UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

CPSC/OFC OF THE SECRETARY
FILED
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In the Matter of	:	
CENTRAL SPRINKLER CORP.	:	CPSC DOCKET NO. 98-2
and	:	
CENTRAL SPRINKLER CO.,	:	
Respondents	:	

ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENTS CENTRAL SPRINKLER COMPANY AND CENTRAL SPRINKLER CORPORATION

Respondents Central Sprinkler Company ("Central") and Central Sprinkler Corporation ("CSC"), through their undersigned attorneys, hereby respond to the Complaint filed in the above matter. Respondents submit this Answer pursuant to the requirements of 16 C.F.R. § 1025.12, which mandates the filing of an answer within 20 days after the service of the Complaint, and without prejudice to their Motion to Dismiss the Complaint which is being filed contemporaneously with this Answer. In response to the numbered paragraphs of the Complaint, Respondents aver as follows:

1. Admitted in part and denied in part. It is admitted only that this is an administrative proceeding pursuant to Section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2064, and that the proceeding is governed in part by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission, 15 C.F.R. Part 1025. The remaining allegations of this paragraph are denied.

2. Denied. Respondents specifically deny that the Consumer Product Safety Commission ("CPSC") has jurisdiction over the products at issue. To the contrary, the CPSC lacks jurisdiction over the products at issue because they are not consumer products within the meaning of the CPSA. By way of further answer, Respondents have filed simultaneously with this Answer a Motion to Dismiss the Complaint that raises the jurisdictional issues with greater specificity. Moreover, the allegations of this paragraph constitute legal conclusions to which no responsive pleading is required and they are therefore deemed denied.

3. Admitted.

4. Admitted.

5. Denied. It is specifically denied that respondent CSC manufactures any products of any kind. Moreover, although respondent Central manufactures products distributed in commerce, Respondents deny that the products at issue are consumer products within the meaning of the CPSA. By way of further answer, Respondents have filed simultaneously with this Answer a Motion to Dismiss the Complaint that raises the jurisdictional issues with greater specificity. Moreover, the allegations of this paragraph constitute legal conclusions to which no responsive pleading is required and they are therefore deemed denied.

6. Admitted in part and denied in part. It is admitted only that Central has manufactured various models of Omega-brand automatic fire sprinkler heads, including model numbers C-1; C-1A; C-1A PRO; C-1A PRO ID; EC-20; EC-20A; EC-20AID; HEC-12; HEC-12 ID; HEC-12 PRO; HEC-12A PRO; HEC-12 RES; HEC-20; HEC-20 ID; R-1; R-1A; R-1M; AC; M; and Flow Control, and that these devices are designed to be incorporated into an automatic fire-sprinkler system to suppress and/or extinguish fire. The remaining allegations of this

paragraph are denied. Moreover, the allegation that Omegas are consumer products is a legal conclusion to which no responsive pleading is required and it is therefore deemed denied.

7. Respondents incorporate paragraphs 1 through 6 of their Answer as though fully set forth at length.

8. Admitted in part and denied in part. It is admitted that Standard for Safety UL 199 has been adopted by Underwriters Laboratories, Inc. ("UL") as a standard for determining whether new, uninstalled sprinkler heads can be listed by UL for installation in automatic fire sprinkler systems, and that Omega sprinkler heads are designed to be installed in sprinkler systems that conform to, inter alia, National Fire Protection Association ("NFPA") Standard 13. It is further admitted that the Omega heads at issue have been, and continue to be, listed by UL for installation in automatic fire sprinkler systems. The remaining allegations of this paragraph are denied.

9. Denied as stated. In the Omega sprinkler heads, a fusible alloy pellet is compressed with a bearing disc into a copper housing by a ball plunger. Heat is absorbed by the heat collecting fins and conducted to the alloy pellet. At the rated temperature, the alloy melts, causing the ball plunger to drop, freeing balls from a retaining groove. This movement allows system water pressure to force the orifice sealing mechanism and deflector assembly open. Water is then discharged in a designed flow pattern.

10. Denied. Upon information and belief, the allegation that Omegas do not and will not function in a significant percentage of instances is based on a hypothetical testing standard that is not intended to and does not predict whether, in fact, the tested sprinkler heads will fail in a fire in the actual buildings from which the tested heads were taken. Moreover, the allegations

of this paragraph do not comply with 16 C.F.R. § 1025.11(b)(3), which requires a "clear and concise statement of the charges, sufficient to inform each respondent with reasonable definiteness of the factual basis or bases of the allegations of violation or hazard." By way of further answer, Respondents have filed simultaneously with this Answer a Motion to Dismiss the Complaint that raises with greater specificity the failure of the Complaint to meet the requirements of 16 C.F.R. § 1025.11(b)(3). Finally, the allegation that Omegas are defective pursuant to 15 U.S.C. § 2064(a)(2) and 16 C.F.R. § 1115.4 is a legal conclusion to which no responsive pleading is required and it is therefore deemed denied.

11. Respondents incorporate paragraphs 1 through 10 of their Answer as though fully set forth at length.

12. Denied. The allegations of this paragraph are mere speculation to which no responsive pleading is required and they are therefore deemed denied. It is true as a matter of hypothetical logic that if a single Omega sprinkler head does not activate in a fire, that head will not suppress or extinguish the fire. By way of further answer, an Omega sprinkler head may not activate because of a number of reasons that cannot plausibly be considered a "defect," including, but not limited to, because the fire was not sufficiently significant to activate the head, the head was subject to misuse and abuse, or prohibited substances were introduced into the sprinkler system. Moreover, sprinkler systems generally are designed with redundancies so that if one sprinkler head does not operate, an adjacent head may and ordinarily does suppress or extinguish a fire.

13. Denied. The allegations of this paragraph are mere speculation to which no responsive pleading is required and they are therefore deemed denied. It is true as a matter of

hypothetical logic that if an Omega sprinkler head does not function, an occupant of a building may be exposed to a fire that will not be controlled by that particular sprinkler head. Respondents deny that an Omega sprinkler head creates a substantial risk of injury to the public, and, indeed, to this date there have been absolutely no injuries to any member of the public that have been caused by an alleged failure of an Omega sprinkler head to operate. By way of further answer, Respondents incorporate paragraph 12 of their Answer as though fully set forth at length. The remaining allegations of this paragraph are denied.

14. Denied. By way of further answer, the allegations of this paragraph include legal conclusions to which no responsive pleading is required and they are therefore deemed denied.

15. Denied. By way of further answer, the allegations of this paragraph constitute legal conclusions to which no responsive pleading is required and they are therefore deemed denied.

16. Denied. By way of further answer, the allegations of this paragraph constitute legal conclusions to which no responsive pleading is required and they are therefore deemed denied.

AFFIRMATIVE DEFENSES

17. The Commission lacks jurisdiction over the products at issue in the Complaint because they are not consumer products within the definition of the CPSA.

18. Respondent CSC is not a manufacturer of the products at issue in the Complaint.

19. The Complaint fails to state a claim upon which relief may be granted.

20. Omega fire sprinkler heads do not create a substantial risk of injury to the public.

21. At all times, Omega sprinkler heads have conformed to the then-existing state of the art.

22. Basing any recall order on a standard of performance or design or knowledge that was not developed at the time of manufacture would deprive Respondents of their rights under the United States Constitution, including their rights under the due process and takings clauses of the Constitution.

23. The Complaint fails to comply with 16 C.F.R. § 1025.11(b)(3), which requires: (a) a clear and concise statement of the charges, sufficient to inform Respondents with reasonable definiteness of the factual bases of the allegations of hazard; and (b) a list and summary of the documentary evidence supporting the charges.

24. The Staff of the Commission did not act in good faith to resolve the matters alleged in the Complaint and did not make a good-faith effort to agree with Respondents to an appropriate remedy prior to the institution of this action.

25. Without conceding that any remedy is legally required, the remedial and testing program offered by Central adequately protects the public from substantial risk of harm.

26. Without conceding that any remedy is legally required, any remedy that may be imposed must reflect that purchasers may have had use and value from the products at issue for periods of time prior to the institution of this action.

27. Any actual inoperation of, or increased activation pressure by, an Omega head was caused by abuse of the sprinkler head, use of prohibited substances in the sprinkler system, or other acts committed by persons not within Respondents' control.

WHEREFORE, Respondents respectfully request that the Commission:

A. Determine that it lacks jurisdiction over the products at issue in this matter;

B. Determine that respondent Central Sprinkler Corporation is not a proper party to this action;

C. Determine that the products at issue do not present a "substantial product hazard" within the meaning of 15 U.S.C. § 2064;

D. Determine that the corrective action plan adopted by respondent Central Sprinkler Company is reasonable and satisfies 15 U.S.C. § 2064;

E. Determine that respondent Central Sprinkler Company need not cease manufacturing for sale, offering for sale or distributing in commerce Omega fire sprinkler heads;

F. Determine that the Complaint should be dismissed; and

G. Take such other and further relief in favor of Respondents as may be appropriate.

Respectfully submitted,

Dated: March 26, 1998

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CERTIFICATE OF SERVICE

I, Michael F. Healy, hereby certify that on this date a true and correct copy of the foregoing Answer and Affirmative Defenses of Respondents Central Sprinkler Company and Central Sprinkler Corporation was served by hand upon the following:

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Date: March 26, 1998

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