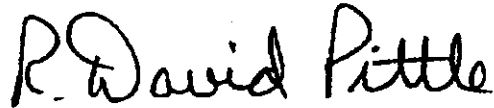
In addition, the Commission should require Daisy Manufacturing to submit any future offers of settlement to the Presiding Officer -- who can decide, as is properly within his or her discretion under 16 C.F.R. § 1025.26, on the sufficiency of any settlement offer, and whether or not to transmit such a settlement offer to the Commission for its consideration.

We urge the Commission to Reconsider the Settlement Agreement currently before it because the Settlement Agreement is 1) improperly presented; and 2)

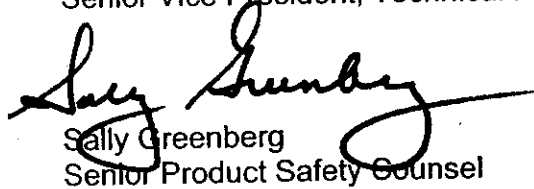
incomplete in its determination of the level of risk to consumers. Given the past history of deaths and injuries associated with these products, accepting such an agreement under these flawed conditions would be a disservice to consumers.

December 24, 2003

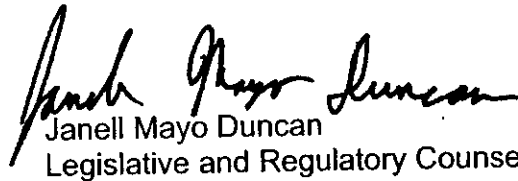
Respectfully submitted,



R. David Pittle
Senior Vice President, Technical Policy



Sally Greenberg
Senior Product Safety Counsel



Janell Mayo Duncan
Legislative and Regulatory Counsel

Stevenson, Todd A.

From: KnoxCa@consumer.org
Sent: Wednesday, December 24, 2003 12:54 PM
To: Stevenson, Todd A.
Subject: Docket No. 08-2 - Comments of Consumers Union



1223 Daisy Gun
Comments.pdf (1...

Attached are comments from Consumers Union urging the Commission to reconsider the Provisionally-Accepted Settlement Agreement with Daisy Manufacturing Co., Inc. Under Federal Hazardous Substances Act and Consumer Product Safety Act (66 Fed. Reg. 68876).

Daisy 19



Consumer Federation of America

December 24, 2003

Secretary Todd Stevenson
Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, DC 20207

RE: CPSC Docket No. 02-2, In the Matter of Daisy Manufacturing Company, Provisional Acceptance of Settlement Agreement and Order

Dear Secretary Stevenson,

Consumer Federation of America (CFA) is writing to request that the U.S. Consumer Product Safety Commission (CPSC or Commission) not accept the Provisional Settlement Agreement it voted to approve from Daisy Manufacturing Company on November 5, 2003. CFA is a nonprofit association of 300 consumer groups, representing more than 50 million Americans, that was established in 1968 to advance the consumer interest through research, education, and advocacy. CFA is submitting this comment in response to the Notice published in the Federal Register on December 10, 2003 regarding CPSC Docket No. 02-2, In the Matter of Daisy Manufacturing Company, Provisional Acceptance of Settlement Agreement and Order.

Product safety, including airgun safety, is an important part of CFA's mission. In particular, CFA has been concerned about the injuries and deaths to children caused by airguns and BB guns, due to the fact that many children perceive the guns to be empty when they are in fact loaded, as well as the high muzzle velocities of these products.

CFA requests that the Commission not accept the Provisional Settlement Agreement it reached with Daisy Manufacturing Company for a number of reasons. Broadly, CFA believes that the available information indicates that the procedures undertaken to reach the Settlement violate the Code of Federal Regulations as well as the structure imposed by the Administrative Procedures Act, and the substance of the Settlement is so weak that it fails to satisfy the public interest.

Initially, we point out that we cannot take a position as to whether the two models of Daisy airguns create a substantial product hazard. Just as the Commission has not deliberated this issue, CFA does not have before it the evidence to make such a determination. While we are concerned about the death and injuries caused by these products, we are **not** objecting to this Settlement based upon a determination that the airguns do not meet the legal threshold of a substantial product hazard. Rather we object to the Settlement based upon the breaches in administrative procedures that have

occurred, the failure of CPSC to make a determination based upon the merits of Complaint Counsel's claims, and the weakness of the substantive elements of the final Settlement. In addition, we must note from the onset, that many relevant documents are currently "in camera" and are not available for us to review. Therefore, our comments are based upon the publicly available information, especially the comments of the Commission regarding this Settlement.

I. Procedural Rules Appear to have been Violated Thus Voiding Settlement Agreement

Much of the record is unavailable to the public, due to the fact that many documents are currently filed "in camera." However, based on the documents that we were able to review as well as from our knowledge of the Code of Federal Regulations, CFA is concerned that a number of procedural rules appear to have been violated and that the Commission's decision violated the Administrative Procedures Act, 5 U.S.C. § 706 (2)(a) and (d) due to the fact that it was arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law and without observance of procedure required by law. Further, we believe that we have been unjustly denied access to documents that were relied upon by the Commission to make their decision and which were referenced in their statements. This has placed CFA and the public at a disadvantage in terms of commenting upon this Settlement.¹ Yet, we remain convinced that these documents, if made available, would only serve to confirm further our view that the Commission's action violated the Administrative Procedures Act.

Initially, what appears to be the most egregious violation of the Code of Federal Regulations occurred when a majority of the Commission failed to submit the Motion to Reconsider of October 14, 2003 to the Administrative Law Judge (ALJ). This Motion represented a new Settlement Offer and was required to be submitted to the ALJ. The Commission's regulations make this clear. 16 C.F.R. § 1025.26 sets out the rules of practice for settlements and sets forth in 1025.26(a) that offers of settlements have to be submitted to the Presiding Officer. However, this did not occur. Rather the Settlement was not submitted to the Presiding Officer but to the Commission, who acted upon it without appropriate authority.

In addition, in response to the ALJ's order, Staying Proceedings and Transmitting the Offer of Settlement, a majority of the Commission voted to propose mediation as a method to resolve *The Matter of Daisy Manufacturing Company*. However, this vote to proceed to mediation appears to conflict with 16 C.F.R § 1025.26, which sets out the

¹ On December 11, 2003, CFA filed a Freedom of Information Act request with the Secretary of the Commission, requesting a letter by the Administrative Law Judge transmitting the Offer of Settlement, dated May 12, 2003, cited on page 2 of Chairman Stratton's statement, in footnote 7. On December 15, 2003 we received a letter from Secretary Stevenson denying our request because the document is currently "filed *in camera*" on the docket and not being disclosed pending a review by the Commission's Office of the General Counsel." Since we have filed our initial FOIA request we have determined that there are a number of other documents that are critical for the public to be able to adequately review in this matter.

Commission's options in response to an order Staying Proceedings and Transmitting the Offer of Settlement. The regulation sets out two alternatives, neither of which a majority of the Commission adopted. The regulation sets forth that the Commission can either accept or reject such an order, however the facts indicate that the Commission chose to create their own alternative—that of proceeding to mediation.²

As required by 16 C.F.R. § 1025.23, the Motion to Reconsider was never served upon the ALJ. Rather, the Motion to Reconsider was addressed to the Commission and the Commission voted to stay the proceedings. At this juncture, a majority of the Commission considered the information provided by Daisy about its financial status. This consideration of new evidence proffered by Daisy conflicts with 16 C.F.R. § 1025.43³ which implies that evidence should be brought before the Presiding Officer, who in this case was the ALJ, and not the Commission.

The consideration of Daisy's financial information and the critical role it seemed to have played in a majority of the Commission's decision to approve the Settlement Agreement appears to have been problematic and untimely for a number of reasons. First among them is the fact that the information was not submitted to the ALJ. In addition, due to the fact that the information was not submitted to the ALJ, the financial information was not reviewed by a neutral arbiter (the Administrative Law Judge) nor was it commented upon in an adjudicative proceeding by Complaint Counsel, who has the right to question the validity and relevance of the information. In his statement, Chairman Stratton stated that he "met independently with Daisy and complaint counsel to learn the details of the case."⁴ While this is commendable, it was an inappropriate interference in the adjudicative process, which sets forth the process for submitting evidence, cross-examining witnesses, etc. These "independent meetings" are not equivalent to the communications and processes protected by the administrative procedures.

This side-stepping of the adjudicative process not only contradicts the Code of Federal Regulations but also illustrates that this Settlement was negotiated by essentially one party: the party that brought the case—as represented by Complaint Counsel—was removed from the process, while the two involved Commissioners⁵ served as the Presiding Officer in place of the ALJ. Unfortunately, in support of the fact that Complaint Counsel was left out of the Settlement negotiation process, it appears that Complaint Counsel filed a Motion for Procedural Clarification in response to Daisy's Motion for Reconsideration. However, the Commission failed to respond to this motion thus denying Complaint Counsel the opportunity to object to the Motion.⁶

² See 16 C.F.R. § 1025.26.

³ As required by 16 C.F.R. § 1025.43.

⁴ Statement of Chairman Hal Stratton Regarding the CPSC v. Daisy Manufacturing Co., CPSC Docket No. 02-02, November 14, 2003, p. 1. (available at <http://www.cpsc.gov/cpscpub/prereel/prhtml04/04033.html>).

⁵ Statement of the Honorable Commissioner Thomas H. Moore in the Matter of Daisy Manufacturing Company, CPSC Docket No. 02-02, November 14, 2003, p. 2. (available at <http://www.cpsc.gov/cpscpub/prereel/prhtml04/04033.html>). (Commissioner Moore noted that he was not included in the settlement negotiation beginning at this stage.)

⁶ *Ibid.* (Commissioner Moore mentioned Complaint Counsel's brief and the Commission's failure to respond in footnote 4 of his Statement.)

Significantly, the information that appeared to be so persuasive to a majority of the Commission, Daisy's financial information, should have been taken into consideration *after* a determination was made about whether the Daisy Airguns at issue in this proceeding did or did not pose a substantial product hazard to consumers. Only once this critical determination was made, which it never was in this case, should the ability of the manufacturer to comply with the recommended corrective action be considered. However, this information seemed to form the basis for the majority decisions to approve the Settlement, even though the essence of the case, the fact that two models of Daisy airguns could be potential product hazards, was never deliberated nor ruled upon. It is this issue, the potential hazards posed to consumers that should have been the main focus of the deliberations, rather than the financial health of the manufacturer.

One illustration is a statement regarding this case made by Chairman Stratton, which demonstrates the lack of adherence to CPSC's regulations in the final Settlement negotiations. He stated that he "considers this administrative legal proceeding to be burdensome and inefficient."⁷ This so called "burdensome and inefficient" process is required by law. If it is found that this process is in fact flawed it can be changed. However, the legal process cannot be ignored or superceded, which occurred here.

The violation of clear regulatory procedures renders the majority of the Commission's decision to approve this Settlement arbitrary and capricious and without observance of procedure required by law, thus rendering this Settlement illegitimate.

II. The Product: Model 856 and 880 Daisy Powerline Airguns

In 2002 an estimated 22,443 non-powder gun injuries were treated in U.S. emergency departments.⁸ Forty-two percent of these incidents occurred to children less than 15 years old and 72 percent to children and teens less than 20. CPSC receives reports of approximately 3 to 4 deaths a year from non-powder guns, however, these deaths may be underestimated since some deaths may be miscoded as firearm deaths or other deaths.

Many of these guns are bought as toys because parents are unaware of their danger until after an injury occurs. The risk of injury from these guns is highest for males aged 10 to 14 years old.⁹ According to the Centers for Disease Control and Prevention, in 2002 the rate of nonfatal injury for non-powder guns among boys aged 10 to 14 was 50.17 per 100,000—more than six times the overall rate (7.82 per 100,000). In 2001, CPSC was aware of at least 15 deaths and 171 serious injuries that have been attributed to incidents involving Daisy's Powerline Airguns. According to the Commission, at that time, about

⁷ Statement of Chairman Hal Stratton Regarding the CPSC v. Daisy Manufacturing Co., CPSC Docket No. 02-02, November 14, 2003, p. 2.

⁸ Data collected from Centers for Disease Control and Prevention, National Center for Injury Prevention and control, Web-based Injury Statistics Query and Reporting System, www.cdc.gov/ncipc/wisqars, queried December 23, 2003.

⁹ *Ibid.*

eighty percent of those who have been killed or injured by the airguns were children under the age of 16. Children have been killed after being shot in the head or chest. Other children have been seriously injured after BBs punctured the heart, spinal cord, or skull, causing paralysis and brain damage. Many of these incidents have occurred because BBs could become lodged in the magazine, even though the rifle appeared to be empty.

Multiple-pump guns, popularized in 1972, propel ammunition using air, which is manually compressed, in a chamber. According to a 1996 article in *The Journal of Trauma*, "Air Powered Guns: Too much firepower to be considered a toy," the velocity at which a bullet is expelled from these guns rises with the number of times the compressor is pumped. In a now publicly available document from Daisy Manufacturing Company that refers to a design review of the Model 880, the then-Director of Product Evaluation wrote:

This is a dangerous gun, it is not a controlled velocity play gun for which we are noted. . . . (T)his gun, with its absence of proper safety procedures and mechanism, invites a dangerous condition, both in plant and consumer hands. With the presentation of an unsafe product that has the energy capabilities such as this gun, we could lose the immunity to criticism we have enjoyed in the Toy Market.¹⁰

The wounding effect of any missile, such as a bullet or pellet, is a function of its size and speed. A pellet traveling at a muzzle velocity of 130 ft/second can penetrate the human eye; at 350 ft/second it can break through skin and penetrate some bones. According to the 2001 *Gun Digest*, 80 percent of the 3.2 million non-powder guns sold in the United States each year have muzzle velocities over 350 ft/second and 50 percent have muzzle velocities between 500 and 930 ft/second.¹¹ Many traditional powder handguns achieve comparable velocities.

There are no national mandatory standards for the sale, ownership, or use of non-powder guns, as this regulation is left to the states. Some states regard non-powder guns as firearms while others do not, and according to the Bureau of Alcohol, Tobacco Firearms and Explosives, only 15 states regulate the sale or possession of non-powder guns.¹²

III. Daisy's Marketing to Children

The airgun industry, and Daisy in particular, understands the benefits of marketing their products to young people as a way to introduce them to the firearm culture. The June

¹⁰ Memorandum from Guy E. Braugner, Director of Product Evaluation, Daisy Manufacturing Company, to Henry F. Waring, Director of Research and Development, Daisy Manufacturing Company, February 4, 1972.

¹¹ Ramage, Ken, ed., *Gun Digest 2001*, Krause Publications, Iola, WI, 2000.

¹² The Department of Treasury, Bureau of Alcohol, Tobacco, and Firearms, *State Laws and Published Ordinances - Firearms*, 24th Edition, 2003.

2003 issue of *Women's Outlook*, the National Rifle Association's magazine for women, featured an article called "The Gateway Gun: Daisy can help you safely introduce your sons and daughters to a lifetime of fun and rewarding shooting." The article deliberately links airgunning to future use of powder firearms:

When it comes to participation in the shooting sports, the airgun is the "gateway gun." We often hear the term gateway in a negative context, but it all depends on your eventual destination. If it's someplace good, like firearms mastery, you'll have that little airgun to thank for the rest of your life.¹³

More than three million non-powder guns are sold in the United States each year.¹⁴ According to a 1995 article in *The Morbidity and Mortality Weekly Report*, most of these guns are intended for children between the ages of eight and 18. At the same time, manufacturers like Daisy are employing various technological advancements to produce faster and more powerful weapons. The June 2003 *Women's Outlook* article notes:

Daisy has expanded over the years and now makes a complete line of airguns and accessories to keep pace as youngster's skills advance [I]f your budding shooter has an interest in small game hunting, you can acquire increasingly powerful Daisy airguns. There are even Daisy pistol airguns for young people enamored of handgunning.¹⁵

Airguns are relatively inexpensive, so its not unreasonable for parents to buy several as their children's skills advance. According to the 2001 HELP Network study, *The Unrecognized Injury Toll of Non-Powder Guns: These Guns Aren't Toys*, those guns with muzzle velocities above 350 ft/sec but below 940 ft/sec are all able to significantly maim and are inexpensive guns, listing from as low as \$50 each.

It makes sense, therefore, for Daisy to market its higher-velocity products as well as its "Youthline" series to young shooters. However, Commissioner Gall seemed to ignore this point in her statement when she wrote, "I find it highly implausible that Daisy would deliberately try to induce purchasers to buy Model 856 and 880 rifles for shooters who are younger than 16."¹⁶

The marketing strategy makes good sense from the firearm industry's perspective. According to the study *Factors Related to Hunting and Fishing Participation in the United States* published by the Fish and Wildlife Reference Service, men and women who do not become hunters by the time they graduate from high school are unlikely ever to become hunters. Nationwide, more than half of all hunters, 54 percent, began hunting

¹³ Daniel McElrath, "The Gateway Gun: Daisy can help you safely introduce your sons and daughters to a lifetime of fun and rewarding shooting," *Woman's Outlook*, vol. 1, no. 6, June 2003, p. 45.

¹⁴ Centers for Disease Control and Prevention, "BB and pellet gun-related injuries—United States, June 1992-1994" *The Morbidity and Mortality Weekly Report*, 1995, no. 44, pp. 909-913.

¹⁵ *Ibid* at 45.

¹⁶ Statement of the Honorable Mary Sheila Gall on Proposed Consent Agreement and Order Submitted by Daisy, November 14, 2003, p. 6.

before they turned 13 years old, 69 percent began before they turned 16, and 83 percent before they turned 19. In a "strategic analysis" for the firearms industry, the National Shooting Sports Foundation concluded that, "there is a continuing need to encourage new first-time shooters and, as much as is practical and responsible, ease their entry into the shooting sports."

Like many other product industries, the gun industry has to continually reinvent itself to boost sales and attract new users. For airgun sales, higher velocity is the key. Contemporary non-powder guns are often used during hunting and competitive sporting events. The impact of this change in design has been lost on many consumers. According to the 2001 HELP Network study, casual users often perceive the non-powder guns as something other than a weapon, e.g. as a toy or as a token indicating a rite of passage. The industry echoes this sentiment and even lauds it as a way to bring in customers. In an article featured in the December 2003 issue of *Shooting Industry* magazine called, "BIG MONEY IN AIRGUNS! Today's Airguns Have Come A Long Way And So Has The Profit Potential For Gun Dealers," writer Tom Gaylord states:

Today's airguns are far more advanced than most shooters and gun dealers realize. They can shoot 3/8-inch groups at 50 yards and sub-3-inch groups at 200 yards. They are used for hunting, and have even harvested elk, mountain lion, Russian boar and deer. Hard to believe? Airguns today are surprising many veteran shooters, and they can pump up your business if you know what sells.¹⁷

Such information, which could have been useful during the administrative process and a hearing on the Daisy airguns, but unfortunately, was not made available. As a result, assumptions were made. In her statement on the Daisy agreement, Commission Gall writes, "Whatever justification the 'Daisy is and always has been associated with low-velocity air rifles,' argument might have had in the early 1970s, it clearly has no merit now."¹⁸

While Daisy has claimed, in the Settlement Agreement, to promote safe shooting practices, including the inclusion of an age limitation warning on the Model 856 and 880 gun boxes, much of the marketing information on Daisy's web site seems to contradict the message that certain guns are inappropriate for children under 16 years old. On Daisy's web site, www.daisy.com, there is no clear distinction between "youth models," which Daisy touts as appropriate for "young shooters," presumably appropriate for those younger than 16, and those guns appropriate for consumers over 16. For example, no guidelines are set forth about what is a "youth gun" is and what is not, instead, the following appears when a consumer goes to the "youth guns" section of Daisy's web site:

Remember your first airgun? The excitement. The pride. The fun. For millions of

¹⁷ Tom Gaylord, "BIG MONEY IN AIRGUNS! Today's Airguns Have Come A Long Way And So Has The Profit Potential For Gun Dealers," *Shooting Industry*, December 2003, www.shootingindustry.com.

¹⁸ Statement of the Honorable Mary Sheila Gall on Proposed Consent Agreement and Order Submitted by Daisy, November 14, 2003, p. 4.

today's shooters the name on that first gun was Daisy. Today, we're still the first choice when it comes to introducing a young shooter to airgunning. Simple, easy-to-use designs. Safety features built-in. Ideal for developing shooting and marksmanship skills—Daisy covers the beginner airgun market like no other.¹⁹

Daisy's web site includes a section on education, which discusses the priority Daisy places on education and touts a number of training programs and contests that it supports. An intrinsic element of the cultural history of Daisy appears to be the promotion of shooting as a family sport for all ages:

Right now Daisy's actively involved in training thousands of new airgun shooters. Some will become expert. Others will simply learn a fun, inexpensive sport they can enjoy throughout their lives. A sport they may share with their children, and grandchildren. That's our tradition. . . . Truly, airgun shooting is an equal opportunity sport for men and women, boys and girls that instills a sense of pride, confidence and achievement for literally hundreds of thousands, young and old alike—the Daisy way.²⁰

Unfortunately, this culture does not prioritize the articulation of the distinction between which guns are appropriate for children and which are appropriate for adults. Not surprisingly, the web site—created as a sales and marketing tool—also fails to mention the numbers of consumers, including children, who are seriously injured or killed while using Daisy products, nor any mention of problems specifically encountered with Powerline guns.

Significantly, there is no language in the “youth gun,” “education” or “adult high velocity airguns” section of the web site, nor in the Settlement, that clarifies to potential purchasers that some guns are designed for youth while others are inappropriate for children under 16. It must be noted that Daisy airgun models 856 and 880 are not sold in the “youth guns” section of the web site but rather are available in the Powerline Adult High-Velocity Airguns section.

With the approval of a majority of CPSC Commissioners, Daisy agreed to include more and bigger safety warnings on its products, as well as launch a \$1.5 million, five-year educational campaign. Safety literature is packaged with non-powder guns on a voluntary basis. Similarly, design standards, set by ASTM, are adhered to on a voluntary basis, and are aimed at reducing hazards associated with non-powder gun use.

In her statement, Commissioner Gall cites Daisy's adherence to the ASTM F589-00 voluntary standard to refute the argument that Daisy knowingly marketed to children. While it's true that Daisy has had age recommendations on its packaging and instructions for decades, and it has now agreed to add more and bigger safety warnings, there is no evidence that those warnings have reduced deaths or injuries from non-powder guns.

¹⁹ See http://daisy.ifworld.com/cgi-bin/daisy/products_daisy.html.

²⁰ See <http://www.daisy.com/education.html>.

In addition, Commissioner Gall states, "Daisy's [safety] campaign will address whatever risk of injury may exist from the magazine characteristics of the Model 880 air rifle and previously-produced Model 856 air rifles now in the hands of consumers. Daisy's campaign, moreover, will assist in educating consumers using not only Daisy air rifles, but also consumers using other manufacturers' air guns, and even consumers using firearms."²¹ Again, there is no evidence that Daisy's safety campaign has had any effect on rates of non-powder gun injury deaths or injuries, let alone firearm-related incidents. In fact, several of the incidents cited by Complaint Counsel involving Daisy rifles note that the children involved had been given gun safety instruction.

Rather than recognizing the inherent danger airguns in the home pose to children, and the possibility of design defects, Daisy's "Take Aim at Safety" program places the onus of safety and responsibility on the children themselves. The NRA's June 2003 *Women's Outlook* article states, "But thanks to Daisy, when your son or daughter is ready, you'll have some guidance for making sure he or she handles this new responsibility in a mature and safe manner."²²

Educators critical of gun safety programs note that they generally show a lack of knowledge of how children make complex decisions. In a 2002 article in The David and Lucile Packard Foundation's publication, *The Future of Children*, entitled, "Behavior-Oriented Approaches to Reducing Youth Gun Violence," psychologist Marjorie S. Hardy found that, "Children and youth are particularly difficult targets for behavioral change programs. Cognitive immaturity among younger children and perceptions of invulnerability among adolescents may be part of the reason."²³

Gun safety programs, typically administered by local firearms dealers and clubs, are designed to teach older children and adolescents how to properly handle a firearm. According to Hardy, gun safety programs have been found to be ineffective in decreasing the firearm injury and death rate among adults and to have no positive effect on storage practices by gun owners. She states, "Even worse, some researchers suggest that gun safety courses for children are likely to increase children's interest in obtaining and using guns and that children cannot be expected to consistently use guns safely even with training."²⁴

Another marketing tool that conflates the notion of which airguns are "appropriate" for which age group, is the promotion of the Daisy 90 all terrain vehicle (ATV). According to Daisy's web page,²⁵ the Daisy 90 ATV is a youth model ATV²⁶ produced under a

²¹ Statement of the Honorable Mary Sheila Gall on Proposed Consent Agreement and Order Submitted by Daisy, November 14, 2003, p. 8.

²² Daniel McElrath, "The Gateway Gun: Daisy can help you safely introduce your sons and daughters to a lifetime of fun and rewarding shooting," *Woman's Outlook*, vol. 1, no. 6, June 2003, p. 47.

²³ Marjorie S. Hardy, "Behavior-Oriented Approaches to Reducing Youth Gun Violence," *The Future of Children*, The David and Lucile Packard Foundation, vol. 12, no. 2, Summer/Fall 2002, p. 101.

²⁴ *Ibid* at 108.

²⁵ The Daisy 90 ATV is available for sale at http://daisy.ifworld.com/cgi-bin/daisy/products_brand.html.

²⁶ A youth model ATV is defined as having an engine size of 70 to 90 ccs and is appropriate for children between 12 and 15 years old. ATVs with engine sizes of over 90s are appropriate for people 16 and older.

licensing agreement with AlphaSports Motors. Each Daisy 90 ATV comes with a certificate for a free Daisy® Red Ryder® or Daisy® Mossy Oak Grizzly Airgun.”²⁷ What is particularly problematic about the Daisy ATV is that it is a youth size model, appropriate for children between the ages of 12 and 16, clearly a subset of the age group that is warned against using the Model 856, 880 and other models of Daisy Airguns. In addition to the sale of the youth model ATVs, there are also other products for sale that send mixed messages to consumers about the appropriateness of Daisy products for children. For example, on the Daisy web page, a *Father and Sons Daisy Clock* is for sale reinforcing the idea that shooting Daisy guns is a wholesome activity for parents and children, as is a *Daisy Boy Clock*, a *Daisy Red Ryder Tin Sign* with the same picture of a boy holding a Daisy gun, an *American Heritage Tin Sign*, and a *Daisy First in Airguns Thermometer*, with a picture of another young boy displayed.²⁸

IV. The Settlement Fails to Protect the Public Interest

Among the many motions relevant to this case—that have not been made available to the public—of particular importance to an analysis of the efficacy of the Provisional Settlement is Complaint Counsel’s Brief Regarding Respondent’s Offer of Settlement.²⁹ This document, as with all of the other documents should be available for public review, since the fact that it is being withheld hinders our ability to comment fully on the Provisional Settlement Agreement.

While, we believe the current Settlement is illegitimate due to the arbitrary and capricious nature of a majority of the Commission’s breach of procedures, we want to comment on the Settlement itself, which we find unacceptably weak. The current marketing information, as available in shooting magazines and on Daisy’s web site, makes clear that children are a clear focus of Daisy’s marketing efforts. Unfortunately, the Provisional Settlement does not seek to remedy or clarify the pervasive marketing of airguns to children of all ages. This is just one of a number of elements of the Settlement that falls short in the protection of the public.

This Settlement language is problematic and was, in fact, found unacceptable by Complaint Counsel in September of 2003. There are essentially two elements of the Settlement: consideration of voluntary standards and a public education campaign. Both of these elements are weak.

The voluntary standards element of the Settlement includes a statement that the Commission and Daisy will take “action” to settle the proceeding by addressing two issues raised by the Complaint. Both issues are required to be submitted for resolution to ASTM Subcommittee F15.06 for “the purpose of consideration and determination, in the sole discretion of the Subcommittee, *of the extent to which, if at all, they shall be*

²⁷ See http://daisy.ifworld.com/cgi-bin/daisy/products_brand.html.

²⁸ See http://daisy.ifworld.com/cgi-bin/daisy/products_brand.html.

²⁹ See Statement of the Honorable Thomas H. Moore, In the Matter of Daisy Manufacturing Company, CPSC Docket NO. 02-02, November 14, 2003, footnote 6, p. 3.

addressed...” [emphasis added]. The phrase “if at all” makes it optional for ASTM to address either issue.

The elective nature of this section is further emphasized in the elaboration of the issues. The first issue is “the *possibility* of uniform industry standards for loading and feeding of BB’s in all multishot airguns to insure that an airgun, when operated in accordance with the manufacturer’s operating instructions, will load, feed or fire properly.” [emphasis added]³⁰ The word “possibility” utterly lacks not only an affirmative step but also a mandate. The words usually used to mandate action, such as “shall” or “should” are not used. Thus, it is very possible, even inevitable, that no such voluntary standard will come to fruition at all.

The other issue to be considered by ASTM, as set forth in the Settlement Agreement, is presented in the form of a question: “What is the appropriate age for intended users of airguns that fire projectiles at more than 350 feet per second? (The parties recognize that the present standard is 16 years of age.)” The question is asked rhetorically, and again the ASTM subcommittee is given the discretion to decide whether or not to address it.

In addition, the list of issues that were originally brought up by Complaint Counsel has been significantly reduced in the Settlement. For example there is no mention of whether the velocity of airguns is so high as to pose a threat to the public, nor is there a mention of automatic safeties. These two issues could have been addressed through voluntary standards as well, and they still could be. However, their absence from the Settlement seems to imply that there was never a concern about these issues, when in reality there was significant concern by Complaint Counsel.

The second element of this Settlement is the education campaign designed to “instruct users in the safe handling and use of its airguns.”³¹ This campaign, by Daisy’s own admission, has been in effect since before this Settlement Agreement. Thus, this campaign is not new and is nothing more than they were already doing. It is also unclear whether the campaign has been effective in educating consumers about the use of airguns and whether it has been effective in reducing deaths and injuries caused by Daisy airguns. Commissioner Moore articulated a long standing perception of education campaigns regarding this particular effort, “Changing behavior through safety campaigns is difficult at best, which is why, whenever possible, a hazard should be designed out of a product to achieve real injury reduction.”³² In this case it may be possible to design the alleged hazard out of the airguns.

Other elements of the Settlement, in particular, the new warning labels that Daisy is proposing to place on tape around gun boxes and on hang tags, zip ties or stickers has not

³⁰ See 68 Fed Reg 237 at 68876 (December 10, 2003).

³¹ See 68 Fed Reg 237 at 68876 (December 10, 2003).

³² See Statement of the Honorable Thomas H. Moore in the Matter of Daisy Manufacturing Company, CPSC Docket No. 02-2, November 14, 2003, p. 4.

been evaluated by CPSC's Human Factors staff.³³ Thus, it is not certain that the language proposed is the most effective language to include that would adequately warn consumers of the dangers of a child under 16 using the airgun, adequately warn of the dangers of killing someone with the airgun, and adequately warn of the potential hazard of the airgun appearing unloaded when it actually contains a BB or a pellet.

The Settlement includes the terms "withdrawn and resolved" in reference to the remaining allegations. While 16 C.F.R. § 1025.26 sets out the procedures for settlements, it does require that the settlement contain a provision that the allegations of the complaint are resolved by the agreement. It does not include a provision setting forth that allegations can be "waived." The inclusion of the word "waived" implies that the only issues of concern are those that were specifically stated in the Settlement. However, the list of allegations in the complaint was actually much broader than the limited issues addressed in the Settlement. It is therefore, misleading to the public to not only fail to include all of the initial allegations, but to also dismiss them without an explanation.

Of critical importance to consumers, especially those who own a Model 856 or 880 Daisy Airgun, the Provisional Settlement does not contain any retroactive corrective action, a crucial element of any settlement.³⁴ This failure to include a retroactive action means that nothing is being done to protect consumers who may suffer potential harms from these products, thus doing nothing to decrease the likelihood of injury and death from these airguns.

V. Conclusion

The decision of a majority of the Commission to approve this Settlement violated administrative procedures, which should render this Settlement illegitimate. Due to the fact that the administrative process was ignored, we are concerned that Daisy's perspective has been presented without the benefit of Complaint Counsel's comments and without the benefit of the rules of administrative procedure. Ultimately, this Settlement is unacceptably weak as it contains no retroactive corrective action, presents merely the possibility of voluntary standards on a reduced set of issues of concern, and prioritizes an education campaign that is already in effect and is untested as to its ability to prevent deaths and injuries from Daisy products. The breach of administrative procedures that have led to this Settlement, as well as the substance of the Settlement together set a terrible precedent for this Commission.

³³ See Statement of the Honorable Thomas H. Moore in the Matter of Daisy Manufacturing Company, CPSC Docket No. 02-2, November 14, 2003, p. 6.

³⁴ As cited in Commissioner Moore's statement, on page 3, in footnote 6, Commissioner Moore notes that in a Brief Regarding Respondent's Offer of Settlement, dated May 30, 2003: "As Respondent's counsel knows, the Compliance staff repeatedly indicated that it would not recommend the Commission's acceptance of Daisy's settlement offer unless it included an offer of corrective action to address the BB lodging defect."

The U.S. Consumer Product Safety Commission is charged with determining whether the Daisy Settlement serves the public interest, however a majority of the Commission made the determination about the efficacy of the Settlement without a review of whether this product created a substantial hazard. The final approval of the Settlement, which apparently was, in the final critical stages, based more upon an analysis of Daisy's financial condition than on whether the product was potentially harmful, fails to serve the public interest and should, therefore, be opposed by the Commission.

Respectfully Submitted,



Rachel Weintraub
Assistant General Counsel



Susan Peschin
Firearms Project Director

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Daisy

Stevenson, Todd A.

From: jeffsipling [jeffsipling@msn.com]
Sent: Friday, December 26, 2003 11:47 AM
To: Stevenson, Todd A.
Subject: Daisy Settlement : Public Comment supporting Settlement CPSC Docket No. 02-2

Reference CPSC Docket No. 02-2.

Mr. Todd Stevenson:

As we adapt to many sensitive issues that will or have already changes our lives in the world we live in today, I would like to briefly touch on the importance of key issues that have been difficult to regulate and control. Presidents Bush has recently placed guidelines on our school districts and the supporting teaching staff to assure quality education is in place with measurable results. Education is a life long and not limited to children, We all need to step up to support the changes in our word today. Education is not a one time event, it requires reinforcement and application with feedback. I will just mention a few issues today that require education that involves several layers of people and programs to promote successful change. Drugs, Smoking and Alcohol Abuse are a few that come to mind. The individual is the focus point for the problem but, there are others that must share responsibility for system failures. It is foreseeable that a small minority of persons will abuse and misuse any product ever Manufactured, this does not create a defect.

My point is that you can list many components into the root cause of failure.

- Raw Materials
- Manufacturing Failures
- Lack of Employee Training
- Lack of Documentation
- Lack of Supervision
- Failure to Retraining
- Lack of System Checks / Selling / Age Monitoring

Recent drinking accidents relating to injury and death have struggled over the last decade to elevate the awareness and penalties of drinking and driving. Today organizations that do not sell adult beverages are involved with this education process. This process must continue and beverage companies must join in creating the awareness and proper use and misuse of their products. In 2003 I recall just a

few adult beverage and tobacco corporations that finally are promoting risk advertisements that mention and suggest alternatives as part of a proactive approach. What about all the other corporations that remain silent? As we approach 2004 we certainly need to continue to provide educational training to consumers, sales, marketing and manufacturing communities to assure proactive awareness.

With reference to the proposed Daisy settlement, I strongly support the proposal to enhance the Safety Education and prevent misuse of air guns. This position supports the need to grow the awareness of proper handling and application of it's products in our environment today. It would be unrealistic for me to compare my safety training with Daisy in 1952 as compared to in today's world. My one point is that Daisy from it's

early existence in the late 1880's was engaged in active BB Training and BB Gun Safety. There were 25 other BB Gun manufactures that just sold there products and realized profits to owners, stockholders and business expense. Daisy elected to take the high road and

educate it's customers. Daisy was active in supplying Training and BB guns in the 1960's with the United States Army Quick Kill Program designed to turn inexperienced recruits into crack shots for the new kind of in-close warfare of Vietnam.

Daisy continues this training philosophy today with key points listed.

Daisy markets and sells the PowerLine guns to adults. All boxes, manuals, advertisements, website, etc., say repeatedly that these guns are for ages 16 and up, with adult supervision. Retailers must not sell minors these guns. Daisy is very careful and mindful of its marketing efforts, and always use our efforts to reinforce safety.

BB Gun education is the key to preventing injuries, using first-hand information from adults with personal experience as trained shooter is foremost and essential.

There would be no accidents if every gun is treated as if it is loaded and never pointed in an unsafe direction. Air guns are not toys. Adult supervision is required. Adults who allow a youth to use an air gun unsupervised are being neglectful.

Thank you for reviewing my comments.

Respectfully yours,

Jeffrey L. Sipling, CMfgE
6410 Deer Run CT
Spring Grove, PA 17362
717 225-6136

Daisy 21

Stevenson, Todd A.

From: tom mounsdon [mounsdon@grm.net]
Sent: Friday, December 26, 2003 10:46 PM
To: Stevenson, Todd A.
Subject: cpsc docket no. 02-2

dear mr. stevenson,

i am writing in support of the proposed settlement with daisy concerning airguns.

education is the key to prevent injuries. the few people who either through criminal or careless personal action should be held responsible for those actions.

any product can and probably will be misused and does not mean the product is defective.

life is not idiot proof.

thank you for your time

tom mounsdon d.d.s.
201 east 1st street
leon, iowa 50144

Daisy

Jerome J. and Rebecca G. Mahoney
5968 Sheffield Drive
Doylestown, PA 18901
215-297-0432

December 22, 2003

Consumer Product Safety Commission
Docket Number 02-2
Office of the Secretary
Washington D.C. 20207

RE: *Daisy Manufacturing Company*
Consumer Product Safety Commission Docket Number 02-2

Dear Sir/Madam:

By this letter, we urge the Commission to reject the proposed settlement agreement with Daisy Manufacturing Company.

Our son, Tucker, was catastrophically injured by a Daisy model 856 airgun when he was accidentally shot in the head by his best friend who believed the gun to be empty. The gun had been fired at least eight times, producing only air. No BB was audible when the gun was shaken. In short, the gun gave every indication of being empty, yet, because of the propensity for BB's to become lodged, one BB remained in the gun. Tucker died last month from his injuries.

During the course of our lawsuit against Daisy, Daisy admitted knowledge that BB's lodge in approximately one of every two of these guns and that this problem leads users of the guns to believe the guns to be empty when they are not. Daisy's own corporate documents concede that the defect poses a safety hazard. This problem poses the most insidious of dangers in that it causes people to treat the guns as if they were incapable of doing harm when, in fact, a hidden BB may remain. This is particularly hazardous when these products are in the hands of children, which they almost always are.

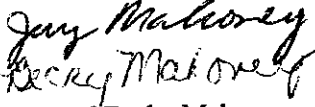
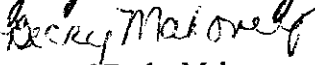
You are the government agency charged with the important responsibility of protecting the consuming public from dangerous products. We are urging you to put the safety of children ahead of the financial interests of the manufacturer of a lethally defective product. Acceptance of this settlement will send the message to all product manufacturers that the way to avoid having to recall a defective product is to cry poor. If a company manufactures a dangerous product, particularly one used by children and capable of such lethal consequences, its responsibility to remove the product from the marketplace, or to answer to the CPSC, should not be dependent upon its corporate finances.

Consumer Product Safety Commission
Docket Number 02-2
Office of the Secretary
December 22, 2003
Page Two

It is important for you to know that in our lawsuit against Daisy, we learned that Daisy is one of a group of related companies in which a Connecticut partnership has an 85 % ownership stake. It is apparent that this conglomerate was organized by the partnership into several separate companies in order to provide Daisy with precisely the argument they made in our lawsuit against them and that they make now to the CPSC, e.g., that they do not have the financial wherewithal to take corrective action with respect to the defective guns that are already in the hands of the public. This argument did not stop Daisy, however, from paying an enormous sum of money to resolve our lawsuit against them. Further, we do not believe that the partnership that owns Daisy would permit any action taken by the CPSC to put Daisy out of business. There is clearly the financial wherewithal there to take appropriate corrective action if so ordered.

As concerned as we are with the substance of the "settlement agreement", we are as concerned with the manner in which it was reached. It is apparent from our reading of Commissioner Moore's opinion that this settlement was consummated in violation of your own procedures and against the wishes of the compliance staff and administrative law judge. We are puzzled that two commissioners who play such a vital role in standing between dangerous products and the consuming public would violate the CPSC's own procedures for the benefit of Daisy and to the detriment of the consuming public and the CPSC's mission. We hope that you will reconsider.

There are millions of these guns still in closets, garages and children's bedrooms all around the country, which have the potential to cause a tragedy such as that which injured our son. The "settlement" does nothing to remove these guns from the marketplace or even provide notice of the defect to owners of these guns. Daisy can and should do both of those things and the settlement should be rejected unless Daisy is required to do those things.

Very truly yours,


Jay and Becky Mahoney

Daisy
Commitment 23

December 26, 2003

Todd Stevenson
Office of the Secretary
Consumer Product Safety Commission
Washington, D.C. 20207

Dear Mr. Stevenson,

I am writing this letter in support of Daisy Outdoor Products. The National Wild Turkey Federation recognizes Daisy as a partner in the teaching of shooting safety, ethics and responsibility and the safe enjoyment of a great American tradition.

Daisy has been a partner of the Federations' JAKES program for the past two years. JAKES stands for Juniors Acquiring Knowledge, Ethics and Sportsmanship and is the Federation's education and outreach program for youth ages 17 and under. By joining forces we have reached over 213,000 JAKES members through magazine articles, safety contests, and JAKES Events where youth are provided with entertaining educational opportunities to learn and practice the Daisy Safety Rules.

Like Daisy, we believe that education is key to the safe, ethical and responsible use of firearms as well as the conservation of our natural resources. Like Daisy, we strongly support programs like 4-H Shooting Sports that promote youth development through the shooting sports while also promoting the highest standards of safe and ethical behavior. Shooting education programs like these have been shown to help youth develop self-confidence, personal discipline, responsibility, teamwork, self-esteem, sportsmanship and conservation ethics.

In addition, hunting and the shooting sports are rich American traditions. Programs like these help continue this tradition safely and enjoyably through the involvement of the whole family.

We are proud to work with Daisy Outdoor products to provide shooting safety education to young people.

Sincerely,
Christine K. Rolka
NWTF Education Coordinator

Stevenson, Todd A.

From: Christine Rolka [crolka@nwtf.net]
Sent: Tuesday, December 30, 2003 4:54 PM
To: Stevenson, Todd A.
Subject: Daisy Support Letter

Christine K. Rolka, Education Coordinator
National Wild Turkey Federation
P.O. Box 530
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Edgefield, SC 29824
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12/31/2003