



WASHINGTON BUSINESS INFORMATION, INC. • 1117 NORTH 19TH STREET, SUITE 200, ARLINGTON, VA 22209-1788 • (703)247-3434, FAX 247-3421

FOIA APPEAL (CPSC ID: S-710111A)

p. 1 of 2

January 22, 1998

Jeffrey Bromme, Esq.  
General Counsel, ATTN: Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207

Fax to: 301/504-0127

Dear Mr. Bromme,

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 522(a)(6).

On January 22, 1998, CPSC responded to a *Product Safety Letter* FOIA request (CPSC ID: S-710111A) filed March 28, 1998, by then-editor Maureen Cislo concerning the recall of table saws by Ryobi. CPSC denied part of the request based on Exemptions 3 and 4.

Please reconsider the denial based on these points, addressing each in your reply.

- A. The White House changed government's policy on the Freedom of Information Act in 1993. On Oct. 4, President Clinton told federal departments and agencies the FOIA "is a vital part of the participatory system of government" and that the "existence of unnecessary bureaucratic hurdles has no place in its implementation." He insisted that agency practices with respect to FOIA requests conform to new guidelines issued by Attorney General Janet Reno favoring a presumption of disclosure. We note that you have ignored this issue in our past FOIA appeals; please respond.
- B. Attorney General Reno's new guideline, also announced Oct. 4, 1993, provide that an agency should use an exemption only where "the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption." She added, "Where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it need be." In light of the policy in favor of disclosure, the material withheld from the FOIA request does not appear to be justified. For any material for which withholding is upheld in the appeal, identify specifically the foreseeable harm that would result from disclosure. We note that you have ignored this issue in our past FOIA appeals; please respond.
- C. Material has been withheld pursuant to Exemptions 3 and 4 based on section 6(A)(2) of the CPSCA. However, the courts have made clear that withholding of such material can be justified only when disclosure would impair the government's ability to obtain information in the future and would cause substantial harm to the competitive position of the provider of the information. See *National Parks & Conservation Assn. v. Morton*, 498 F. 2d 765 (C.C. Cir 1974). The information withheld from disclosure here does not appear to qualify for this exemption.
- D. A promise by an agency of "confidentiality" is not, by itself, sufficient to invoke Exemption 4.
- E. Exemption 4 does not cover government-prepared documents based primarily on information the government generates itself.

FOIA APPEAL (CPSC ID: S-710111A)

p. 2 of 2

January 22, 1998

I trust that upon reconsideration, you will reverse the decision denying us access to this material and grant the original request. However, if you deny this appeal, I intend to initiate a lawsuit to compel disclosure. In any case, I will expect to receive your decision within 20 working days, as required by the statute.

Thank you for you assistance.

Sincerely,



Sean Oberle, Editorial Director

cc: Thomas Howlett, Esq.



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

0841  
R40  
*[Handwritten signature]*

JAN 22 1998

**Certified Mail**

Mr. Sam Cristy  
Editor - Product Safety Letter  
Washington Business Information  
1117 North 19th Street  
Arlington, VA 22209-1798

**Re: FOIA Request S710111A: Ryobi and Sears Table Saw Switch Recall**  
**/CPSC File RP960088**

Dear Mr. Cristy:

Thank you for your Freedom of Information Act (FOIA) request seeking records from the Commission. Enclosed are copies of the releasable records. The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information.

Portions of the files where the manufacturer has requested confidentiality must be withheld pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) and 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2) and (b)(1). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to this material, we are relying in part on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. See Commission regulations at 16 C.F.R. § 1101.32 and 33. It would not be fair in the circumstances to disclose a firm's notes, drafts or minutes of meetings

Mr. Sam Cristy

Page 2

to discuss and negotiate settlements agreements, when the company has requested confidentiality and such records are protected from disclosure pursuant to 16 C.F.R. § 1101.33. To certain parts of the company's submission's we are also applying section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information. Confidential commercial information is information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. Specifically, we are withholding portions that if disclosed would reveal confidential financial and business relationships, customers and proprietary engineering drawings or data. The pages being withheld are 3-16, 23-36, 40-53, 55-67, 76, and 81-83.

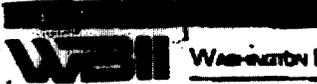
According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. CONSUMER PRODUCT SAFETY COMMISSION, Washington, D.C. 20207.

Processing this request, performing the file searches and preparing the information, cost the Commission \$80.00. In this instance, we have decided to waive all of the charges.

Sincerely,

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

Enclosures



Washington Business Information, Inc. • 1117 North 19th Street, Suite 200, Arlington, VA 22209-1798 • (703)247-3434, Fax 247-3421

March 28, 1996

PSL CODE -- Recall -- 076

Consumer Product Safety Commission  
Freedom of Information Office  
4330 East-West Highway  
Bethesda, Md. 20207  
Fax: 301/504-0127

*m/e*

Dear FOI Officer,

Pursuant to the federal Freedom of Information Act, 5 U.S.C. Section 552, I request access to and copies of all information to and from CPSC and Ryobi America Corporation of Anderson, S.C. recall of table saws (release #96-088). *0841*

As a member of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Please waive any additional fees. Release of the information is in public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as an editor and this information is of timely value, I would appreciate your communicating with me by phone (direct line 703/247-3423) or fax (247-3421), rather than by mail, if you have questions regarding this request. I look forward to your reply within 10 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

*Maureen R. Cislo*

Maureen Cislo, Editor  
PRODUCT SAFETY LETTER

Receipt of this letter is acknowledged:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print or type)

cc: PUB/SEC-rf, DIR  
(13278074.LXZ)

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*6710111A*  
*67*

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U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207-0001

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403  
E-Mail: cpsc-gc@cpsc.gov

April 3, 1998

Mr. Sean Oberle, Editorial Director  
Washington Business Information, Inc.  
1117 North 19th Street  
Suite 200  
Arlington, VA 22209

Re: FOIA Appeal #S-710122A  
Dan-Dee Teddy Bears

Dear Mr. Oberle:

By letter dated February 3, 1998 you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and the responsive documents. I affirm the FOI Officer's decision. The documents are being withheld pursuant to FOIA Exemptions 3 and 4. 5 U.S.C. §§ 552(b)(3) and (b)(4).

Exemption 3 of the FOIA provides for the withholding of documents that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to these documents, we are relying on section 6 of the CPSA. 15 U.S.C. § 2055. Section 6(a)(2) of the CPSA expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission that contains or relates to trade secrets or other confidential commercial information. Section 6(a)(2) incorporates Exemption 4 of the FOIA, which also protects trade secrets and confidential commercial information.

Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain the necessary information in the future, or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. The information that has been withheld pursuant to Exemption 3, relying on section 6(a)(2), and Exemption 4 consists of pricing information. Based on my review of pertinent factors, including the claims of Dan-Dee, it is my

Mr. Sean Oberle  
April 3, 1998

Page 2

judgment that release of this information would cause substantial competitive harm to Dan-Dee.

You have the right to seek judicial review of this decision as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,

  
Jeffrey S. Bromme

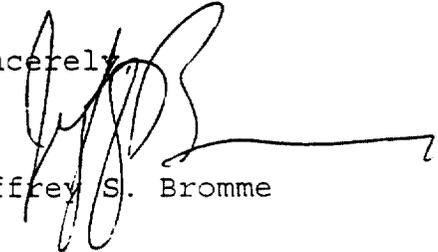
Michael A. Motto, Esq.  
March 27, 1998

Page 2

When consumers submit complaints to the Commission, the Commission sends them forms requesting that they confirm the information as accurate to the best of their knowledge and belief. We also send each submitter a franked return envelope for mailing back the confirmation. This process, which is voluntary on the part of the submitter, has been in place since 1983. The 39 complaints being withheld were subjected to this process. However, because the submitters of these complaints did not respond to the Commission's request for confirmation, the Commission may not disclose the complaints under the FOIA.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Jeffrey S. Bromme

SECRETARY  
REGISTRATION  
1978 MAR 15 A 9:31  
*Baker & Associates, P.A.*

CHARTERED ATTORNEYS  
TRIALS / PERSONAL INJURY / WRONGFUL DEATH

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FAX (561) 367-6094

CORAL SPRINGS OFFICE  
\* 9900 W. SAMPLE ROAD  
CORAL SPRINGS, FL 33065  
(954) 753-6990

\* PLEASE REPLY TO  
BOCA RATON

ROBERT B. BAKER  
FLORIDA BAR  
NEW YORK BAR  
MASSACHUSETTS BAR  
RHODE ISLAND BAR

MICHAEL A. MOTTO  
FLORIDA BAR  
NEW YORK BAR  
NEW JERSEY BAR

RAYMOND P. MARTUCCI JR.  
FLORIDA BAR

BRADFORD W. PATTERSON  
PARALEGAL

KEVIN F. SAER  
OF COUNSEL

March 10, 1998

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

**RE: FOIA Request S712136: Kenmore/Sears and Sunbeam Outdoor Gas Grills/Complaints, Reported Incidents and Investigations of Incidents**

Dear Sir or Madam:

Pursuant to 16 C.F.R. Section 1015.7, the undersigned hereby files his appeal to the withholding of the thirty-nine product complaints relating to the above referenced matter. The Commission's reason for withholding said complaints is that they have been unable to confirm the accuracy of the information contained within same. The undersigned is in need of said complaints. Presently, the undersigned has a case pending in front of the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, Florida against Sears and Sunbeam for an incident which occurred with one of their gas grills which resulted in serious personal injuries to a client. The undersigned has requested from both, Sears and Sunbeam, copies of complaints received by them relating to the above referenced product. Both, Sears and Sunbeam, have responded that they are not in possession of any such complaints. Through discovery and outside investigation, the only source of consumer complaints regarding the above referenced product have been provided by the Commission. The undersigned is in need of **any and all** complaints relating to the product in question to adequately prepare his case against Sears and Sunbeam. The undersigned's client shall be severely prejudiced if the Commission does not release the additional thirty-nine complaints. The undersigned shall have independent investigation performed to confirm the accuracy of the information contained in the withheld complaints. If the Commission requires any additional information before rendering an opinion, please contact the undersigned.

Thank you for your anticipated cooperation.

Very truly yours,

  
MICHAEL A. MOTTO, ESQUIRE



bcc: Requester // Chron, Off 6bREL, partwith/3,6b1,25c, 3248 Sunbeam  
Fec(SheilaP), ADFS R48-97 \$191.80



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

February 20, 1998

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Mr. Michael A. Motto  
Baker & Associates  
6100 Glades Road, Suite 301  
Boca Raton, FL 33434

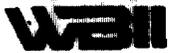
**Re: FOIA Request S712136: Kenmore/Sears and Sunbeam Outdoor Gas Grills / Complaints,  
Reported Incidents and Investigations of Incidents / File Search 1995 to Present**

Dear Mr. Motto:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission. The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed.

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

Also enclosed are records pertaining to twenty-three product complaints and reported incidents that were submitted to the Commission by consumers and others. (Sixteen reports identify Sunbeam products and seven reports identify Sears or Kenmore products.) The consumers or submitters have confirmed the accuracy of the information in the



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FOIA APPEAL (CPSC ID: S-710122A)

p. 1 of 2

February 3, 1998

Jeffrey Bromme, Esq.  
General Counsel, ATTN: Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207

Fax to: 301/504-0127

Dear Mr. Bromme,

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 522(a)(6).

On January 28, 1998, CPSC responded to a *Product Safety Letter* FOIA request (CPSC ID: S-710122A) filed July 2, 1996, by then-editor Maureen Cislo concerning the recall of Dan-Dee Teddy Precious Indian Girl. CPSC denied part of the request based on Exemptions 3 and 4.

Please reconsider the denial based on these points, addressing each in your reply.

- A. The White House changed government's policy on the Freedom of Information Act in 1993. On Oct. 4, President Clinton told federal departments and agencies the FOIA "is a vital part of the participatory system of government" and that the "existence of unnecessary bureaucratic hurdles has no place in its implementation." He insisted that agency practices with respect to FOIA requests conform to new guidelines issued by Attorney General Janet Reno favoring a presumption of disclosure. We note that you have ignored this issue in our past FOIA appeals; please respond.
- B. Attorney General Reno's new guideline, also announced Oct. 4, 1993, provide that an agency should use an exemption only where "the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption." She added, "Where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it need be." In light of the policy in favor of disclosure, the material withheld from the FOIA request does not appear to be justified. For any material for which withholding is upheld in the appeal, identify specifically the foreseeable harm that would result from disclosure. We note that you have ignored this issue in our past FOIA appeals; please respond.
- C. Material has been withheld pursuant to Exemptions 3 and 4 based on section 6(A)(2) of the CPSA. However, the courts have made clear that withholding of such material can be justified only when disclosure would impair the government's ability to obtain information in the future and would cause substantial harm to the competitive position of the provider of the information. See *National Parks & Conservation Assn. v. Morton*, 498 F. 2d 765 (C.C. Cir 1974). The information withheld from disclosure here does not appear to qualify for this exemption.
- D. A promise by an agency of "confidentiality" is not, by itself, sufficient to invoke Exemption 4.
- E. Exemption 4 does not cover government-prepared documents based primarily on information the government generates itself.

FOIA APPEAL (CPSC ID: S-710122A)

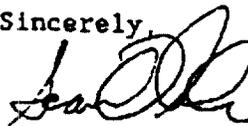
p. 2 of 2

February 3, 1998

I trust that upon reconsideration, you will reverse the decision denying us access to this material and grant the original request. However, if you deny this appeal, I intend to initiate a lawsuit to compel disclosure. In any case, I will expect to receive your decision within 20 working days, as required by the statute.

Thank you for you assistance.

Sincerely,



Sean Oberle, Editorial Director

cc: Thomas Howlett, Esq.

Officer (6a,6b release), Officer (wh), chron, 2618

✓  
5004 Dan-Dee

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

January 28, 1998

Mr. Sam Cristy, Editor  
PRODUCT SAFETY LETTER  
Washington Business Information, Inc.  
1117 North 19th Street, Suite 200  
Arlington, VA 22209-1798

**RE: FOIA Request S-710122A: Dan-Dee International Recall of "Teddy Precious Indian Girl"**

Dear Mr. Cristy:

This responds to your Freedom of Information Act (FOIA) request to the Consumer Product Safety Commission (Commission) seeking all information concerning the recall of "Teddy Precious Indian Girl" of Dan-Dee International.

The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in a recall file that evaluated Dan-Dee International's stuffed toy with the name of "Teddy Precious Indian Girl" and are identified as Establishment Inspection Reports, Laboratory Summaries, Hazard Assessment memoranda, and other correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information.

Portions of the file are being withheld pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 in this instance we are applying in part section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information. Confidential commercial information is information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. The withheld records contain confidential pricing and cost information.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

This completes the processing of your request. The cost to the Commission to perform the searches and prepare this information was \$125.00. In this instance, we have decided to waive the charges. Thank you for your interest in consumer product safety. Should you have any questions, contact Sandra Bradshaw by letter, facsimile (301) 504-0127 or telephone (301) 504-0785 (ext.1224).

Sincerely,

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

Enclosure



WASHINGTON BUSINESS INFORMATION, INC. • 1117 North 18th Street, Suite 200, Arlington, VA 22209-1798 • (703)247-3434, Fax 247-3421

July 2, 1996

PSL CODE -- Recall -- 096

Consumer Product Safety Commission  
Freedom of Information Office  
4330 East-West Highway  
Bethesda, Md. 20207  
Fax: 301/504-0127

Dear FOI Officer,

Pursuant to the federal Freedom of Information Act, 5 U.S.C. Section 552, I request access to and copies of all information to and from CPSC and Dan-Dee International on the recall of "Teddy Precious Indian Girl" stuffed bears (CPSC release #96-118). I would also like copies of all inter-agency memos staff may have written to each other regarding this recall.

As a member of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Please waive any additional fees. Release of the information is in public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as an editor and this information is of timely value, I would appreciate your communicating with me by phone (direct line 703/247-3423) or fax (247-3421), rather than by mail, if you have questions regarding this request. I look forward to your reply within 10 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

*Maureen R. Cislo*  
Maureen Cislo, Editor  
PRODUCT SAFETY LETTER  
*gxm cmm*

Receipt of this letter is acknowledged:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print or type)

cc: PUB/SEC-rf, DIR  
(12276074 LYI)

*710122A*  
*R.D.*  
*gy*

# News from

## U.S. Consumer Product Safety Commission

Office of Information and Public Affairs

Washington, D.C. 20207

**For Immediate Release**  
**May 6, 1996**  
**Release # 96-118**

**Contact: Kate Premo**  
**(301) 504-0580 Ext. 1187**

### **CPSC, DAN-DEE INTERNATIONAL ANNOUNCE TEDDY BEAR RECALL**

WASHINGTON, D.C. -- In cooperation with the U.S. Consumer Product Safety Commission (CPSC), Dan-Dee International Inc. of North Largo, Fla., is voluntarily recalling approximately 11,600 "Teddy Precious Indian Girl" stuffed bears. The bear's American Indian-style clothing includes a headband and waist sash decorated with beads that can detach from the sash. Young children can choke on the beads or inhale them into their lungs which could lead to death.

CPSC is not aware of any injuries involving this toy. This recall is being conducted to prevent the possibility of injury. CPSC identified this problem during routine surveillance.

The light brown bears, measuring approximately 18 inches in length, each wear a brown vinyl dress trimmed with Native American embroidery and a headband patterned with matching embroidery. A pink label sewn to each bear's foot reads in part, "Teddy Precious®." The blue and white tag sewn into the animal's lower back reads in part, "DAN-DEE INTERNATIONAL LIMITED, JERSEY CITY, N.J. 07305 ... MADE IN CHINA." Some



-more-

(dan-dee teddy bears)

-2-

bears' tags also include "SKU # 089318."

Kay Bee Toy & Hobby Shops retail stores sold the bears nationwide from March 1995 through March 1996 for approximately \$13.

Consumers should take the bear away from young children immediately and return the toy to any Kay Bee Toy & Hobby Shop for a full refund or a replacement toy. For more information, consumers should call Dan-Dee International Inc. toll free at (800) 477-8697.

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

####

23

U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207-0001

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403

February 25, 1998

Joseph R. Armenti, Esq.  
303 Chestnut Street  
Philadelphia, Pennsylvania 19106

Re: FOIA Appeal 707042 on Conair hairdryers

Dear Mr. Armenti:

On February 13, 1998, you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold 122 unconfirmed consumer complaints, based on FOIA Exemption 3. 5 U.S.C. § 552(b)(3).

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

Section 6(b)(1) requires that before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The information that is being withheld pursuant to Exemption 3, relying on section 6(b)(1), consists of 122 unconfirmed consumer complaints. The Commission's regulations require that this information be confirmed as a reasonable step to assure the accuracy of the information. 16 C.F.R. § 1101.32(a)(3).

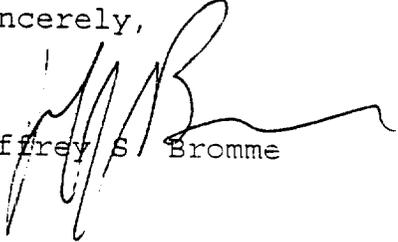
Joseph R. Armenti, Esq.  
February 25, 1998

Page 2

When consumers submit complaints to the Commission, the Commission sends them forms requesting that they confirm the information as accurate to the best of their knowledge and belief. We also send each submitter a franked return envelope for mailing back the confirmation. This process, which is voluntary on the part of the submitter, has been in place since 1983. The 122 complaints being withheld were subjected to this process. However, because the submitters of these complaints did not respond to the Commission's request for confirmation, the Commission may not disclose the complaints under the FOIA.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,

  
Jeffrey S. Bromme

# JOSEPH R. ARMENTI & ASSOCIATES

## ATTORNEYS AT LAW

303 CHESTNUT STREET  
PHILADELPHIA, PENNSYLVANIA 19106

TEL (215) 925-2020  
FAX (215) 440-0183

JOSEPH R. ARMENTI  
MARIA E. ARMENTI  
MEMBERS: PENNSYLVANIA BAR  
NEW JERSEY BAR

NEW JERSEY OFFICE  
SUITE 117  
601 HADDON AVENUE  
COLLINGSWOOD, N.J. 08108  
(609) 869-9600

DELAWARE COUNTY OFFICE  
(610) 352-2841

February 13, 1998

Fax and Regular Mail  
General Counsel  
Attn. Office of the Secretary,  
U.S. Consumer Product Safety Commission  
Washington, D.C. 20207  
**301-504-0127**

**RE: APPEAL From Denial of Production of 122 complaints regarding Conair hairdryers requested previously under FOIA Rquest S-707042, etc.**

Dear Sir,

On January 19, 1998, I received from your office a letter dated January 14, 1998 and 40 epidemiological reports and 77 verified reports from consumers concerning Conair hair dryers. The letter also mention 122 uninvestigated consumer complaints. These 122 complaints were not forwarded to me. I am hereby appealing the denial of these records.

I represent the estate of three children as young as 10 months old who died in the fire caused by the defective Conair hairdryer. Their mother and grandmother and uncle who were also in the burning building, and who made heroic efforts to save the children are also being represented by me.

I sought discovery from Conair. I specifically asked whether any government agency had any records of complaints against their product, especially the 101 and 095. Conair answered under oath that Consumer Product had no complaints against their product. This statement as your documents prove is utterly false!

However, under Pennsylvania law, had I not discovered that these reports did exist and obtained them from you, Conair could have brought before the judge or jury their sworn answer, and my lack of documentation to the contrary, in order to break the causation link, and thereby win the case - by defrauding the Court.

I put the Court and Conair on notice of that this answer (along with others) amounted to perjury. Conair then produced only two of the CPSC epidemiological reports: one from

Minnesota and one from Hawaii. They have never produced all of the other documents which you sent to them, nor any of the other complaints which they have in house.

[ In a parallel case in Chicago, where the daughter of a Doctor was blow drying her hair with a Conair hair dryer which set her and her bathrobe on fire seriously injuring her, Conair denied have having many reports. Some of the reports which were being hidden surfaced only when the judge ordered a second set of depositions be taken. Counsel has reason to believe that not all of the reports came to him because Conair has stated that it has systematically destroyed all notices of complaints on a 6 month basis (Deposition of Pamela Keegan, Conair Consumer Complaints Representative, 1997). ]

**Consumer Product safety would be the only source of this important, and absolutely necessary, information concerning complaints against Conair.**

Conair has even refused to comply with a Discovery Court instruction directing them to turn over their exemplar of the unit which cause the fire burning to death three of my clients, and injuring their mother, grandmother and uncle.

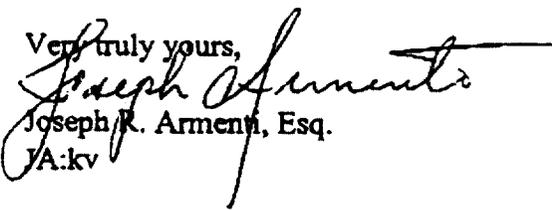
The store from which the product was purchased is out of business, and its records, according to its former purchasing agent were destroyed. Therefore, any complaints concerning this product from that source are unavailable.

Plaintiffs bear the burden of proof. Conair is systematically stonewalling my efforts to get at the truth of the matter. Your records are the vital to the quest for truth in this case, and for justice to three young children, and three injured adults. Conair's bad faith dealings make it imperative that we receive these 122 complaints, and proceed to investigate them ourselves. They contain crucial information needed to get to the truth of the matter. We need to be able to investigate for ourselves the leads which those 122 complaints provide.

**There can be no more serious and compelling case than that involving the deaths of three children, and the injury to their mother, grandmother and uncle.**

In the interest of justice in this case, and in the interest of public safety, and for the good cause we have shown, we respectfully request that you forward to my office in Philadelphia the 122 reports which we have not received.

Very truly yours,

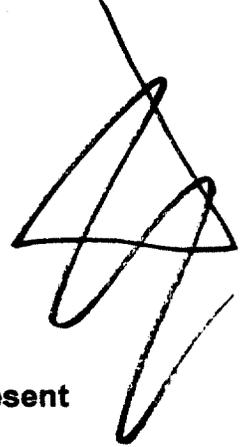
  
Joseph R. Armenti, Esq.

JA:kv

Code 1602: Firm Conair, Chron, Officer 6b Release, Sp/EG  
bcc: Joseph R. Armenti, Fee, ADFS R-041-98

January 14, 1998

Joseph R. Armenti, Esq.  
Joseph R. Armenti and Associate  
303 Chestnut Street  
Philadelphia, PA 19106



**RE: FOIA Request S-707042, S707159 and S707112: Conair Hair Dryers, Models 101, 95 and others, Search Covers 1980 to Present**

Dear Mr. Armenti:

This is a **partial** response to your Freedom of Information Act (FOIA) request seeking information from the Commission. The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed.

The enclosed records include forty (40) Epidemiologic Investigation Reports with the underlying and supporting documentation and related product complaints or reported incidents where available and Medical Examiner and Coroner Alert Project Reports. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incidents. Where possible, Commission staff have examined the products reportedly involved in the incidents. Although the Commission has investigated the incidents described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to seventy-seven (77) product complaints and reported incidents that were submitted to the Commission by consumers and others. The consumers or submitters have confirmed the accuracy of the information in the complaints and reported incidents. The Commission has neither investigated the incidents nor conducted or obtained any evaluations of the products that corroborate the substance of the information contained in the complaints and reported incidents. In some of the complaints and reported incidents we have removed the identities of the complainants at their request.

The Commission's FOIA regulations at 16 C.F.R. § 1015.9, provide for the charging of fees resulting from the processing of FOIA requests. The processing of your request involved: (1) the duplication of 675 pages X \$0.10/page = \$67.50; (2) file searching by professional personnel, 5 hours X \$19.60/hour = \$98.00; (3) review time to determine whether records were permitted to be withheld, 1.05 hours X \$19.60/hour = \$39.20. Forward the total amount due, **\$204.70.**, by check or money order made payable to the **TREASURY OF THE UNITED STATES** with the enclosed copy of this letter to: **Division of Financial Services, ADFS Room 522, U.S. CONSUMER PRODUCT SAFETY COMMISSION, Washington, D. C. 20207.**

Note that after thirty days interest will be charged on amounts billed. Furthermore, if billing is not paid in a timely manner the Commission will require advance payment for your future requests and any pending requests.

The other records from the Commission files responsive to your request relate to one-hundred twenty-two (122) product complaints and reported incidents that the Commission has obtained from consumers, attorneys for consumers and others. The Commission has not received confirmation of the accuracy of the information in the complaints and reported incidents. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, we are relying on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances,

and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. See Commission regulation, 16 C.F.R. § 1101.32. The Commission's policy is to withhold each consumer complaint and reported incident unless: (1) the Commission has conducted an investigation of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; (2) the Commission has conducted or obtained a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and evaluation corroborates the substance of the information contained in the complaint and reported incident; or (3) the consumer or person reporting or submitting the incident confirms the accuracy of the information. The Commission did not take any of these steps with regard to these certain consumer complaints and reported incidents responsive to your request. While it has been Commission practice since June 1983 to seek confirmation of incoming consumer complaints and incidents, the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information.

You will note that in the documents disclosed information that could identify injured parties and persons treating them has been deleted, because section 25(c) of the Consumer Product Safety Act, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals. In some cases the parties have denied consent or consent has not otherwise been obtained.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

Thank you for your interest in consumer product safety. Should you have any questions, contact Eva M. Grady, Paralegal Specialist by letter, facsimile (301) 504-0127 or telephone (301) 504-0785.

Sincerely,

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

Enclosures

Code 1602: Firm Conair, Chron, Officer 6b Release, Sp/EG

October 21, 1997

**Certified Mail**

Joseph R. Armenti, Esq.  
303 Chestnut Street  
Philadelphia, Pa 19106

**RE: FOIA Request S-702037: Conair Hair Dryers, Model 1250, Search  
Covers 1985 to Present**

Dear Mr. Armenti:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission. The records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed.

The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in RP900034 and are identified as correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

The enclosed records include five (5) Epidemiologic Investigation Reports with the underlying and supporting documentation and related product complaints or reported incidents where available. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission

JOSEPH R. ARMENTI & ASSOCIATES *EMMS/FOIA*

JOSEPH R. ARMENTI  
MARIA E. ARMENTI  
MEMBERS: PENNSYLVANIA BAR  
NEW JERSEY BAR

ATTORNEYS AT LAW  
303 CHESTNUT STREET  
PHILADELPHIA, PENNSYLVANIA 19106  
TEL (215) 925-2020  
FAX (215) 440-0183  
*CPSC/DEC OF THE FREEDOM OF INFORMATION ACT*  
*1997 JUL -1*

NEW JERSEY OFFICE  
SUITE 117  
601 HADDON AVENUE  
COLLINGSWOOD, N.J. 08108  
(609) 869-9600

DELAWARE COUNTY OFFICE  
(610) 353-2841

C9775033

July 7, 1997

VIA FAX AND REGULAR MAIL

Ms. Sandra Bradshaw, FOIA Officer  
U.S. Consumer Products Safety Commission  
FOIA Office  
Washington, D.C. 20207  
(301) 504-0785 (ext. 1224), Fax (301) 504-0127

*MS*

*Re: Freedom of Information Act Request*  
*Farrare v. Clairol et al., July Term 1996: No.: 994*  
*Farrare v. Conair et al., January Term 1997: No. 254*

Dear Ms. Bradshaw:

Please be advised that our office represents the Plaintiffs in the above referenced law suits. We are hereby making a FOIA request for information in the possession of your agency pursuant to the Freedom of Information Act. We are seeking information pertaining to electrical hand held hair blow dryers and any fires and/or injuries due to fire associated with such blow dryers.

*1602*

Please provide the following information:

1) Epidemiological Investigation Reports pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Conair Corporation (or simply Conair) from 1980 to date;

*IC/C*  
*EXCS*

2) Epidemiological Investigation Reports pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Clairol Incorporated (or simply Clairol) from 1980 to date;

*OS index*  
*DIF-3*

3) Epidemiological Investigation Reports pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Remington Products Company, L.L.C (or simply Remington) from 1980 to date;

*4707112*

PLEASE CORRESPOND WITH:  PHILADELPHIA  COLLINGSWOOD

Re: FOIA Request

Farrare v. Clairol et al. , July Term 1996: No.: 994

Farrare v. Conair et al. , January Term 1997: No. 254

Date: July 7, 1997

Page 2 of 2.

4) Generic epidemiological investigation reports or computer print outs of any injuries due to fires caused by an electrical hand held hair blow dryer;

5) Epidemiological Investigation Reports pertaining to any fire caused by an electrical hand held hair blow dryers distributed by Clover, Division of Strawbridge and Clothier;

6) any and all correspondence, memorandum and/or reports, not privileged, from persons in your agency, technical department and/or laboratories addressed to Underwriters Laboratories Inc. and/or received from Underwriters Laboratories Inc., pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Conair, Clairol and/or Remington between 1980 to date;

7) any and all reports and/or documents generated from your engineering lab and/or house science laboratory pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Conair, Clairol and/or Remington;

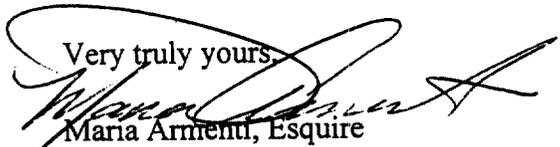
ERU

8) any and all staff reports, and/or documents pertaining to electrical hand held blow dryers manufactured and /or distributed by Conair, Clairol and/or Remington from 1980 to date and relating to fires caused thereby.

If you have any questions, please do not hesitate to call. Please inform us of the cost of Xeroxing said materials prior to doing so, if possible. Finally, if the manufacturers and/or distributors object to any of the information which you intend to send, please notify me.

Thank you for your kind corporation in this matter.

Very truly yours,

  
Maria Armenti, Esquire

MEA/am

ENDS/FOIA

JOSEPH R. ARMENTI & ASSOCIATES

ATTORNEYS AT LAW

303 CHESTNUT STREET  
PHILADELPHIA, PENNSYLVANIA 19106

TEL (215) 925-2020  
FAX (215) 440-0183

C9775043

NEW JERSEY OFFICE  
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601 HADDON AVENUE  
COLLINGSWOOD, N.J. 08108  
(609) 869-9600

DELAWARE COUNTY OFFICE  
(610) 353-2841

JOSEPH R. ARMENTI  
MARIA E. ARMENTI  
MEMBERS: PENNSYLVANIA BAR  
NEW JERSEY BAR

July 29, 1997

VIA FAX AND REGULAR MAIL

Ms. Eva M. Grady, Paralegal Specialist  
Todd A. Stevenson,  
Deputy Secretary and FOIA Officer  
Office of the Secretary  
U.S. Consumer Products Safety Commission  
FOIA Office  
Washington, D.C. 20207  
(301) 504-0785 (ext. 1224), Fax (301) 504-0127

close

Re: Freedom of Information Act Request  
Farrare v. Clair et al., July Term 1996: No. 994  
Farrare v. Conair et al., January Term 1997: No. 254

AB

Dear Ms. Grady:

Please be advised that our office represents the Plaintiffs in the above referenced law suits. We are hereby making a FOIA request for information in the possession of your agency pursuant to the Freedom of Information Act. We are seeking information pertaining to electrical hand held hair blow dryers and any fires and/or injuries due to fire associated with such blow dryers.

1602

Please provide the following information:

1) Epidemiological Investigation Reports pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Conair Corporation (or simply Conair) from 1980 to date, specifically Models 95W, 95 with or without additional suffix and/or prefix letters and/or numbers, 101W with or without additional suffix letters and/or numbers, 101 with Prefix W and additional prefix and/or suffix letters and/or numbers, WPV121 with additional suffix letters and/or numbers, WC2017BC, WB20, and WP4002.

1602

etc  
ENDS

4707159

PLEASE CORRESPOND WITH:  PHILADELPHIA  COLLINGSWOOD

**Re: FOIA Request**

**Farrare v. Clair et al. , July Term 1996: No.: 994**

**Farrare v. Conair et al. , January Term 1997: No. 254**

**Date: July 7, 1997**

**Page 2 of 3.**

2) Epidemiological Investigation Reports pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Conair Corporation (or simply Conair) from 1980 to date, specifically Model 101 with or without alphanumeric prefixes and suffixes JRK0693G, JRK0694P, JRK0695F, JRK0696Y, JRK0726LA, -0727MN, -0728PP, -0729CA, and 095 with or without alphanumeric prefixes and/or suffixes, C2017, C2017B, B20, PV0959W, PL956D, P4002, 121224, 157401, \*SA-1, PV101 with or without alphanumeric suffixes. PV701 and P4101 with or without alphanumeric suffixes, BKT9000.

3) Generic epidemiological investigation reports or computer print outs of any injuries due to fires caused by an electrical hand held hair blow dryer;

4) Epidemiological Investigation Reports pertaining to any fire caused by an electrical hand held hair blow dryers distributed by Clover, Division of Strawbridge and Clothier;

5) any and all correspondence, memorandum and/or reports, not privileged, from persons in your agency, technical department and/or laboratories addressed to Underwriters Laboratories Inc. and/or received from Underwriters Laboratories Inc., pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Conair 1980 to date;

6) any and all reports and/or documents generated from your engineering lab and/or house science laboratory pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Conair;

7) any and all staff reports, and/or documents pertaining to electrical hand held blow dryers manufactured and /or distributed by Conair, from 1980 to date and relating to fires caused thereby.

or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incidents. Where possible, Commission staff have examined the products reportedly involved in the incidents. Although the Commission has investigated the incidents described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to one product complaint and reported incident submitted to the Commission by a consumer or his or her attorney or others. The consumer or submitter has confirmed the accuracy of the information in the complaint and reported incident. The Commission has neither investigated the incident nor conducted or obtained any evaluations of the product that corroborate the substance of the information contained in the complaint and reported incident. In this case, we have removed the identity of the complainant at his or her request.

The other records from the Commission files responsive to your request relate to three product complaints and reported incidents that the Commission has obtained from consumers, attorneys for consumers and others. The Commission has not received confirmation of the accuracy of the information in the complaints and reported incidents. Pursuant to Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3) and section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b)(1), and our regulations, 16 C.F.R. § 1101.32, we must withhold the unconfirmed product complaints and reported incidents.

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, we are relying on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. See Commission regulation, 16 C.F.R. § 1101.32. The Commission's policy is to withhold each consumer complaint and reported incident unless: (1) the Commission has conducted an investigation of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; (2) the Commission has conducted or obtained a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and evaluation corroborates the substance of the information contained in the complaint and reported incident; or (3) the consumer or person

page 3`

reporting or submitting the incident confirms the accuracy of the information. The Commission did not take any of these steps with regard to these certain consumer complaints and reported incidents responsive to your request. While it has been Commission practice since June 1983 to seek confirmation of incoming consumer complaints and incidents, the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information.

Before disclosing any records, Sections 6(a)(2) and 6(b)(1) of the Consumer Product Safety Act (CPSC), 15 U.S.C. § 2055(a)(2) and (b)(1), requires that we must first notify any firms whose identity can be readily ascertained by the public and opportunity to comment on the proposed disclosure package. Since this measure was not taken with respect to the enclosed documents, we have deleted the manufacturers from the Eurostyle Hair Dryers File RP900034.

You will note that in the documents disclosed information that could identify injured parties and persons treating them has been deleted, because section 25(c) of the Consumer Product Safety Act, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals. In some cases the parties have denied consent or consent has not otherwise been obtained.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

Processing this request, performing the file searches and preparing the information, cost the Commission \$60.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. Should you have any questions, contact Eva M. Grady, Paralegal Specialist by letter, facsimile (301) 504-0127 or telephone (301) 504-0785.

Sincerely,

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

Enclosures



**Re: FOIA Request**

**Farrare v. Clair et al. , July Term 1996: No.: 994**

**Farrare v. Conair et al. , January Term 1997: No. 254**

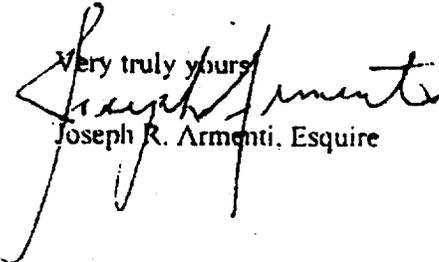
**Date: July 7, 1997**

**Page 3 of 3.**

If you have any questions, please do not hesitate to call. Please inform us of the cost of Xeroxing said materials prior to doing so, if possible.

Thank you for your kind corporation in this matter.

Very truly yours

  
Joseph R. Armenti, Esquire

JRA/am

# JOSEPH R. ARMENTI & ASSOCIATES

ATTORNEYS AT LAW

303 CHESTNUT STREET  
PHILADELPHIA, PENNSYLVANIA 19106

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(609) 669-9600

DELAWARE COUNTY OFFICE  
(610) 353-2841

JOSEPH R. ARMENTI  
MARIA E. ARMENTI  
MEMBERS: PENNSYLVANIA BAR  
NEW JERSEY BAR

July 7, 1997

VIA FAX AND REGULAR MAIL

Ms. Sandra Bradshaw, FOIA Officer  
U.S. Consumer Products Safety Commission  
FOIA Office  
Washington, D.C. 20207  
(301) 504-0785 (ext. 1224), Fax (301) 504-0127

*Close*  
A/1  
1602

*Re: Freedom of Information Act Request  
Farrare v. Clairol et al., July Term 1996: No. 994  
Farrare v. Conair et al., January Term 1997: No. 254*

Dear Ms. Bradshaw:

Please be advised that our office represents the Plaintiffs in the above referenced law suits. We are hereby making a FOIA request for information in the possession of your agency pursuant to the Freedom of Information Act. We are seeking information pertaining to electrical hand held hair blow dryers and any fires and/or injuries due to fire associated with such blow dryers.

Please provide the following information:

1) Epidemiological Investigation Reports pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Conair Corporation (or simply Conair) from 1980 to date; *1c*

2) Epidemiological Investigation Reports pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Clairol Incorporated (or simply Clairol) from 1980 to date; *1c*

3) Epidemiological Investigation Reports pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Remington Products Company, L.L.C (or simply Remington) from 1980 to date; *1c*

*570 7042*

PLEASE CORRESPOND WITH:

PHILADELPHIA

COLLINGSWOOD

*DF-3*

Re: FOIA Request

Farrare v. Clairol et al., July Term 1996: No.: 994

Farrare v. Conair et al., January Term 1997: No. 254

Date: July 7, 1997

Page 2 of 2.

4) Generic epidemiological investigation reports or computer print outs of any injuries due to fires caused by an electrical hand held hair blow dryer; IC

5) Epidemiological Investigation Reports pertaining to any fire caused by an electrical hand held hair blow dryers distributed by Clover, Division of Strawbridge and Clothier; IC

6) any and all correspondence, memorandum and/or reports, not privileged, from persons in your agency, technical department and/or laboratories addressed to Underwriters Laboratories Inc. and/or received from Underwriters Laboratories Inc., pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Conair, Clairol and/or Remington between 1980 to date; EEC | C

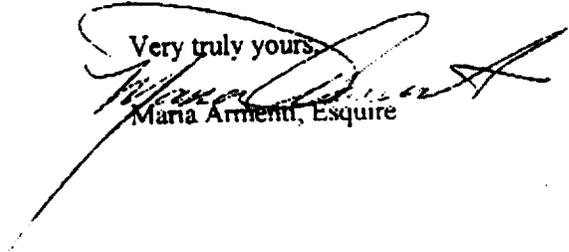
7) any and all reports and/or documents generated from your engineering lab and/or house science laboratory pertaining to electrical hand held hair blow dryers manufactured and/or distributed by Conair, Clairol and/or Remington; ES |

8) any and all staff reports, and/or documents pertaining to electrical hand held blow dryers manufactured and /or distributed by Conair, Clairol and/or Remington from 1980 to date and relating to fires caused thereby.

If you have any questions, please do not hesitate to call. Please inform us of the cost of Xeroxing said materials prior to doing so, if possible. Finally, if the manufacturers and/or distributors object to any of the information which you intend to send, please notify me.

Thank you for your kind corporation in this matter.

Very truly yours,

  
Maria Armenti, Esquire

MEA/am

24

U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207-0001

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403

March 27, 1998

Michael A. Motto, Esq.  
Baker & Associates, P.A.  
6100 Glades Road, Suite 301  
Boca Raton, Florida 33434

Re: FOIA Appeal 712136 on Sunbeam and Sears gas grills

Dear Mr. Motto:

On March 10, 1998, you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold 39 unconfirmed consumer complaints, based on FOIA Exemption 3. 5 U.S.C. § 552(b)(3).

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

Section 6(b)(1) requires that before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The information that is being withheld pursuant to Exemption 3, relying on section 6(b)(1), consists of 39 unconfirmed consumer complaints. The Commission's regulations require that this information be confirmed as a reasonable step to assure the accuracy of the information. 16 C.F.R. § 1101.32(a)(3).

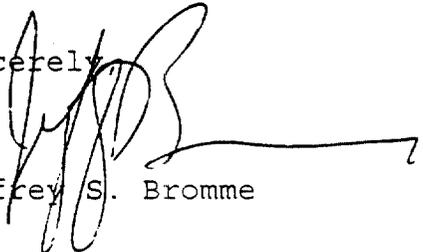
Michael A. Motto, Esq.  
March 27, 1998

Page 2

When consumers submit complaints to the Commission, the Commission sends them forms requesting that they confirm the information as accurate to the best of their knowledge and belief. We also send each submitter a franked return envelope for mailing back the confirmation. This process, which is voluntary on the part of the submitter, has been in place since 1983. The 39 complaints being withheld were subjected to this process. However, because the submitters of these complaints did not respond to the Commission's request for confirmation, the Commission may not disclose the complaints under the FOIA.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,

  
Jeffrey S. Bromme

See Commission regulation, 16 C.F.R. § 1101.32. The Commission's policy is to withhold each consumer complaint and reported incident unless: (1) the Commission has conducted an investigation of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; (2) the Commission has conducted or obtained a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and evaluation corroborates the substance of the information contained in the complaint and reported incident; or (3) the consumer or person reporting or submitting the incident confirms the accuracy of the information. The Commission did not take any of these steps with regard to these certain consumer complaints and reported incidents responsive to your request. While it has been Commission practice since June 1983 to seek confirmation of incoming consumer complaints and incidents, the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information.

You will note that in the documents disclosed information that could identify injured parties and persons treating them has been deleted, because section 25(c) of the CPSA, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals. In some cases the parties have denied consent or consent has not otherwise been obtained.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

Thank you for your interest in consumer product safety.

Sincerely,

Todd A. Stevenson  
Deputy Secretary and  
Freedom of Information Officer

Enclosures

*Baker & Associates, P.A.*

OFFICE OF THE CHARTERED ATTORNEYS  
FREEDOM OF INFORMATION ACT  
TRIALS / PERSONAL INJURY / WRONGFUL DEATH

1997 NOV 25 6:00 AM  
6100 GLADES ROAD, SUITE 301  
BOCA RATON, FLORIDA 33434  
(561) 367-0025  
1-888-BAKER LAW  
FAX (561) 367-6094

CORAL SPRINGS OFFICE  
\* 9900 W. SAMPLE ROAD  
CORAL SPRINGS, FL 33065  
(954) 753-6990

\* PLEASE REPLY TO  
BOCA RATON

*me  
11/28*

November 19, 1997

ROBERT B. BAKER  
FLORIDA BAR  
NEW YORK BAR  
MASSACHUSETTS BAR  
RHODE ISLAND BAR  
MICHAEL A. MOTTO  
FLORIDA BAR  
NEW YORK BAR  
NEW JERSEY BAR  
CHRISTOPHER J. O'TOOLE  
FLORIDA BAR  
BRADFORD W. PATTERSON  
PARALEGAL  
KEVIN F. SAER  
OF COUNSEL

U.S. Consumer Product Safety Commission  
Freedom of Information Office  
Washington, DC 20207

RE: Kenmore, Sears, and Sunbeam Outdoor Gas Grills

*3248*

*4/1*

Dear Sir or Madam:

Please furnish the undersigned with any and all information regarding complaints of the above referenced gas grills. If you require any additional information, please contact the undersigned.

*0.4*

Additionally, if there is a cost involved with compiling said information, please contact the undersigned to arrange payment for same.

Thank you for your anticipated cooperation.

Very truly yours,

MICHAEL A. MOTTO, ESQUIRE

*5-712136*

25

U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207-0001

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403  
E-Mail: cpsc-gc@cpsc.gov

April 13, 1998

Sarah L. Reid, Esq.  
Kelley Drye & Warren, LLP  
101 Park Avenue  
New York, New York 10178

Re: FOIA Appeal 802075  
New York Lighter Co. disposable cigarette lighters

Dear Ms. Reid:

By letter dated April 3, 1998, you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold pages 157-160 of the information that is responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal.

I affirm the decision of the FOI Officer to withhold the four pages of responsive information. I am withholding them under Exemptions 3 and 4 of the FOIA. 5 U.S.C. §§ 552(b)(3) and (4).

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying Exemption 3 to the withheld information, we are relying on section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). Section 6(a)(2) expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission that contains or relates to trade secrets or other confidential commercial information. Section 6(a)(2) incorporates FOIA Exemption 4, which protects trade secrets and confidential commercial information obtained from a person. Commercial information is confidential if disclosure is likely (1) to impair the government's ability to obtain the necessary information in the future, or (2) to cause substantial harm to the competitive

Sarah L. Reid, Esq.  
April 13, 1998

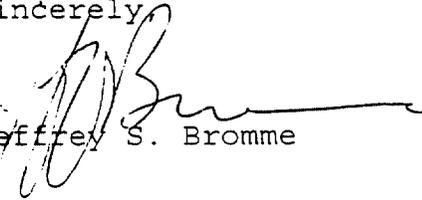
Page 2

position of the person from whom the information was obtained. Pursuant to FOIA Exemption 3, relying on CPSA section 6(a)(2), and FOIA Exemption 4, we are withholding pages 157-160 because they are invoices or Commission documents that reveal customer, sales, and pricing information of New York Lighter Co.

You asked whether the decision to withhold pages 157-160 was made after notification to the affected manufacturer. New York Lighter Co. did review these pages, and made claims of confidentiality for them, in accordance with the applicable criteria of FOIA Exemption 4.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,

  
Jeffrey S. Bromme

**KELLEY DRYE & WARREN LLP**

A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

101 PARK AVENUE  
NEW YORK, N.Y. 10178

TEL: 212 808-7800

WASHINGTON, D.C.  
LOS ANGELES, CA.  
MIAMI, FL.  
CHICAGO, IL.  
STAMFORD, CT.  
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HONG KONG  
AFFILIATED OFFICES  
NEW DELHI, INDIA  
TOKYO, JAPAN

FACSIMILE  
15101 808-7807  
TELEX 13369

WRITER'S E-MAIL  
kdw@kdlaw.com

April 3, 1998

NARAH L. REID  
DIRECT LINE 212 808 7730

VIA FACSIMILE (301) 504-0127  
BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

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

Re: New York Lighter Co., Inc. ("NYLC");  
FOIA Request S-802075;  
File No. 004752-0025

To Whom it May Concern:

We represent Bacardi & Company Limited and BACARDI-MARTINI U.S.A. Inc. (collectively, "Bacardi"). Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 551 et seq., and 16 C.F.R. § 1015.7, Bacardi hereby appeals, to the extent set forth herein, a decision of the U.S. Consumer Product Safety Commission (the "Commission") contained in the Commission's letter, dated February 24, 1998, a copy of which is enclosed herewith, and which we received on March 4, 1998.

The Commission's decision from which Bacardi presently appeals was in response to Bacardi's FOIA request for records pertaining to disposable cigarette lighters manufactured by NYLC. Bacardi requested such information because it may be relevant to a legal proceeding brought by Bacardi against NYLC, among others, currently pending in the United States District Court for the Eastern District of New York, styled Bacardi & Company Limited and BACARDI-MARTINI U.S.A. Inc. against New York Lighter Company, Inc., John Nordstrom and Mary Anne Nordstrom, Civil Action No. 97-CIV-7140 (JS). In its response to Bacardi's request, the Commission produced records from file CA950156, but withheld pages 157-160 from that file pursuant to Exemption 3 of the FOIA and section 6(b)(1) of the Consumer Product Safety Act (the "CPSA"), 15 U.S.C. § 2055(b)(1). Section 6(b)(1) of the CPSA requires the Commission to notify the manufacturer or private labeler whose identity may be revealed by

KELLEY DRYE & WARREN LLP  
-2-

April 3, 1998

General Counsel

disclosure of the requested information. Section 6(b)(1) does not, however, provide a blanket prohibition on the disclosure of such information. Rather, it provides for procedures by which the Commission and a manufacturer or private labeler may protect against the dissemination of inaccurate information.

Because the Commission's letter does not state whether the decision not to disclose pages 157-160 was made unilaterally by the Commission, was made after notification to affected manufacturers or private labelers or whether such notification was provided at all, Bacardi does not possess sufficient information from which it can determine if these papers were properly withheld. Moreover, because the Commission has not identified the general subject matter of the withheld information, Bacardi cannot determine whether the withheld information may be relevant to Bacardi's concerns in the first instance.

Accordingly, Bacardi respectfully requests that the Commission either (i) provide Bacardi with previously withheld pages 157-160 to the extent permitted by, and in accordance with, the protective procedures contained in section 6(b)(1) of the CPSA, or (ii) inform Bacardi of the general subject matter of these pages and whether they have been withheld pursuant to a unilateral decision by the Commission or pursuant to a request by an affected manufacturer or labeler. Furthermore, to the extent that the Commission responds to this appeal by continuing to withhold pages 157-160, but providing Bacardi with information regarding the subject matter of the withheld information sufficient to form substantive grounds for further appeal, Bacardi respectfully requests that this letter, as supplemented by any further correspondence necessitated by the Commission's response, be deemed Bacardi's appeal in accordance with 16 C.F.R. § 1015.7.

We thank you for your consideration.

Sincerely yours,

*Sarah L. Reid*

Sarah L. Reid

SLR:jl

Enclosure



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

rec'd  
3/4/98

February 24, 1998

**CERTIFIED MAIL**

Ms. Sarah L. Reid  
Kelly, Drye & Warren LLP  
101 Park Avenue  
New York, NY 10178

Re: FOIA Request S-802075: CPSC Investigation of "City-Lites" and "Liberty Lites" Disposable Cigarette Lighters manufactured by New York Lighter Co., Inc.

Dear Ms. Reid:

This responds to your Freedom of Information Act (FOIA) request seeking information from the Consumer Product Safety Commission. The records from the Commission files responsive to your request have been processed and copies of the releasable records are enclosed.

The enclosed records represent file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file CA960156 and are identified as Inspection Reports, Laboratory Summaries, Hazard Assessment memoranda and other correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

Portions of the files where the manufacturer has requested confidentiality must be withheld pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the Consumer Product Safety Act (CPSA), 16 U.S.C. § 2055(a)(2). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 in this instance we are applying in part section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt

Ms. Reid, S802075  
Page 2

from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information. Confidential commercial information is information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. Specifically, we are withholding portions that if disclosed would reveal confidential financial and business relationships, sales figures, customers and proprietary testing data.

With respect to the above, the following pages are being withheld pursuant to Exemption 3 of the FOIA and section 6(b)(1) of the CPSA, 15 U.S.C. § 2055(b)(1).

Pages: 157-160.

Portions of the following pages are being withheld pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the CPSA, 16 U.S.C. § 2055(a)(2).

Pages: 8-9, 19-28, 38, 42, 45-56, 48, 57-58, 61, 63, 67-70, 104-108, 109-113, 118, 124-125, 127, 129-130, 132, 140-143, 145-148, 150-154, 157-160, 161-162, 171, 177-178, 239, 241, 247, 252, 254-255 and 257.

Please note that information that could identify injured parties and persons treating them has been deleted from some of the records because section 256 of the Consumer Product Safety Act, 15 U.S.C. § 2074(c)(1), prohibits such disclosures without the consent of those individuals. In some cases the parties have denied consent or consent has not otherwise been obtained.

We must also withhold other portions of the law enforcement investigatory files pursuant to Exemptions 5 and 7 (E) of the FOIA, 5 U.S.C. §§ 552 (b) (5) and (b) (7) (E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party in litigation with the agency. FOIA Exemption 7 (E) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

The records being withheld consist of internal notes and memoranda containing recommendations, opinion, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any

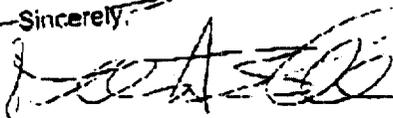
Ms. Reid, S802075  
Page 3

factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these material because disclosure would: (1) impair the frank exchange of views necessary with respect to such matters, and (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations of the Commission administrators.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

Processing this request, performing the file searches and preparing the information cost the Commission \$70.00. In this instance, we have decided to waive all of the charges. Should you have any questions, please contact Alberta Mills, Paralegal Specialist, by letter, facsimile (301) 504-0177 or telephone (301) 504-0785, ext. 1299

Sincerely,



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

enclosures

93 APR -3 PM 4:47

**KELLEY  
DRYE**

# FACSIMILE TRANSMISSION

TO General Counsel  
 FIRM Office of the Secretary  
 CITY Washington, D.C.  
 FAX (301) 504-0127  
 PHONE  
 NO. OF PAGES 5 (including this page)  
 DATE April 3, 1998

KELLEY DRYE & WARRIN LLP  
 101 PARK AVENUE  
 NEW YORK, NY 10178  
 (212) 800-7800  
 FAX (212) 800-7897

**MESSAGE**

FROM Sarah I. Reid, Esq.  
 PHONE (212) 808-7720  
 E-MAIL sreid@kclleydrye.com  
 CLIENT NO. 004352-0025

NEW YORK  
 LOS ANGELES  
 WASHINGTON, DC  
 CHICAGO  
 MIAMI  
 STAMFORD, CT  
 PARSONS, NJ

HONG KONG  
 BRUSSELS  
 AFFILIATED OFFICES  
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 TOKYO

**IF PROBLEMS OCCUR DURING TRANSMISSION PLEASE CALL (212) 808-5036.**

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**PRINCE WILLIAM COUNTY  
COUNTY ATTORNEY'S OFFICE  
1 COUNTY COMPLEX COURT  
PRINCE WILLIAM, VIRGINIA 22192-9201  
TELEPHONE (703) 792-6620 FAX (703) 792-6633**

**FAX TRANSMITTAL FORM**

**SEND TO: (FAX #):** (301) 504-0127  
**FOR DELIVERY TO:** Consumer Product Safety Commission

**FROM:** Sandy Gagnon for Ross G. Horton, Esq.

**MESSAGE:** Please fax a copy of the Federal Register document on Central Sprinkler from 3/10/98 CPSC Docket No. 98-2 (63 FR 11656)

Thank you for your assistance.

**NUMBER OF PAGES INCLUDING THIS COVER PAGE: 1**

**IF TRANSMISSION PROBLEMS OCCUR,  
PLEASE CALL (703) 792-6620**

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is hereby strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service.

\*\*\*END\*\*\*

Firm: 1604 New York Lighter (cig.  
lighter), Off(6a6b release),  
Off(Denial) Ex. 3, 6b1&6a2, 4, 5,  
7(E), Chron, spec. 3285

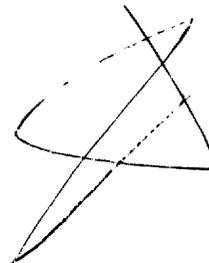


U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207

February 24, 1998

**CERTIFIED MAIL**

Ms. Sarah L. Reid  
Kelly, Drye & Warren LLP  
101 Park Avenue  
New York, NY 10178



**Re: FOIA Request S-802075: CPSC Investigation of "City-Lites" and "Liberty-Lites"  
Disposable Cigarette Lighters manufactured by New York Lighter Co., Inc.**

Dear Ms. Reid:

This responds to your Freedom of Information Act (FOIA) request seeking information from the Consumer Product Safety Commission. The records from the Commission files responsive to your request have been processed and copies of the releasable records are enclosed.

The enclosed records represent file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are in file CA950156 and are identified as Inspection Reports, Laboratory Summaries, Hazard Assessment memoranda and other correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

Portions of the files where the manufacturer has requested confidentiality must be withheld pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 in this instance we are applying in part section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt

from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information. Confidential commercial information is information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. Specifically, we are withholding portions that if disclosed would reveal confidential financial and business relationships, sales figures, customers and proprietary testing data.

With respect to the above, the following pages are being withheld pursuant to Exemption 3 of the FOIA and section 6(b)(1) of the CPSA, 15 U.S.C. § 2055(b)(1).

Pages: 157-160.

Portions of the following pages are being withheld pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the CPSA, 15 U.S.C. § 2055(a)(2).

Pages: 8-9, 19-28, 38, 42, 45-56, 48, 57-58, 61, 63, 67-70, 104-108, 109-113, 118, 124-125, 127, 129-130, 132, 140-143, 145-146, 150-154, 157-160, 161-162, 171, 177-178, 239, 241, 247, 252, 254-255 and 257.

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We must also withhold other portions of the law enforcement investigatory files pursuant to Exemptions 5 and 7 (E) of the FOIA, 5 U.S.C. §§ 552 (b) (5) and (b) (7) (E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party in litigation with the agency. FOIA Exemption 7 (E) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

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factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these material because disclosure would: (1) impair the frank exchange of views necessary with respect to such matters, and (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations of the Commission administrators.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D. C. 20207.

Processing this request, performing the file searches and preparing the information cost the Commission \$70.00. In this instance, we have decided to waive all of the charges. Should you have any questions, please contact Alberta Mills, Paralegal Specialist, by letter, facsimile (301) 504-0127 or telephone (301) 504-0785, ext. 1299

Sincerely,

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

enclosures

**KELLEY DRYE & WARREN LLP**

A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1000/OFC OF THE SECRETAR  
FREEDOM OF INFORMATION ACT  
100 PARK AVENUE

NEW YORK, N.Y. 10178  
1998 FEB 10 A 11-4

(212) 808-7800

FACSIMILE  
(212) 808-7897  
TELEX 12369

WASHINGTON, D.C.

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BRUSSELS, BELGIUM

HONG KONG

AFFILIATED OFFICES

NEW DELHI, INDIA

TOKYO, JAPAN

SARAH L. REID

DIRECT LINE (212) 808-7720

February 6, 1998

**VIA FACSIMILE (301) 504-0121 AND MAIL**

Mr. Todd Stevenson  
Consumer Products Safety Commission  
Freedom of Information Act Office  
Washington, D.C. 20207

Re: Freedom of Information Act Request

Dear Mr. Stevenson:

I am writing to make a request under the Freedom of Information Act for the following documents:

1. All documents relating to any past, present or potential investigation, review or other work performed by the Consumer Products Safety Commission concerning New York Lighter Company, Inc., present address (as of November 1997): 40 Smith Street, Farmingdale, New York, 11735 (address prior to November was in Brooklyn, New York).
2. All documents concerning communications between the Consumer Products Safety Commission and New York Lighter Company, Inc.;
3. All documents relating to the testing or analysis of disposable butane lighters manufactured or distributed by New York Lighter Company, Inc.; and
4. All documents evidencing any complaints received by the Consumer Products Safety Commission, whether from a private individual, from a public or private

ALL

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KELLEY DRYE & WARREN LLP

Mr. Todd Stevenson

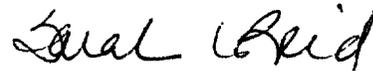
-2-

February 6, 1998

corporation, association, or partnership, or from any department or agency of the federal or any state government, concerning New York Lighter Company, Inc.

I agree to pay the costs associated with providing me copies of all documents responsive to this request. It is my understanding that I will receive a response to this FOIA request within ten business days. If you need any further information to process my request, please call me at the above number.

Respectfully,



Sarah L. Reid

SLR:mmg



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207-0001

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403  
E-Mail: [jbromme@cpsc.gov](mailto:jbromme@cpsc.gov)

May 5, 1998

Herman J. Bigi, Esq.  
Bigi & Associates  
337 Fallowfield Avenue  
Charleroi, PA 15022

Re: FOIA Appeal S-803007  
Sunbeam Plus Automatic Heating Blanket

Dear Mr. Bigi:

By letter dated April 7, 1998, you appealed the decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal and the responsive documents.

Since the FOI Officer's April 2, 1998 response to your request, he has tentatively reconsidered his decision as to some of the responsive documents that he had previously withheld. In part, due to your clarifying letter dated April 13, 1998, he realizes that the documents that are responsive to your FOIA request consist of in-depth investigation reports and/or consumer complaints. The documents that were previously withheld were not responsive to your FOIA request.

However, the FOI Officer cannot finally decide whether to withhold or disclose some of these documents until after the Commission complies with section 6(b) of the Consumer Product Safety Act (CPSA). 15 U.S.C. § 2055(b). Under this provision, the FOI Officer must provide the manufacturer the opportunity to comment upon the disclosure of information that identifies a manufacturer. If the FOI Officer decides to disclose information over the objection of the identified manufacturer, he must notify the manufacturer of the proposed disclosure at least 10 days in advance.

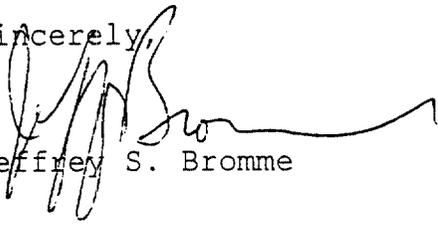
Herman J. Bigi, Esq.  
May 5, 1998

Page 2

The FOI Officer will notify the manufacturer of its opportunity to comment, and he will notify you of his determination when this process has been completed. If he decides to withhold any responsive information at that time, you may appeal his decision to me. While the manufacturer comment process is underway, you may either await his decision or treat this letter as a denial of your FOIA appeal for that responsive information. We are currently withholding the responsive documents that will be sent to the manufacturer for comment under FOIA Exemption 3, in reliance on CPSA section 6(b). Exemption 3 provides for withholding information that is specifically exempted from disclosure by another statute.

You have the right to seek judicial review of this decision, as provided by 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Jeffrey S. Bromme

# BIGI & ASSOCIATES

ATTORNEYS AT LAW

\*HERMAN J. BIGI

ELENA J. DURONIO  
JASON M. WALSH

\*ADMITTED IN PENNSYLVANIA  
AND WEST VIRGINIA

337 FALLOWFIELD AVENUE  
CHARLEROI, PA 15022  
TEL. (724) 483-1020  
FAX (724) 483-0103

562 McKEAN AVENUE  
DONORA, PA 15033  
TEL. (724) 379-4043  
FAX (724) 379-4635

April 7, 1998

#98025

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

*Den 5803007*

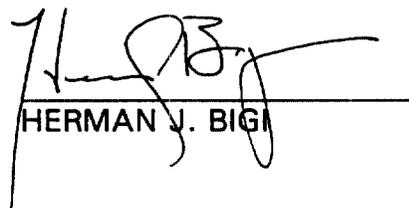
IN RE: FOIA Request S-803007: Injuries and/or Complaints associated  
with Sunbeam Plus Automatic Heating Blanket

Dear Sir/Madam:

We hereby file an appeal from the attached letter from Todd A. Stevenson,  
Deputy Secretary and Freedom of Information Officer. This appeal is filed in  
accordance with the Freedom of Information Act.

Very truly yours,

BIGI & ASSOCIATES

  
HERMAN J. BIGI

HJB:jem  
Enclosure

CERTIFIED MAIL NO. P 208 890 256

cc: Melonie Gorecki



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

April 2, 1998

**Certified Mail**

Herman J. Bigi  
Bigi & Associates  
337 Fallowfield Avenue  
Charleroi PA 15022

**Re: FOIA Request S-803007: Injuries and/or Complaints associated with Sunbeam Plus Automatic Heating Blanket**

Dear Mr. Bigi:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the Commission. We have searched the Commission's injury information files covering from calendar year 1993 though the current year for information responsive to your request. If you want us to search into older records, please send in a new request and specify the time period.

The records from the Commission files responsive to your request are contained in the Commission's active law enforcement investigatory files. We must withhold the records pursuant to the Exemption 5 and & 7(A), 5 U.S.C. § 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

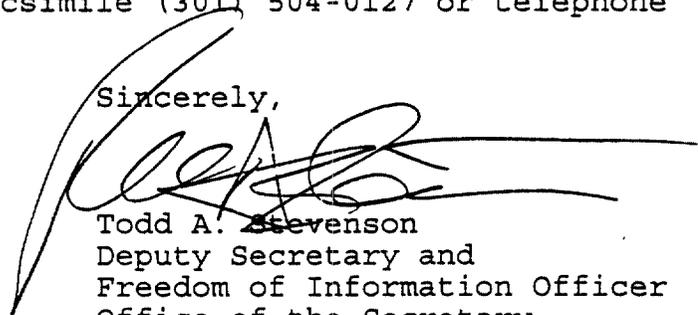
The records being withheld consist of internal staff notes, correspondence and memoranda containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both predecisional and attorney-client and attorney-work product privileges. Any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

information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

According to the Commission's regulations implementing the FOIA at 16 C.F.R. § 1015.7, a partial denial of access to records may be appealed to the General Counsel of the Commission within thirty (30) days of your receipt of this letter. An appeal must be in writing and addressed to: FOIA APPEAL, General Counsel, ATTN: Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207. ✓

Processing this request, performing the file searches and preparing the information, cost the Commission \$25.00. In this instance, we have decided to waive all of the charges. Thank you for your interest in consumer product safety. Should you have any questions, please contact Robbie T. Perry, Paralegal Specialist, by letter, facsimile (301) 504-0127 or telephone (301) 504-0785.

Sincerely,



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

Bigi, S-803007

Page 2

information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

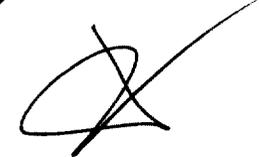
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Sincerely,

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

OS/FOI Denial, Chron, Officer 6a Denial, 3488, Neiss code 0132

DEN  
S 803007  


April 2, 1998

**Certified Mail**  
Herman J. Bigi  
Bigi & Associates  
337 Fallowfield Avenue  
Charleroi PA 15022

**Re: FOIA Request S-803007: Injuries and/or Complaints associated with Sunbeam Plus Automatic Heating Blanket**

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*BHJ/WJ*

# BIGI & ASSOCIATES

ATTORNEYS AT LAW

*1 698 35008*  
 337 FALLOWFIELD AVENUE  
CHARLEROI, PA 15022  
TEL. (412) 483-1020  
FAX (412) 483-0103

562 MCKEAN AVENUE  
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TEL. (412) 379-4043  
FAX (412) 379-4635

\*HERMAN J. BIGI

ELENA J. DUONIO  
JASON M. WALSH

\*ADMITTED IN PENNSYLVANIA  
AND WEST VIRGINIA

February 26, 1998

98025

*ALS*

United States Consumer Products  
Safety Commission  
Washington, D. C. 20207

In Re: Sunbeam Prestige Plus Automatic Heating Blanket *0132*

Dear Sir/Madam:

I am requesting information under the Freedom of Information Act. I represent a person who purchased a Sunbeam Blanket in November of 1997, and on January 20, 1998, as she was sleeping, the blanket caught on fire and my client sustained severe injuries. I am requesting all information concerning this particular blanket as to it catching on fire, and producing either fatalities or injuries. I would request this data perhaps for at least the last 5 years.

*MC  
EX45  
D3*

Also, I would request a list of recalls on the product during that 5 year period.

Very truly yours,

BIGI & ASSOCIATES

*[Signature]*  
HERMAN J. BIGI

HJB:mac

*480 3007*

27

U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207-0001

OFFICE OF THE GENERAL COUNSEL

Jeffrey S. Bromme  
General Counsel  
Tel: 301-504-0980 ext. 2299  
Fax: 301-504-0403

May 28, 1998

Jack Christian Sales, Esq.  
Sales & Weber  
P.O. Box 34  
Springfield, Illinois 62705

Re: FOIA Appeal 801010 on Scripto multi-purpose lighter

Dear Mr. Sales:

On May 8, 1998, you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold eight unconfirmed consumer complaints, based on FOIA Exemption 3. 5 U.S.C. § 552(b)(3).

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

Section 6(b)(1) requires that before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The information that is being withheld pursuant to Exemption 3, relying on section 6(b)(1), consists of eight unconfirmed consumer complaints. The Commission's regulations require that this information be confirmed as a reasonable step to assure the accuracy of the information. 16 C.F.R. § 1101.32(a)(3).

Jack Christian Sales, Esq.  
May 28, 1998

Page 2

When consumers submit complaints to the Commission, the Commission sends them forms requesting that they confirm the information as accurate to the best of their knowledge and belief. We also send each submitter a franked return envelope for mailing back the confirmation. This process, which is voluntary on the part of the submitter, has been in place since 1983. The eight complaints being withheld were subjected to this process. However, because the submitters of these complaints did not respond to the Commission's request for confirmation, the Commission may not disclose the complaints under the FOIA.

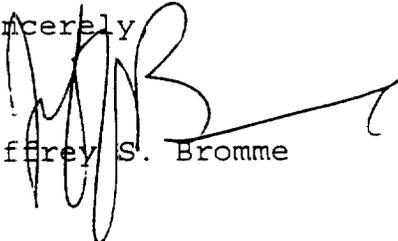
Section 25(c) of the CPSA, 15 U.S.C. § 2074(c), prohibits the Commission from disclosing the identities of injured parties and persons treating them, absent consent. Based on this provision and on FOIA Exemption 3, I affirm the Freedom of Information Officer's decision to withhold the identities of the victims who have not provided consent.

Finally, you are seeking the comments of Scripto-Tokai on disclosure of the responsive information. As Alan Shakin of my office discussed with you by telephone on May 22, 1998, those comments fall outside the scope of your FOIA request. In addition, they are exempt from disclosure under the Commission's regulations, 16 C.F.R. § 1101.33(a)(1), and FOIA Exemption 3.

You have the right to seek judicial review of the foregoing decision, as provided by 5 U.S.C. § 552(a)(4)(B).

You also submitted a subpoena with your appeal, which seeks the same documents sought by the appeal. For the reasons already given, and also because the documents are not within the jurisdiction of the Northern District of Illinois (from which the subpoena issued), the Commission will not provide the documents described in the subpoena. Enclosed is your witness fee check of \$25, which I am returning.

Sincerely

  
Jeffrey S. Bromme

Enclosure

**SALES & WEBER**  
*Attorneys and Counsellors at Law*  
P.O. BOX 34  
SPRINGFIELD, ILLINOIS 62705  
(217) 789-9200

JACK CHRISTIAN SALES  
RAYMOND P. WEBER

May 8, 1998

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

Re: FOIA Request S-801010  
Product: Scripto "Aim-N-Flame" multi-purpose lighter  
House fire on January 20, 1997  
1702 East Matheny Street  
Springfield, Illinois  
Client: Derek Roberts et al.  
D/L: January 20, 1997

Dear Sir or Madam:

On behalf of my clients, I have filed a product liability lawsuit against the manufacturer, Scripto-Tokai Corp. of Fontana, California, which is now pending in the United States District Court for the Northern District of Illinois. Subsequent to filing the lawsuit, I received the FOIA response to my request of January 5, 1998. A copy of Todd Stevenson's response letter of April 8<sup>th</sup> on behalf of the Commission is attached for your immediate reference.

In the first paragraph and in the third paragraph of Mr. Stevenson's letter make reference to copies of releasable records and also that the distributor's comments were not included as it has "objected to the disclosure of its comments". I would like to know what documents are characterized as not "releasable". I would like copies of those documents and also complete copies of the distributor/manufacturer's comments, including the letter or other notice setting forth its objection to disclosure of its comments.

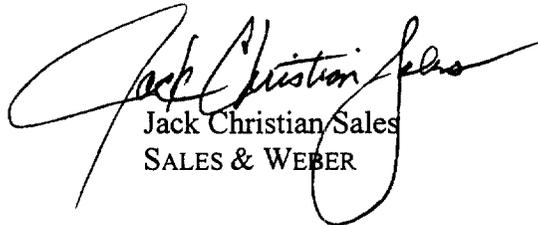
In light of the foregoing, I have enclosed a Subpoena for the production of those records. Naturally, this Subpoena is from the Northern District of Illinois, and you can merely advise me that you will not honor the subpoena. However, I will serve another one on the director of your Chicago office, and he will end up wasting his valuable time

trying to get the documents together or he will simply send it along to your office. Would you kindly telephone me at the above number so that we can discuss the most expeditious and efficient manner in handling this matter?

Enclosed is my check in the amount of \$25.00 as the witness fee contemplated under FRCP 45. I will pay the reasonable cost of reproducing the rest of the information sought. I do apologize for the hand written subpoena; typewriters are a lost commodity in the age of computers.

Thank you in advance for your kind assistance in this matter. I look forward to talking with you.

Cordially yours,



Jack Christian Sales  
SALES & WEBER

Copy: Donald J. O'Meara, Esquire  
Hinshaw & Culbertson  
222 North LaSalle Street  
Suite 300  
Chicago, Illinois 60601-1081

# United States District Court

NORTHERN DISTRICT OF ILLINOIS

Roberts et al.

v.

Scripto-Tokai Corp.

## SUBPOENA IN A CIVIL CASE

CASE NUMBER: 98 CV 2247  
Judge Manning

TO: General Counsel  
Office of the Secretary  
US Consumer Product Safety Commission  
Washington, D.C. 20207

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Those documents withheld as highlighted in the April 8, 1998, letter of the US CPSC, a true and correct copy of which is attached.

PLACE	DATE AND TIME
<u>Compliance by mail: Jack Christian Sales</u> <u>P.O. Box 34</u> <u>Springfield, IL 62705</u>	<u>on or before May 31, 1998</u>

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
<u>Jack Christian Sales</u> <u>attorney for Plaintiffs</u>	<u>5-8-98</u>

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
<u>Jack Christian Sales</u>