

<p style="text-align: center;">In the matter of</p> <p>DAISY MANUFACTURING COMPANY, Inc., doing business as Daisy Outdoor Products 400 West Stribling Drive Rogers, Arkansas 72756</p> <p style="text-align: center;">Respondent.</p>	<p>)</p>	<p>CPSC Docket No.: 02-2</p>
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COMPLAINT

Nature of Proceedings

1. This is an administrative proceeding pursuant to Section 15 of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. § 1274, and Section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2064, for public notification and remedial action to protect the public from substantial risks of injury and substantial product hazards created by Respondent Daisy Manufacturing Company, Inc.'s Powerline Airguns.

2. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission, 16 C.F.R. Part 1025.

Jurisdiction

3. This proceeding is instituted pursuant to the authority contained in Sections 15(c), (d) and (f) of the CPSA, 15 U.S.C. §§ 2064(c), (d) and (f), and Sections 15(c)(1), (2) and (e) of the FHSA, 15 U.S.C. §§ 1274 (c)(1), (2) and (e).

Parties

4. Complaint Counsel is the staff of the Legal Division of the Office of Compliance (hereinafter referred to as "Complaint Counsel") of the United States Consumer Product Safety Commission (hereinafter referred to as "The Commission"), an independent regulatory commission established by Section 4 of the CPSA. 15 U.S.C. § 2053.

5. Respondent Daisy Manufacturing Company, Inc. (hereinafter referred to as "Daisy") is a Delaware Corporation, with its principal place of business located at 400 West Stribling Drive, Rogers, Arkansas.

6. Daisy "manufactures" Powerline Airguns and is, therefore, a "manufacturer" of consumer products as that term is defined in the CPSA, 15 U.S.C. § 2052(a)(4).

The Consumer Product

7. The Daisy Powerline Airgun is a pneumatic powered or carbon dioxide ("CO₂") charged gun designed to shoot BBs or pellets at a rate over 350 feet per second (fps). From September, 1972 to January, 2001, Daisy manufactured approximately 4,925,353 model 880 Powerline Airguns including the following models and product numbers: 880, 881, 882, 1880, 1881, 9072, 9082, 9083, 9093, 9393, 9382, 3305, 3480, 3933, 1455 and 5150. Daisy continues to manufacture the model 880 Powerline Airgun.

8. From 1984 through January, 2001, Daisy manufactured approximately 2,353,798 model 856 Powerline Airguns including the following models and product numbers: 860, 856, 2856, 7856 and 990. Daisy continues to manufacture the model 856

Powerline Airgun. (All models recited in paragraphs 7 and 8 above are hereinafter referred to as “Daisy Powerline Airguns.”)

9. The retail cost of the Daisy Powerline Airgun currently being sold varies from approximately \$39.95 to \$67.95.

10. Daisy has and continues to produce and distribute the Powerline Airguns in United States commerce for sale to a consumer for use in or around a permanent or temporary household or residence, in recreation or otherwise or for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, in recreation or otherwise. These airguns are, therefore, “consumer products” that are “distributed in commerce.” 15 U.S.C. § 2052(a)(1) and (11).

COUNT 1

The Daisy Powerline Airguns Contain Defects

Which Creates a Substantial Product Hazard

Defect

11. Paragraphs 1 through 10 are hereby realleged, and incorporated by reference as though fully set forth herein.

12. A user can load 50 to 100 BBs through a loading door on the Daisy Powerline Airguns, and into the magazine reservoir. The consumer may then pull a bolt handle toward the rear to cock the gun, and close a pump valve. When the muzzle is raised, at least 45° above the horizon, and the gun is not tilted towards either side, BBs move from the magazine, via gravity, onto a feed ramp, and to a loading port. This

allows a magnetic bolt tip to pick up a BB from the feed ramp. The user can then close the bolt by pushing the handle forward, and chamber the BB into the rifle.

On the pneumatic versions of these airguns, the user provides power to the Daisy Powerline Airguns by pumping the forearm lever on the gun. This pumping process builds air pressure and determines the speed and power with which the projectile is ultimately expelled from the airgun. On the CO₂ cartridge versions of the gun, the consumer can insert a replaceable CO₂ cartridge which provides all the power needed to expel the projectile.

13. The Daisy Powerline Airguns have a rifle barrel, which is concentrically supported and surrounded by an outer barrel casing. These airguns have a “virtual magazine”, whose borders consist of the receiver halves, a casing surrounding the cylindrical pump that holds the projectile propellant, the outer barrel casing, and the inner rifle barrel’s forward support tab. The Daisy design permits BBs to move freely around the inside of the magazine area.

14. During normal use of the Daisy Powerline Airguns, BBs may become lodged within the “virtual magazine” of the gun. A consumer using the gun may fire the gun repeatedly or shake the gun and receive no visual or audible indication that the airgun is still loaded.

15. Although Daisy made some changes to the Powerline Airguns to try to lessen the likelihood that BBs will lodge in the gun, BBs can still lodge inside of them. The Daisy Powerline Airguns design, and manufacturing variances, prevent BBs from loading into the firing chamber and lead consumers to believe the airgun is empty, are,

therefore, defective within the meaning of Section 15 of the CPSA, 15 U.S.C. § 2064, and Section 15 of the FHSA, 15 U.S.C. § 1274.

16. Because these Daisy airguns can lodge BBs or fail to feed BBs into the firing chamber under normal conditions of use, consumers may be unaware when a BB loads unless they look into the loading port. Daisy made design decisions that impair the ability of the user to ascertain whether a BB is loaded. Daisy manufactures BBs that are silver in color. The Powerline Airgun's feed ramp is made of a zinc material. Due to the color similarity, a user operating the airgun rapidly may not be able to discern the presence of a BB even if he is looking directly into the loading port. Further, Daisy designed the airgun so a user can install an optional riflescope on top of the receiver halves and over the loading port. The placement of the riflescope can obscure the user's ability to see a BB in the loading port.

17. Daisy's design relies unduly on consumers to see a BB in the loading port and then interferes with that ability in reasonably foreseeable circumstances. This design constitutes a defect under Section 15 of the CPSA, 15 U.S.C. § 2064, and Section 15 of the FHSA, 15 U.S.C. § 1274.

18. Daisy's Powerline Airguns use a safety mechanism that does not automatically engage when the airgun is loaded and ready to fire. An automatic safety design would prevent against accidental discharge.

19. The failure to incorporate an automatic safety into the Daisy Powerline Airgun constitutes a design defect under Section 15 of the CPSA, 15 U.S.C. § 2064, and Section 15 of the FHSA, 15 U.S.C. § 1274.

Substantial Risk of Injury

20. All of the approximately 7,279,151 Daisy Powerline Airguns, and the Powerline Airguns currently being sold, contain the defects alleged in paragraphs 11 through 19 above.

21. Most of the consumers using these airguns will be children or young adults. It is likely that these consumers will operate the gun rapidly and not continue to check the loading port to determine whether any BBs are feeding into the chamber when they believe the airgun is no longer loaded. It is also reasonably foreseeable consumers, during use, will be less careful with a gun they believe is not loaded. A BB that had previously been lodged or misfed can then be loaded, and fired from the airgun. Under these circumstances, BBs are likely to be fired at and strike the consumer or another person in the vicinity.

22. It is likely consumers will carry and handle the Daisy Powerline Airguns when they are cocked and loaded. Since these airguns do not have an automatic safety, it is likely the gun will be discharged during handling in the direction of the user or another person in the vicinity.

23. At close range, BBs fired from these airguns can penetrate tissue and bone, damaging internal organs, such as the brain, heart, liver, spleen, stomach, bowel and colon. The Commission has learned of at least 15 deaths and 171 serious injuries, including brain damage and permanent paralysis, caused by the defects in the Daisy Powerline Airguns. Most of these injuries were to children under the age of 18.

24. The defects in the Daisy Powerline Airgun create a substantial risk of injury, and the airguns create a substantial product hazard within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

COUNT 2

The Daisy Powerline Airguns Create
a Substantial Risk of Injury to Children

25. Paragraphs 1 through 24 are hereby realleged, and incorporated by reference as though fully set forth herein.

26. The Daisy Powerline Airguns were marketed for, and intended for the use of, children. Although Daisy marketed the airguns initially with no age recommendation, it later labeled them for users 14 and older and eventually 16 and older. A substantial number of the airguns are intended for use by children.

27. Given the pattern of the defects alleged above, the number of Powerline Airguns distributed in commerce, and the likelihood of further serious injury and death, especially to children, these airguns present a substantial risk of injury to children. Sections 15(c)(1) and (c)(2) of the FHSA, 15 U.S.C. § 1274(c)(1) and (c)(2).

Relief Sought

Wherefore, in the public interest, Complaint Counsel requests that the Commission:

A. Determine that Respondent Daisy's Powerline Airgun presents a "substantial product hazard" within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

B. Determine that Respondent Daisy's Powerline Airgun presents a "substantial risk of injury to children" within the meaning of Sections 15(c)(1) and (c)(2) of the FHSA, 15 U.S.C. § 1274(c)(1) and (c)(2).

C. Determine that public notification under Section 15(c) of the CPSA, 15 U.S.C. § 2064(c), and Section 15(c)(1) is required to protect the public adequately from the substantial product hazard and substantial risk of injury to children presented by the Powerline Airgun. We also want to prevent future distribution and order that the Respondents:

(1) Give prompt public notice that the Daisy Powerline Airgun presents a serious injury and death hazard to consumers and of the remedies available to remove the risk of injury and death;

(2) Mail such notice to each person who is or has been a distributor or retailer of the Daisy Powerline Airgun;

(3) Mail such notice to every person to whom Respondents know the Daisy Powerline Airgun were delivered or sold; and

(4) Include in the notice required by (1), (2) and (3) above a complete description of the hazard presented, a warning to stop using the Daisy Powerline Airgun immediately; and clear instructions to inform consumers how to avail themselves of any remedy ordered by the Commission.

D. Determine that action under Section 15(d) of the CPSA, 15 U.S.C. § 2064(d), and Section 15(c)(2) of the FHSA, 15 U.S.C. § 1274(c)(2) is in the public interest and order Respondents:

(1) To cease distribution of all Daisy Powerline Airguns until such time as all defects in the airguns are eliminated and the risk of injury reduced in a manner satisfactory to the Commission.

(2) With respect to Daisy Powerline Airguns already manufactured and distributed in commerce, Daisy must

(a) elect to repair all the Powerline Airguns so they will not create a serious injury and death hazard; replace all the Powerline Airguns with a like or equivalent product which will not create a serious injury or death hazard; or refund to consumers the purchase price of the Powerline Airgun;

(3) make no charge to consumers and reimburse them for any foreseeable expenses incurred in availing themselves of any remedy provided under any order issued in this matter;

(4) reimburse distributors and dealers for expenses in connection with carrying out any Commission Order issued in this matter;

(5) submit a plan satisfactory to the Commission, within ten calendar (10) days of service of the final Order, directing that actions specified in paragraphs D(2) through D(4) above be taken in a timely manner;

(6) submit monthly reports documenting progress of the corrective action program;

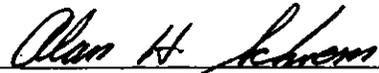
(7) For a period of five (5) years after entry of a Final Order in this matter, keep records of its actions taken to comply with paragraphs D(2) through D(4) above, and supply these records upon request to the Commission for the purpose of monitoring compliance with the Final Order.

E. Daisy shall notify the Commission at least 60 days prior to any change in their business (such as incorporation, dissolution, assignment, sale or petition for bankruptcy) that results in, or is intended to result in, the emergence of successor ownership, the creation or dissolution of subsidiaries, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission.

F. Daisy shall take such other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA and FHSA.

Issued by Order of the Commission

Dated this 30th day of October 2001



Alan H. Schoem
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U.S. Consumer Product Safety Commission
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CERTIFICATE OF SERVICE

TO BE PROVIDED AFTER SERVICE HAS BEEN COMPLETED

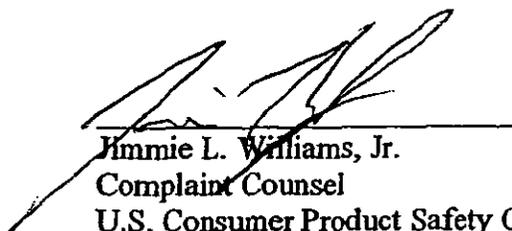
5. Information provided by consumers pertaining to product liability lawsuits filed against Daisy Manufacturing Company.

6. CPSC In-Depth Epidemiological Investigation Reports of personal injury and fatality incidents involving the Powerline Airgun.

7. CPSC Product Safety Assessments from the Directorates for Engineering Sciences, Economic Analysis and Health Sciences concerning the Powerline Airgun.

8. Technical reports and notes from outside consultants retained by CPSC staff concerning the Powerline Airgun.

Dated this 30th day of Oct, 2001



Jimmie L. Williams, Jr.
Complaint Counsel
U.S. Consumer Product Safety Commission
Office of Compliance
4330 East West Highway
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(301) 504-0626, ext. 1376

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to the within action. I hereby certify that on October 30, 2001, I have served the attached document described as **LIST AND SUMMARY OF DOCUMENTARY EVIDENCE** on all parties and participants of record in these proceedings as follows:

SEE ATTACHED SERVICE LIST

 By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing for mailing. Under the practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepared in the ordinary course of business.

 X By Personal Service. I delivered such envelope by hand to the addressee.

Executed on October 30, 2001, at Bethesda, Maryland. Time:

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Print Name

Signature

For: U.S. Consumer Product Safety Commission

SERVICE LIST

Aaron Locker, Esq.
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420 5th Avenue, 26th Floor
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(212) 391-5200
(212) 391-2035 fax

Attorneys for Daisy Manufacturing
Company
(Courtesy Copy)

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to the within action. I hereby certify that on October 26, 2001, I have served the attached document described as COMPLAINT on all parties and participants of record in these proceedings as follows:

SEE ATTACHED SERVICE LIST

 By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing for mailing. Under the practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepared in the ordinary course of business.

X By Personal Service. I delivered such envelope by hand to the addressee.

Executed on October 30, 2001, at Bethesda, Maryland. Time: 12:42

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

CAROLYN K. FAIK
Print Name

Carolyn K. Faik
Signature

For: U.S. Consumer Product Safety Commission

SERVICE LIST

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 X By Personal Service. I delivered such envelope by hand to the addressee.

Executed on October 30, 2001, at Bethesda, Maryland. Time:

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Bob R. Baxter

Print Name

Bob R. Baxter

Signature

10/30/2001

11:45 CST

For: U.S. Consumer Product Safety Commission

SERVICE LIST

Marianne McBeth, Esq.
Daisy Manufacturing Company
400 W. Stribling Drive
Rogers, Arkansas 72756

Agent for Service of Process for
Daisy Manufacturing Company



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

MINUTES OF COMMISSION MEETING (CLOSED TO THE PUBLIC)

October 30, 2001
4330 East West Highway
Bethesda, Maryland

Chairman Ann Brown convened the October 30, 2001, meeting of the U. S. Consumer Product Safety Commission that was closed to the public. Commissioner Mary Sheila Gall and Commissioner Thomas H. Moore were present.

ITEM: Enforcement Matter OS#4312 – Possible Administrative Complaint Regarding Daisy Manufacturing Company Powerline Airguns

The Commission considered the recommendation of the staff to issue an Administrative Complaint under Section 15 of the Consumer Product Safety Act (CPSA) and Section 15 of the Federal Hazardous Substances Act (FHSA) against certain model Daisy Manufacturing Company Powerline Airguns. The Commission was briefed on this matter by the staff at the Commission meeting of October 23, 2001. (Ref: staff briefing packages dated October 4 and 16, 2001.)

On motion of Chairman Brown, the Commission voted (2-1) to authorize the issuance of an Administrative Complaint under Section 15 of the CPSA, and Section 15 of FHSA, against Daisy Manufacturing Company, seeking a determination that certain models of Powerline Airguns, manufactured by Daisy – models 880, 881, 882, 1880, 1881, 9072, 9082, 9083, 9093, 9393, 9355, 9382, 3305, 3480, 3933, 3934, 1455, 5150, 860, 856, 7856, and 990 – contain defects that present a substantial risk of injury to the public, and also authorizing the staff to compel Daisy to notify consumers about the risk of severe injury or death with these air guns, and to take remedial steps to protect consumers. Chairman Brown and Commissioner Moore voted to issue an Administrative Complaint. Commissioner Gall voted not to issue the Administrative Complaint.

There being no further business on the agenda, Chairman Brown adjourned the part of the meeting closed to the public. Commissioner Gall filed a statement concerning the Daisy complaint, copy attached.

For the Commission:

Todd A. Stevenson
Acting Secretary to the Commission

Attachment



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

**STATEMENT OF THE HONORABLE MARY SHEILA GALL
IN OPPOSITION TO ISSUANCE OF ADMINISTRATIVE
COMPLAINT AGAINST DAISY MANUFACTURING COMPANY**

October 30, 2001

Today I voted against the issuance of an administrative complaint against Daisy Manufacturing Company (Daisy) seeking to force the recall of certain model air rifles. This complaint is highly politicized, it is not well founded in law or the evidence and it should not have been brought.

Procedural Irregularities

The timing of the filing of this Complaint is one in a chain of procedural irregularities that have characterized the handling of the entire Daisy matter. Yesterday some Commission staff furnished the confidential draft Complaint to a reporter and other news organizations before the Commission voted on the issue. News organizations were also informed that the Commission would be holding a press conference at 2:00 p.m. today to announce a matter concerning a consumer product that would involve the mother of a victim. Today the Commission voted to authorize the issuance of the complaint. Normally Commission staff contacts the company involved and gives it one last chance to settle the matter. In this case, however, the Complaint, once authorized, was rushed to the Office of the Secretary to be filed so that the 2:00 p.m. press conference deadline could be met.

Other irregularities have characterized the handling of this case. Although the Commission staff retained both a gunsmith expert and a materials science expert to examine Daisy BB guns alleged to lodge BBs in the magazine or elsewhere, the Commission has no written report from either of these experts. Nor was the work of these experts reviewed by the Commission's own laboratory staff. When I inquired about the reason why no written report was prepared, I was told that it was part of a litigation strategy. From this I conclude that the decision was made early on to litigate this case, and the case was prepared with that objective in mind, rather than the ordinary objective of informing the Commission as

thoroughly as possible prior to a vote. In addition to the lack of experts' reports, the staff provided the Commission with only the most rudimentary financial information concerning Daisy's ability to conduct the huge recall contemplated by the Complaint, and the staff never sought a Subpoena and Special Order to compel Daisy to provide financial information. Finally, the briefing memo contains glaring errors of fact, such as a description of a BB being "chambered" into a rifle's "muzzle" and the assertion that Daisy BB guns are more "powerful" than .38 caliber revolvers.

The best explanation for these procedural irregularities can be found in Chairman Ann Brown's August 8, 2001 statement announcing her departure. In that statement she announced both the result of this investigation ("a lawsuit regarding a very dangerous product [which everyone at the Commission knew to be Daisy BB guns] that kills and maims children") and its timetable ("before I leave"). Yet the Commission did not receive its briefing package in the Daisy matter until October 4, 2001. As the Queen of Hearts said in Lewis Carroll's *Alice in Wonderland*: "Sentence first, verdict afterwards."

Alleged Defects Common to Airgun Designs

The staff's proposed complaint alleges that certain characteristics of the Daisy air rifles in question constitute defects. These characteristics are: (1) the gravity feed magazine design; (2) the color of the feeding ramp; (3) the capability to install a telescopic sight that may impede the ability of the shooter to see a BB in the loading port prior to placing it in the chamber; and (4) the lack of a safety mechanism that resets after each shot. The proposed complaint also claims that Daisy's marketing practices and how users are warned about the hazards associated with the use of the airguns constitute a defect. I find none of these theories of defect persuasive when applied to the specific Daisy designs in question, because they are industry-wide.

The gravity feed magazine is a very common design feature in airguns and has been used for around 100 years. Virtually every manufacturer of airguns either uses or has used a gravity feed magazine design in its airguns. While a gravity feed mechanism may, on occasion, result in a failure to feed a projectile into the loading port, that is also true of controlled feed mechanisms. If the gravity feed mechanism is now to be labeled as defective, the Commission should seek changes that apply to the entire industry through either the voluntary standards setting process, or through the regulatory procedures available to the Commission.

Similar considerations apply to the other alleged defects of Daisy BB guns that are common to all airguns. The Complaint alleges that the color of the Daisy BB gun feed ramp should contrast with the color of Daisy BBs. Feed ramp color and BB color, if they are considered at all, need to be considered through voluntary standards, or through regulation, and certainly not in a recall. The presence of a telescopic sight on a BB gun enhances accuracy for most users. Whether such a sight should be permitted, and how it should be mounted on the airgun's receiver are matters much better suited to an industry-wide solution rather than a recall aimed at specific products. Finally, a safety that resets automatically has been incorporated in a few airgun and firearm designs. Most airgun and firearm designs, however, do not have this feature, and commentators divide in their opinions on whether it enhances or detracts from safety. Again, this issue should be considered in the context of voluntary standards or regulation, not in a recall aimed at one manufacturer and two models of airguns.

Finally, Daisy is accused in the Complaint of marketing the 856 and 880 model airguns to "children," which the Complaint defines as persons under 18. Both the Daisy BB gun packaging and the literature accompanying the rifle, however, contain the warning required by the voluntary standard. Whether these warnings are adequate or whether the age recommendations for high velocity air guns should be changed are industry-wide issues, and should not be litigated in the context of a specific recall.

Lodging of BBs in Daisy BB Guns

The most serious allegation of the Complaint, and one that may be unique to Daisy, is that BBs may lodge in the mechanism of the 856 and 880 airguns without the shooter realizing that they are there. Outside experts hired by the Commission staff, and other experts appear to have determined that this lodging problem exists in the Daisy BB guns and the specific places in which BBs lodge may be unique to the Daisy design. Obviously a BB lodging in the mechanism is a cause for concern. A shooter should be able to unload the rifle with a reasonable degree of assurance that no BBs remain in the mechanism. I note that Daisy has made design changes to the 856 intended to remedy this situation and that the present 856 is a single shot design that dispenses entirely with magazine.

The existence of a problem in a design, however, is not synonymous with either a defect or a substantial product hazard. I note first that the Commission laboratory staff has never been able to replicate the lodging problem, in spite of repeated attempts to do so. In fact, the Commission's Compliance staff conducted

six separate investigations of Daisy BB guns between 1981 and 1999. (There was additional Commission activity *considering petitions five times* between 1975 and 1989, and a *special staff project and report on airgun safety in 1997*.) At no time was the lodging problem identified as either a defect or a substantial product hazard. This does not mean that the Commission is forever precluded from considering the issue, but it does mean that we should be very careful before making a call of defect or of substantial product hazard.

Experience with Daisy BB guns by their users also leads to the conclusion that the lodging problem does not constitute a substantial product hazard. Daisy has sold nearly five million examples of the Model 880 between 1972 and 2001, and it has sold approximately 2.4 million examples of the Model 856 between 1984 and 2001. The staff has determined that the lodging problem has been associated with three deaths and 47 serious injuries during this period of time. While any death or serious injury is tragic and heart-rending for the family involved, I note that the *average* number of deaths per year associated with the use of bicycles by children aged under 15 is 250.

Even if a BB is lodged in the magazine or elsewhere in the mechanism of a Daisy BB gun, it cannot be discharged until the shooter performs several deliberate actions:

- Pull the bolt handle to the rear. (At this point the shooter has the opportunity to observe the presence of the BB in the loading port.)
- Push the bolt handle forward.
- Pump up the gun to the desired power level.
- Disengage the safety if it has been engaged.
- Pull the trigger.

Thus, the hazard of a BB lodged in the gun appears only when the shooter deliberately places it in the chamber through the ordinary operation of the mechanism. Moreover, several of the serious accidents involved with these Daisy BB guns have resulted from reckless conduct; where shooters deliberately pointed a gun that had been pumped up at the head or torso of another person and pulled the trigger. Such conduct is a violation of the most basic rules of airgun and firearms safety.

Conclusion

This Compliance action has been the subject of some of the most intense pressure and emotion of any topic during my service as a Commissioner. On the one hand, we have witnessed the devastating results of accidents involving these airguns and the emotional impact that they have on the victims' families. On the other hand, Commissioners' offices have received dozens of calls and hundreds of e-mails from persons who sincerely enjoy the use of airguns, use them safely, and believe that a recall is unjustified. I have considered both of these points of view carefully. My decision is, however, based on the law and the evidence before the Commission. Upon that law and that evidence, I do not believe that it is appropriate for the Commission to authorize the issuance of the Complaint against Daisy. I do believe that the topic of airgun safety merits further study, and a decision in the future by the Commission to possibly use the voluntary standards setting process, the regulatory process, the compliance process, the information and education process, or some mixture of these processes, to achieve the maximum amount of safety consistent with the nature of these products.

My vote today, and this statement, are based on the record before me at this time. The administrative complaint has been filed and a record will be developed by the Commission staff and by Daisy before an administrative law judge. Any future votes that I may take in this matter will be based on that record as it stands at that time.