



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

Record of Commission Action  
Commissioners Voting by Ballot \*

Commissioners Voting: Chairman Ann Brown  
Commissioner Mary Sheila Gall  
Commissioner Thomas H. Moore

ITEM

Proposed Settlement: Red Rock Trading Co., Inc./Blackjack Fireworks, Inc., CPSC  
Docket No. 00-C0010

DECISION

The Commission voted 2-1 to provisionally accept the Settlement Agreement and Order containing a civil penalty in the amount of \$90,000 in the matter of Red Rock Trading Co., Inc./Blackjack Fireworks, Inc., CPSC Docket No. 00-C0010. Unless a commenter asks the Commission not to accept the Settlement Agreement and Order within 15 days after publication in the Federal Register, the Agreement and Order will be deemed finally accepted on the 16th day. Chairman Brown and Commissioner Moore voted to provisionally accept the agreement. Commissioner Gall voted to reject the agreement. Chairman Brown and Commissioner Gall filed statements concerning their respective votes, copies of which are attached.

For the Commission:

A handwritten signature in cursive script, appearing to read "Sadye E. Dunn".

Sadye E. Dunn  
Secretary

\* Ballot due June 2, 2000

STATEMENT OF CHAIRMAN ANN BROWN IN SUPPORT OF SETTLEMENT OF  
CIVIL PENALTY WITH RED ROCK TRADING, INC./BLACKJACK FIREWORKS,  
INC.

June 2, 2000

After reviewing the facts of this case, I support the staff's proposed \$90,000 settlement. While I would have voted to seek a greater penalty if the matter were litigated, I recognize that settlement saves the Commission's precious enforcement resources.

For more than eight years, Red Rock Trading/Blackjack Fireworks imported 96 kinds of violative fireworks representing almost 15 million individual fireworks items. Fifty-two of these violations occurred during the statute of limitations, thirty-seven of these were severe. A total of 742,823 devices had to be either re-exported, destroyed or reconditioned during that time period. When the staff asked the firm to account for all of these devices, it could not do so.

In evaluating the proposed settlement, I have considered the number of violative products involved and the other factors set forth in the Federal Hazardous Substances Act at 15 U.S.C. § 1264(c)(4). Based on the number of products, the firm faces a potential penalty of many millions of dollars.

The Shelton case, decided in 1999, has been cited as guidance for the amount of the penalty to impose here. If Shelton is to be used as a benchmark, we should adhere to the Court's reasoning. In Shelton, the Court stated that it would "normally settle" for a fine of \$351,909, but would apply a fine of \$100,000 under the "special circumstances" of that case, because it was a "test-case, for which the industry has not previously prepared" and which had been "unusually costly to defend." In contrast, the case now before the Commission does not involve "special circumstances," is not a "test case," and has not been "unusually costly to defend." Moreover, in light of Shelton, the industry cannot possibly be said to be unprepared this time. If Shelton is to serve as a benchmark, the appropriate figure to use is the figure the Shelton Court intended is used – \$351,909.

Red Rock Trading/Blackjack Fireworks admits to gross sales of nearly \$2.5 million and agreed that it could pay a penalty of \$90,000. The risk of severe injury from these devices cannot be disputed, even though the number of actual injuries may be small due to proactive surveillance work by CPSC and U.S. Customs staff.

In addition to these factors, I considered the arguments in mitigation made by the firm through its submissions. The staff has raised significant doubts about the extent of the firm's efforts to comply with our laws. Their recent conversion to a reasonable testing plan presents hope that this penalty has motivated them to comply with our laws in the future, but we have not yet been able to test this.

I find the \$90,000 settlement fair given the factors statute to consider and the savings of Commission resources inherent in the process require me. Any pattern of future violations should be dealt with more severely.



**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

WASHINGTON, D.C. 20207

**STATEMENT OF THE HONORABLE  
MARY SHEILA GALL IN OPPOSITION  
TO SETTLEMENT OF CIVIL PENALTY WITH  
RED ROCK TRADING CO., INC/BLACKJACK FIREWORKS, INC.**

June 2, 2000

I do not object to the imposition of a civil penalty on Red Rock Trading Co., Inc./Blackjack Fireworks, Inc. (Red Rock/Blackjack) for violations of Commission regulations concerning fireworks, but I believe that the amount of \$90,000 is excessive. In 1999 the U.S. District Court for the Western District of Missouri imposed a fine of \$100,000 on Shelton Wholesale (Shelton) for violations of the Commission's fireworks regulations. The circumstances of the violations in the case of Red Rock/Blackjack were not as serious as those in the case of Shelton. In addition, there were mitigating factors, most notably the attempt of Red Rock/Blackjack to test its fireworks, and its willingness to sever relations with its Chinese suppliers who shipped non-complying fireworks, that were not present in the Shelton case. These circumstances do not justify a civil penalty that is 90% of that in the Shelton case, and accordingly, I vote to reject the proposed civil penalty settlement with Red Rock/Blackjack.