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

VOTE SHEET

DATE: November 26, 1996

TO : The Commission
Sadye E. Dunn, Secretary

FROM : Eric A. Rubel, General Counsel ER
Stephen Lemberg, Asst. General Counsel SL
Harleigh P. Ewell, Attorney, GCRA (Ext. 2217) HE

SUBJECT: Commission Options on Petition CP 96-1, from Judy L. Carr, to Amend the Safety Standard for Cigarette Lighters to Include Multi-Purpose Lighters

Attached is the staff's briefing package on whether to grant or deny the subject petition. A draft advance notice of proposed rulemaking ("ANPR") is being forwarded separately for the Commission's consideration.

Please indicate your vote on the following options.

I. GRANT THE PETITION. (Please check the appropriate option.)

___ A. Approve the ANPR as drafted.

___ B. Approve the ANPR with changes (please specify).

_____ (Signature) _____ (Date)

II. DENY THE PETITION. (Staff will prepare a draft letter of denial for the Commission's consideration.)

_____ (Signature) _____ (Date)

CPSA 6 (b)(1) Cleared
11/26/96
___No Mfrs/PrvtLblrs or Products Identified

11/26/96

III. OTHER (please specify).

_____ _____
(Signature) (Date)

Comments/Instructions:

Multi-Purpose Lighter Petition Briefing Package

November 1996

For Additional Information, Contact:

Barbara J. Jacobson, Project Manager
Directorate for Epidemiology and Health Sciences
(301) 504-0477 ext. 1206

NOTE: This document has not been reviewed or accepted by Commission 11/26/96

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MULTI-PURPOSE LIGHTER PETITION
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TAB A Petition to initiate rulemaking proceeding to amend 16 CFR 1210 Safety Standard for Cigarette Lighters to include the Scripto Aim 'n Flame™ disposable butane "multi-purpose" lighter within the scope of the Safety Standard for Cigarette Lighters (CP 96-1), February 1996. 21

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Memoranda from staff regarding comments received in response to the May 7, 1996, Federal Register Notice.

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"Response to Public Comments, Multi-Purpose Lighter Petition," September 10, 1996.

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"Comments In Response to Petition CP 96-1 For Child-Resistant Multi-Purpose Lighters," September 18, 1996.

EXECUTIVE SUMMARY

In February 1996, Judy L. Carr petitioned the Commission to ". . . initiate Rulemaking Proceedings to amend 16 CFR 1210 Safety Standard for Cigarette Lighters to include the Scripto Aim 'n Flame™ disposable butane 'multi-purpose' lighter within the scope of that standard and its child-resistant performance requirements." To support the claim that the requested action is necessary, the petitioner provided information about eight incidents associated with the Aim 'n Flame™ lighter. One of the incidents involved the petitioner's child.

This briefing package provides the Commission with the available information about the hazards associated with multi-purpose lighters and describes options for the Commission's consideration. The issue to be considered in deciding how to proceed is whether the Commission preliminarily finds that an amendment to the Safety Standard for Cigarette Lighters may be reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with multi-purpose lighters.

Based on the available information from January 1988 to the present, there were 53 reported incidents involving fires started by children under age 5 using multi-purpose lighters. These fires resulted in 10 deaths and 24 injuries. Five or fewer fires were reported annually from 1988 through 1994. In 1995, 11 fires, 3 injuries, and 2 deaths were reported. The staff is aware of 22 fires, 15 injuries, and 4 deaths for 1996 to date. Some of the incidents involved multi-purpose lighters other than the Aim 'n Flame™. The numbers of fires, deaths, and injuries are conservative since they are only the number of incidents known to CPSC rather than national estimates.

For some children, the combination of the "toy-like" shape of multi-purpose lighters and the size of the flame could enhance the attractiveness of multi-purpose lighters compared with ordinary cigarette lighters or matches. Additionally, the piezo-electric mechanism of multi-purpose lighters can easily be operated by children. Children under age 5 typically are incapable of dealing with a fire once started. This puts them and their families at special risk of injury. Almost all of the 10 fatalities were the children who started the fires.

Educational efforts, warning labels, and supervision are important, but not the sole solution to the problem of child-play fires started by young children. Based on the experience with cigarette lighters, the staff believes that effective child-resistant mechanisms can be designed for multi-purpose lighters. To the extent a product can be designed at reasonable cost to address a hazard, that is the most effective approach.

The staff recommends that the Commission grant the petition to initiate rulemaking to include the Scripto Aim 'n Flame™ butane "multi-purpose" lighter within the scope of the requirements of the Safety Standard for Cigarette Lighters. The staff also recommends that the Commission include all multi-purpose lighters in the amendment. Other models that operate in a similar manner present the same risk of injury. Some were involved in reported incidents.

The staff does not believe it is necessary to delay a standard for multi-purpose lighters until the effectiveness of the current lighter standard can be evaluated or until national estimates can be developed. Such a delay would allow the deaths and injuries associated with child-play with this product to continue unabated. Preliminary staff estimates, based solely on known casualties, indicate that expected benefits of adding a child-resistant feature could equal, or exceed, the expected costs.

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

MEMORANDUM

NOV 26 1996

TO : The Commission
Sadye E. Dunn, Secretary

Through : Eric A. Rubel, General Counsel
Pamela Gilbert, Executive Director

FROM : Ronald L. Medford, Assistant Executive Director, RLM
Office of Hazard Identification & Reduction
Barbara J. Jacobson, Project Manager,
Directorate for Epidemiology and Health Sciences
(301) 504-0477 ext. 1206

SUBJECT : Multi-Purpose Lighter Petition (CP 96-1)

I. BACKGROUND

On July 12, 1993, the Commission published a consumer product safety standard that requires disposable and novelty cigarette lighters to have a child-resistant mechanism that makes the lighters difficult for children under 5 years old to operate. The standard excludes lighters, such as multi-purpose lighters, that are primarily intended for igniting materials other than cigarettes, cigars, and pipes. Multi-purpose lighters are most commonly used to light charcoal or gas grills and fireplaces. During the development of the lighter standard, the staff was not aware of any data to indicate that multi-purpose lighters presented an unreasonable risk of injury.

Multi-purpose lighters are not subject to the requirements of any voluntary standard. Because they contain butane lighter fuel, they are subject to labeling requirements under the Federal Hazardous Substances Act. The required statements include: "DANGER - EXTREMELY FLAMMABLE," "CONTENTS UNDER PRESSURE," and "Keep out of the reach of children."

In February 1996, Judy L. Carr petitioned the Commission to "initiate Rulemaking Proceedings to amend 16 CFR 1210, Safety Standard for Cigarette Lighters, to include the Scripto Aim 'n Flame™ disposable butane 'multi-purpose' lighter within the scope of that standard and its child resistant performance requirements" (TAB A). To support the claim that the requested action is necessary, the petitioner provided information about eight

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incidents associated with the Aim 'n Flame™ lighter. One of the incidents involved the petitioner's child. Information about the other incidents was obtained by discovery in the petitioner's litigation with the product's manufacturer.

The petitioner's 4-year-old daughter was burned over 60% of her body when a 6-year-old boy triggered the lighter and ignited her clothing. The petitioner stated that the 6-year-old child was at a 3 to 4-year-old developmental level due to Downs Syndrome. The other seven incidents, all involving the Scripto Aim 'n Flame™ lighter, occurred over the 6-year period from 1988 through 1993. In all, the eight incidents resulted in property damage, burn injuries to three children and one adult, and one death. In the incident where a 4-year-old child died, the fire was started by his 5-year-old brother.

The petitioner stated that the Aim 'n Flame's™ ". . . gun-like shape and trigger with trigger guard makes it more attractive than a cigarette lighter as a play object." The petitioner highlighted information in four of the incidents provided with the petition that referred to the "gun-like" nature of the lighter.

The petitioner alleged that repeated operation of the trigger will cause the ON/OFF switch to move from the OFF position to the ON position and that the switch is easier to disengage than to engage.

On May 7, 1996, the Commission published a Federal Register notice soliciting comments on topics related to issues raised by the petition (TAB B). The comment period closed on July 8, 1996. The Commission received a total of nine comments, including four from lighter importers and one from the Lighter Association, Inc. Staff responses to issues raised by the commenters are provided in this briefing package at TABS F through I.

II. DISCUSSION

A. Incident Data (TAB C)

The staff searched all the relevant CPSC data bases since 1985, when multi-purpose lighters first entered the market, to identify fires started by children under 5 years old using these lighters. Data bases included consumer complaints, newspaper clippings, death certificates, hospital emergency room-treated injuries, and investigation reports. All incidents involving fires started by children under five that were submitted by the petitioner and commenters on the May 7, 1996, Federal Register notice are included in the analysis.

Based on the available information from January 1988 to the present, there were 53 reported incidents involving fires started by children under age 5 using multi-purpose lighters. These fires resulted in 10 deaths and 24 injuries. Although many of the reports did not indicate the amount of property damage, 12 reports cited property damage that exceeded $50,000. Two additional incidents involved fires started by older children (5 and 6) with Downs Syndrome, a condition that affects mental development.

Children under age 5 typically are incapable of dealing with a fire once started. This puts them and their families at special risk of injury. Almost all of the 10 fatalities were the children who started the fires. At least 3 of the 25 injured persons required hospitalization for treatment. One 15-month-old infant was hospitalized for second and third degree burns over 80 percent of his body when his 3-year-old brother ignited the playpen in which the infant was sleeping.

Among the 49 fires where the sex of the fire starter was known, 5 were girls, and 44 were boys. The children typically found the multi-purpose lighters in a variety of locations such as on kitchen counters or furniture tops. Others, however, obtained the lighters from more inaccessible locations, such as high shelves or cabinets, where parents tried to hide them. Investigation reports indicated that two 3-year olds and one 4-year-old involved in the incidents demonstrated that they could operate the ON/OFF switch.

Five or fewer fires were reported annually through 1994. In 1995, 11 fires resulted in 3 injuries and 2 deaths. For the first eight months of 1996, 22 fires resulted in 15 injuries and 4 deaths. The numbers of fires, deaths, and injuries are conservative since they are only the incidents known to CPSC. We also know from our data that some multi-purpose lighter fires were initially reported as "lighter" fires. In seven incidents, the involvement of a multi-purpose lighters was known only because there was a follow-up investigation.

The apparent increase in the number of fires may be related, in part, to the increase in sales of multi-purpose lighters. There were 1 million of these lighters sold in 1985. Since then sales have risen steadily. Total industry sales for 1995 were estimated at 16 million lighters and sales for 1996 are projected at 17 to 18 million.

Given the limited number of incidents reported, it is not possible at this time to make a national estimate of the total number of fires and casualties related to multi-purpose lighters. Development of a national estimate would require a special study to follow up on a large sample of child-play fires involving both multi-purpose lighters and lighters in general. A 24-month period of follow-up may be required to obtain a sufficient number of incidents involving multi-purpose lighters.

B. Market Information (TAB D)

The Product

Multi-purpose lighters are butane-filled lighters with a 4 to 8 inch nozzle from which the flame is emitted. The long nozzle allows the user to reach hard-to-light places and also keeps the user's hand away from the flames. Multi-purpose lighters are most often non-refillable. The lighters are activated by applying pressure to a trigger or button mechanism, which initiates fuel flow and a piezo-electric spark. They are most commonly used to light charcoal or gas grills and fireplaces. The lighters also are used to light pilot lights in

household gas appliances, campfires, camp stoves, and propane gas ranges in recreational vehicles. This type of multi-purpose lighter is sold at retail for $2.50 to $8 each, with an average retail price of about $4.

Another type of multi-purpose lighter has additional features, such as refillable fuel chambers, flexible extended nozzles, and piezo-electric spark mechanisms powered by replaceable batteries. These lighters retail for about $40 and are most likely to be used in commercial applications, such as during installation or repair of gas appliances. These lighters may not be a consumer product that would be subject to a mandatory standard.

Most multi-purpose lighters now sold include some type of safety switch. Usually this is a two-position slider-type switch which must be in the ON position before the lighter can be triggered. This safety switch would not be sufficient to make the lighter comply with the existing requirements for child-resistance because it is easy for children under 5 years old to operate and because it does not automatically reset after every operation.

Manufacturers

The largest marketer of multi-purpose lighters is Scripto-Tokai, which imports its lighters from Mexico. Cricket imports its lighters from the Philippines. Both of these firms are members of the Lighter Association, Inc., a trade association located in Washington, D.C. About a dozen other firms market multi-purpose lighters under private label; all of these lighters are produced by two Chinese manufacturers. Donnel, a manufacturer of the more expensive design, produces multi-purpose lighters domestically.

Sales

Multi-purpose lighters were introduced to the U.S. market in 1985 by Scripto with about 1 million units sold in the first year. Since then, sales have increased steadily. Scripto estimated total industry sales of 16 million units for 1995. Scripto and the Lighter Association, Inc., estimated total industry sales since their introduction to be over 100 million units. These industry sources expect sales of multi-purpose lighters to continue to increase, at the rate of 5-10 percent annually, for the foreseeable future. For 1996, sales are projected at 17 to 18 million.

Lighters In Use

The service life of multi-purpose lighters depends on how they are used. Lighters used seasonally for fireplaces or for camping may have useful lives of two years of more. If used in everyday applications, the useful life would be similar to that of disposable butane cigarette lighters, less than one year. Based on a useful life of one to two years, and a linear estimation of sales growth from 1985 forward, there were an estimated 23-36 million multi-purpose lighters available for use at the end of 1995.

Product Substitutes

Readily available substitutes for multi-purpose lighters include matches and disposable butane lighters. The closest substitutes are probably long-stem matches, sometimes called fireplace matches. However, fireplace matches are substantially more costly per light than multi-purpose lighters. These matches commonly retail for about $5 for a box of 50 or 10 cents per light ($5/50 lights). This compares to an average retail price of $4 for a multi-purpose lighter or 0.4 cents per light ($4/1000 lights). Although disposable butane lighters are less costly per light than multi-purpose lighters at 0.1 cents per light ($1/1000 lights), they do not have comparable features that allow the user to reach hard-to-light places while keeping the user's hand away from the flames.

Costs and Benefits of Adding a Child-Resistant Mechanism

Based on available incidents for 1995, there were 11 fires, 3 injuries, and 2 deaths, at an estimated societal cost of about $10.3 million. Assuming that the "baseline" child-resistance of multi-purpose lighters is within the same range as cigarette lighters, and using the 85 percent acceptance criterion in the cigarette lighter standard, the staff can estimate the potential costs and benefits of adding a child-resistant mechanism to multi-purpose lighters. Assuming that there were 23 million (one-year life) to 36 million (two-year life) multi-purpose lighters in use in 1995, the estimated maximum potential benefits would be 45 to 57 cents per lighter. However, this assumes a 100 percent reduction in fire losses associated with multi-purpose lighters and does not take into account that some children will be able to operate lighters even with a child-resistant mechanism.

Based on "baseline" test results of lighters with "roll-and-press" and "pushbutton" mechanisms from the cigarette lighter standard, the estimated potential range of effectiveness for multi-purpose lighters is 73 to 82 percent. For a one-year useful life, and a potential 73 percent improvement in child-resistant effectiveness, the benefit of adding a child-resistant mechanism would be 33 cents per multi-purpose lighter in use in 1995. Assuming a two-year useful life, and an 82 percent potential improvement in child-resistant effectiveness, the benefit per lighter would be 47 cents per multi-purpose lighter in use in 1995. Therefore, the estimated potential benefits of 33 to 47 cents per multi-purpose lighter compare to estimated costs of 20 to 40 cents per lighter.

Incomplete data for 1996 (cases reported through September) show 22 fires, 15 injuries and 4 deaths, with sales that are projected at 17 to 18 million multi-purpose lighters. Using all of the same assumptions as were used for 1995, the estimated potential benefits for 1996 are 65 to 93 cents per lighter compared to estimated costs of 20 to 40 cents per lighter.

C. Discussion of Issues Raised by the Petitioner

1. The petitioner stated that Scripto-Tokai Corporation possessed critical fire and injury data which would have been useful to the Commission during development of the Safety Standard for Cigarette Lighters.

Staff Response:

Scripto-Tokai did not provide information about incidents involving multi-purpose lighters to the staff during the standard development process. In addition, the 1987 special study collected information only on fires involving cigarette lighters. During the latter part of the standard development process, the staff did become aware of two incidents involving multi-purpose lighters.

Based on summary information submitted by the petitioner, Scripto-Tokai was aware of four fires started by young children with Aim 'n Flame™ lighters prior to publication of the Safety Standard for Cigarette Lighters on July 12, 1993. Two of these fires resulted in burn injuries and two resulted in property damage. None of the incidents involved a death. These few additional incidents would not have supported a conclusion during the rulemaking proceeding for cigarette lighters that multi-purpose lighters presented an unreasonable risk at that time.

2. The petitioner stated that the Aim 'n Flame's™ ". . . gun-like shape and trigger with trigger guard makes it more attractive than a cigarette lighter as a play object." The petitioner highlights information in four of the incidents provided with the petition that reference the "gun-like" nature of the lighter.

Staff Response (TAB E):

For some children, the combination of the "toy-like" shape of multi-purpose lighters and the size of the flame could enhance the attractiveness of these lighters as play objects compared with ordinary cigarette lighters or matches.

The appeal and attractiveness of the Aim 'n Flame™ and other multi-purpose lighters relies, in part, on their "toy-like" appearance. They have similar physical characteristics to a gun (barrel, trigger, and, in some cases, trigger guard). Most are also functionally similar to a gun since they are activated by pulling a trigger mechanism. It seems likely that children might play with these lighters by "shooting" them as they would a toy gun. Available incident data indicate some children were first attracted to the product because of its shape. In one incident, a 3-year-old boy saw the lighter on a basement workbench and thought it was a toy gun. His mother reported the child called it a "trigger gun."

In addition to the shape, the flame of multi-purpose lighters is also an attractive feature to children. Children's curiosity about fire is a normal, appropriate stage in their development. Fire appeals to young children because it is bright, warm, and exciting. In the case of multi-purpose lighters, the flame produced is larger than those of ordinary cigarette lighters. This might heighten the multi-purpose lighter's appeal to children.

3. The petitioner stated that Scripto-Tokai has not notified the Commission under Section 15(b) of the Consumer Product Safety Act that the Aim 'n Flame™ contains a defect that could create a substantial product hazard. The petitioner alleged that repeated operation of the trigger will cause the safety switch to move from the OFF position to the ON position and that the switch is easier to disengage than to engage.

Staff Response (TAB G):

The staff evaluated ten Aim 'n Flame™ lighters and determined:

a. It took about ten forceful pulls on the trigger to cause the safety switch to migrate from the OFF position to the ON position the first time. This procedure appeared easier with each successive attempt. It is unknown whether children under 5 years of age would have the strength or inclination to attempt to override the safety switch in this manner. Since the safety switch is not child-resistant, it is more likely that a child would just move it from the OFF position to the ON position.

b. It is easier to place the safety switch in the ON position than the OFF position because of a detent that holds it in the ON position. Investigation reports indicated that some 3 and 4-year old children involved demonstrated that they were capable of operating the ON/OFF switch.

The issue of whether the Aim 'n Flame™ contains a defect is an issue that will be considered as a separate matter by the Office of Compliance.

D. Comments Received in Response to the May 7, 1996, Federal Register Notice

The Commission received nine comments in response to the Federal Register notice. Commenters included Scripto-Tokai, Pinkerton Group Inc. (Cricket), Colibri Corporation, and Calico Brands, Inc., lighter importers; the Lighter Association, Inc.; Vinson & Elkins, the petitioner's attorneys; Ms. Diane L. Denton, the petitioner for the current lighter standard; Mr. Davis S. Carson, an attorney; and Dr. John O. Geremia, a lighter expert. Copies of the comments are available upon request from the Office of the Secretary.

Scripto-Tokai and Cricket, both members of the Lighter Association, Inc., currently import multi-purpose lighters. Mr. Carson, Ms. Denton, and Calico Brands, Inc., wrote in support of including multi-purpose lighters in the current standard. Scripto-Tokai, Cricket, and the Lighter Association, Inc., request that the Commission carefully consider all factors before initiating a rulemaking proceeding to amend the current lighter standard. Specific concerns included the potential costs and benefits of any amendment and whether making multi-purpose lighters child-resistant would compromise the overall safety of the product.

Calico Brands, Inc., stated that all multi-purpose lighters should be included in the amendment. Vinson & Elkins and Mr. Carson submitted information about incidents involving multi-purpose lighters. Dr. Geremia commented on the need for third-party certification for lighters and provided some thoughts on the design of child-resistant features for multi-purpose lighters.

Issue: Incidents Limited to One Product

The Pinkerton Group, Inc., commented that the incidents appear to be limited to one particular product on the market.

Staff Response (TAB F):

The one manufacturer who represents approximately 90 percent of U.S. sales accounted for 19 of the 25 fires in which the product was identified. The other 6 fires were associated with other manufacturers' lighters, establishing that the incidents are not limited to one product alone.

Issue: Risk Associated with Multi-Purpose Lighters.

Scripto-Tokai and the Lighter Association, Inc., commented that there are very few fire incidents involving multi-purpose lighters relative to the number of units sold and therefore these lighters present an extremely low risk compared to other open flame products.

Staff Response (TAB F):

At this time, fire data involving multi-purpose lighters are limited to counts of cases known to CPSC which are, by nature, conservative. It is not possible to estimate adequately the magnitude of the fire hazard or the per-unit risk associated with multi-purpose lighters. To do so would require a special study. Even if the per-unit risk was identical for lighters, matches, and multi-purpose lighters, there would be many times more fires with matches and lighters, solely because of the larger number of these products in use. The relative risks of open-flame devices are discussed in the response to the next comment.

Issue: Switch to Matches

Scripto stated "More fires are started each year by children playing with matches than with any other source. . ." ". . . The number of fires started by children using matches has not declined and in fact may have even increased since the adoption of 16 CFR, Part 1210." ". . . some consumers are switching to less safe means of lighting tobacco products, such as matches."

The Lighter Association, Inc. stated ". . . The difficulty in using child-resistant multi-purpose lighters may cause some users to move to long stem matches. . ."

Staff Response (TAB F):

Current data do not support the claim that more fires are started each year by children with matches than with any other source. In both 1993 and 1994, child-play fires involving matches and lighters were at about the same level. In 1994, the most recent year for which fire data are available, matches were involved in an estimated 9,100 child-play fires compared to 10,600 for lighters.

Because matches are not child-resistant, there is no reason to expect the number of child-play match fires to be declining. Nor are we aware of any data that indicate that child-play fires have increased. Available data through 1994 do not allow us to determine if the number of child-play match fires have increased since the effective date of the Safety Standard for Cigarette Lighters on July 14, 1994.

Scripto-Tokai does not provide any supporting evidence that consumers are switching from child-resistant lighters to matches. Additionally, non-child-resistant cigarette lighters are more hazardous than matches. A CPSC study conducted in the late 1980's found that the proportion of child-play fires started by children under age 5 was considerably smaller for matches than for cigarette lighters. This may be due to the fact that very young children lack the coordination necessary to strike a match. This study also concluded that lighters were 1.4 times as likely as matches to be involved in a child-play fire, 3.3 times as likely to be involved in a child-play death, and 3.9 times as likely to be involved in a child-play injury. Because many of the child-resistant lighter designs on the market now are very easy for consumers to use, there is no reason to believe, or data to support, the assertion that a significant number of consumers are switching to matches.

Based on the experience with cigarette lighters, the staff believes that child-resistant mechanisms for multi-purpose lighters can be designed that are easy for most consumers to use. For this reason, and because matches are a less convenient and more expensive source of flame, it is unlikely that many consumers would move from child-resistant multi-purpose lighters to long-stemmed matches.

Issue: Requiring Multi-Purpose Lighters to be Child-Resistant May Create Other Hazards.

Scripto-Tokai commented that the existing technology for child-resistant lighters, specifically the reset mechanism, would be unsafe for multi-purpose lighters. The piezo-electric technology used in most multi-purpose lighters is not completely reliable in producing a flame each time it is activated. The reset mechanism could further delay ignition and increase the potential for mini-explosion or flashback fire from accumulated pressurized gas.

The Lighter Association, Inc., stated that when a multi-purpose lighter is used to ignite a gas grill, the user typically turns the gas on and then ignites the gas burner with the lighter. Delays caused by multiple attempts while the gas continues to be emitted from the grill present a risk of flame-up or explosion.

Staff Response (TAB G):

The failure of piezo-electric mechanisms to light after each activation creates a potential for "mini explosion" or "flashback fire" under certain conditions. The probability and severity of this type of reaction depends on a number of variables, including the length of time the gas flows and the air circulation within any container holding the gas to be ignited. The staff believes the addition of a properly designed child-resistant feature should not add significantly to the delay already inherent in the device. Should the Commission decide to develop a rule to require multi-purpose lighters to be child-resistant, this issue would be carefully evaluated by the staff.

Issue: Easy Operability of Multi-Purpose Lighters

Diane Denton, who in April 1985 petitioned for the current standard on cigarette lighters, stated that multi-purpose lighters are easier to operate than small, more common lighters.

Staff Response (TAB H):

While there are no comparison data on the ease of operability between these types of lighters, available incident reports show how easy it is for young children to operate multi-purpose lighters, most of which have a piezo-electric mechanism. After one fire, a mother found that both of her children, aged two and four, could operate the lighter with little difficulty. In another incident, fire investigators asked a 3-year-old to demonstrate how he used the lighter. The child switched the ON/OFF switch to ON and pulled the trigger with one hand. The father said the ON/OFF switch was similar to that on some of his son's toys and the trigger pull action was similar to that of toy guns.

Also, among various types of non-child-resistant lighters tested during the development of the cigarette lighter standard, the piezo-electric mechanism was the easiest to operate.

Forty-six out of 50 (92 percent) of the children on a test panel were able to operate the lighter with the piezo-electric mechanism. Multi-purpose lighters can easily be operated by children with one hand, while two hands are required to operate most disposable non-child-resistant cigarette lighters.

Issue: Accessibility of Multi-Purpose Lighters

Scripto-Tokai states that multi-purpose lighters are less accessible to children than disposable lighters and therefore, do not present a similar risk. They "are typically stored away in the same manner as tools or implements" and "are not carried in a pants or shirt pocket, or in a purse." Since they cost more than disposable lighters, they are "less likely to be left laying around."

Staff Response (TAB H):

In the available fire incidents, children found the multi-purpose lighters in a variety of locations, some easily accessible and others less accessible. Multi-purpose lighters are sometimes stored in accessible locations convenient to their use. A 2-year-old boy was burned with a multi-purpose lighter that he took off a hook near a fireplace in his grandmother's home.

Storing multi-purpose lighters in the same manner as tools does not necessarily make them inaccessible to children. In one incident, a 3-year-old boy took a multi-purpose lighter out of a relative's tool box and hid it in his toy box. Two weeks later he started a fire with the lighter in the family's living room. Children started fires with lighters that they retrieved from kitchen cabinets, the top of microwave ovens, a 6-foot-high cabinet, a garage shelf, a bathroom medicine chest, a bookcase, a bedroom dresser, a basement workbench, and the top of a water heater in a utility closet.

Also, that these devices are not necessarily "less likely to be left laying around" based on cost, as they are fairly inexpensive. In fact, in two of the incidents, the lighters were obtained free as part of a cigarette promotion. Further, since these lighters are not commonly carried in a pocket or purse, they are likely to always be in their normal storage locations, some of which, as noted above, are accessible to children.

Issue: "False Sense of Security"

The Lighter Association, Inc., commented that "there is always the possibility that parents and caretakers will be more careless with child-resistant lighters, erroneously thinking them child-proof."

Scripto-Tokai stated that child-resistant lighters "are viewed frequently as 'childproof' leading parents to a false sense of security."

Staff Response (TAB H):

It is not likely that the issue of a "false sense of security" will prevent the expected reduction of child-play fires started with multi-purpose lighters. As detailed above, multi-purpose lighters are currently stored in accessible locations convenient to their use. Even when they are stored out of reach, in locations considered inaccessible, children seek them out. The same argument about "false sense of security" could be applied to child-resistant packaging used for drugs and household chemicals. Yet an article published in the June 5, 1996, Journal of the American Medical Association, "The Safety Effects of Child-Resistant Packaging for Oral Prescription Drugs," demonstrates that child-resistant packaging has reduced childhood poisoning from oral prescription drugs for children under age 5 by about 45 percent since 1974, the year these drugs became subject to the packaging requirements.

Issue: Education and Supervision

Scripto-Tokai commented that education and supervision are the "first line of defense" in lighter-related fires. They stated that parents must be "repeatedly reminded to keep fire sources out of the reach of children, and never leave small children unsupervised." They said warnings and labels must be used "to adequately inform consumers of applicable hazards." They stated that the Commission has ignored educational efforts and has narrowly focused on product design.

Colibri Corporation recommended the Commission review educational materials on multi-purpose lighters.

Calico Brands, Inc., stated that they always place a label on their lighters and lighter packaging warning parents "to keep lighters out of the reach of children." However, they also say that they are aware the warning is not "foolproof" and that child-resistance is also necessary "to further protect the safety of our children."

The Lighter Association, Inc., stated that "ultimately the issue of fire safety is an issue of parental supervision" and "[p]rior to initiating rule-making, it would seem prudent to consider whether this issue could be dealt with through educational efforts."

Staff Response (TAB H):

Educational efforts, warning labels, and supervision are important, but not the sole solution to the problem of child-play fires started with multi-purpose lighters. To the extent a product can be designed at reasonable cost to address a hazard, that is the most effective approach.

Available incidents indicate that even when consumers were aware of the danger of these lighters and took precautions to keep them out of reach, children still managed to access the lighters. In some instances, it appeared that the lighter was normally stored in a particular

space, but for whatever reason, it was not returned there after its latest use. This is a foreseeable scenario, since people can be expected to be forgetful.

Children of the ages of those involved in the incidents are old enough to engage in play activities in rooms other than where their parents or guardians are present. At the time of the incidents the children were under reasonable levels of adult supervision. Fires were started while parents or guardians were present in the house. One mother was downstairs fixing lunch at the time of the incident. In other cases, children started fires while a parent was showering or sleeping. These are also foreseeable scenarios, since people cannot be expected to watch their children every moment of the day.

Issue: Safety Standard for Cigarette Lighters.

1. Effectiveness of the current standard.

The Lighter Association, Inc., states that it is not aware of any data available for 1994 and, more importantly, for 1995 to demonstrate the effectiveness of the current standard.

Staff Response (TAB I):

The most recent year for which fire data are available is 1994. However, since the current standard became effective in July of 1994, and since non-child-resistant lighters were in the channels of distribution through 1994 and 1995, the full effect of the cigarette lighter standard will not be achieved until non-child-resistant cigarette lighters made before July 12, 1994, are no longer in use. Since this has not yet occurred for a year for which complete fire data are available, the standard's effectiveness has not been evaluated.

However, based on tests of non-child-resistant and child-resistant cigarette lighters, the staff estimates the cigarette lighter standard will address 80 to 105 (53 to 70 percent) of the 150 deaths each year resulting from young children playing with cigarette lighters. The staff plans to evaluate the effectiveness of the current standard in 1998.

2. Consumer resistance to the current standard.

The Lighter Association, Inc., commented that there is strong adverse consumer reaction to lighters that comply with the current child resistancy standard. Since the standard went into effect on July 12, 1994, member companies have received tens of thousands of letters complaining about how difficult it is to operate the new child-resistant lighters.

Scripto-Tokai commented that child-resistant lighters generated daily letters and phone calls from puzzled and upset consumers expressing their frustration and resistance to the inconvenience. Senior citizens and people with disabilities (arthritis) find them difficult to operate. Consumers without children complain there is no choice. Consumers even found ways to disarm the lighters' child-resistant mechanisms.

Staff Response (TAB G, TAB I):

When the Safety Standard for Cigarette Lighters went into effect, some consumers wrote to CPSC expressing dissatisfaction and some manufacturers reported receiving complaints from consumers. This is similar to the initial reaction to the requirement for child-resistant packaging of prescription drugs under the Poison Prevention Packaging Act in the early 1970's. It appears that consumer dissatisfaction with child-resistant cigarette lighters has lessened substantially, since the staff now rarely receives complaint letters.

Additionally, child-resistant mechanisms have been evolving during the period the standard has been in effect. Originally, most of the lighters used some type of lock operated by moving a lever. These designs were sometimes cumbersome and, for some people, may have required the use of two hands. While some of these lighters are still on the market, the trend now is toward more subtle movement such as pressure on the flint wheel or pressing a button to disable the lock. The staff expects consumer resistance to be minimized by these new lighters, which are easy for adults to operate.

3. Products designed to defeat the child-resistant features of disposable lighters.

The Lighter Association, Inc., Scripto-Tokai, and Colibri Corporation discussed products designed to override the child-resistant features of disposable lighters. The Association provided a copy of a patent for such a product issued to two inventors in Cottonwood, Arizona. Scripto-Tokai stated that CPSC failed to take action against a particular device that is marketed for overriding the child-resistant features of cigarette lighters.

Staff Response (TAB I):

Although the marketing of tools designed to override the child-resistant features of disposable lighters does not violate Commission regulations, the staff has requested the manufacturer of the device referred to by Scripto-Tokai to discontinue marketing the device. The decline in consumer dissatisfaction with child-resistant lighters as the designs become easier to operate will likely eliminate the market for such products.

4. CPSC enforcement of the current standard.

Without giving details, the Lighter Association, Inc., and Scripto-Tokai stated that there were a number of alleged violations of the stockpiling rule in the current standard. They believe that Chinese importers as a group brought in over 100 million non-child-resistant lighters above the permissible stockpiling limit. They stated that there are stores still stocking (and restocking) non-child-resistant lighters.

The Lighter Association, Inc., stated that some distributors apparently are buying child-resistant lighters, opening the master cartons, disengaging the child-resistant features, repacking the lighters, and selling the cartons at a substantial premium.

Association members believe that some importers are fraudulently bringing in non-child-resistant lighters as child-resistant lighters using "contrived" testing or other ruses.

The Lighter Association, Inc., and Scripto-Tokai request tightening of the stockpiling requirements and stringent even enforcement of any new rule relating to multi-purpose lighters.

Staff Response (TAB I):

The Commission has aggressively enforced the requirements of both the safety standard and the anti-stockpiling provisions. In cooperating with U.S. Customs Service, the Commission has prevented the importation of millions of non-child-resistant lighters. The Commission will continue to vigorously enforce the standards and investigate any reports of possible noncompliance brought to its attention.

5. Issue: Recommendations for Any Requirements for Multi-purpose Lighters.

Scripto-Tokai stated that the lessons learned from the disposable cigarette lighter experience must be applied to any effort to regulate new products. Recommendations include:

- Including all multi-purpose lighters, whether disposable or refillable, long or short, expensive, or inexpensive, novelty or otherwise.
- Clearly defining acceptable child-resistant mechanisms.
- Requiring all importers to submit base period and monthly reports to CPSC on importation of both child-resistant and non-child-resistant lighters and specific manufacturing source information.
- Working closely with the United States Customs Service and through diplomatic channels to insure that importers do not circumvent the stockpiling rules.
- Applying enforcement measures evenly.

Dr. Geremia questioned the validity of allowing the industry to self-certify. He suggested that testing be conducted by CPSC or an independent organization not paid directly by the importers.

Dr. Geremia stated that a holding company that makes purchases from a factory to fill orders, denies accountability in the event of a malfunction and serious accident. He recommends that lighters have identification as to manufacturers name and address and a date code.

Staff Response (TAB I):

The Commission does strive to evenly enforce all of its regulations, routinely working with the U.S. Customs Service, as well as other government agencies.

The Safety Standard for Cigarette Lighters requires manufacturers to certify compliance through a reasonable testing program which includes (1) qualification tests on surrogates (non-flame-producing versions) of each model of lighter produced, (2) development of a specification of the characteristics of the surrogates found to meet the child-resistance requirements, and (3) tests performed as the lighters are produced to demonstrate that they continue to meet the original specifications.

The Commission expects companies to be able to demonstrate that they have a reasonable testing program that evaluates whether their lighters are in compliance. However, the Commission does have the authority to test and take action against any product which does not comply. The Commission conducts its own tests using an independent testing organization where appropriate.

Other suggestions specific to an amendment involving multi-purpose lighters will be considered if the Commission proceeds to develop a proposed rule for multi-purpose lighters.

6. Designs for Child-Resistant Features to be Considered for Multi-Purpose Lighters.

Dr. Geremia commented that the following are child-resistant designs to be considered:

a. A trigger guard similar to those used on firearms except it would remain attached to the unit in some way.

b. A design which requires the burner nozzle and handle to be pushed toward each other and then twisted in order for gas to flow.

c. A false trigger in the present location with the real trigger hidden at the base of the handle.

Staff Response:

Suggestions specific to child-resistant designs for multi-purpose lighters will be considered if the Commission initiates a rulemaking proceeding to amend the standard. It should be noted, however, that the Safety Standard for Cigarette Lighters does not specify product designs. Any design that meets the performance requirements of the testing protocol is acceptable.

III. OPTIONS

1. Grant the petition.

If the Commission determines that multi-purpose lighters may present an unreasonable risk of injury, and that a mandatory action may be reasonably necessary to address the risk, the Commission may grant the petition and issue an ANPR to initiate rulemaking to include the Scripto Aim 'n Flame™ disposable butane "multi-purpose" lighter within the scope of the requirements of the Safety Standard for Cigarette Lighters.

2. Defer the petition and continue to monitor incidents.

If the Commission determines that more information is needed before a decision can be made to grant or deny the petition, the Commission could defer a decision and direct the staff to collect additional information.

3. Deny the petition.

If the Commission determines that the available information does not indicate that multi-purpose lighters present an unreasonable risk of injury, or that mandatory requirements would not effectively reduce the risk of injury and death associated with multi-purpose lighters, the Commission may deny the petition.

IV. CONCLUSIONS AND STAFF RECOMMENDATION

The staff recommends that the Commission grant the petition to initiate rulemaking to include the Scripto Aim 'n Flame™ butane "multi-purpose" lighter within the scope of the requirements of the Safety Standard for Cigarette Lighters. The staff also recommends that the Commission include all multi-purpose lighters in the amendment. Other models that operate in a similar manner present the same risk of injury. Some were involved in reported incidents.

The staff searched all CPSC data bases since 1985, when multi-purpose lighters first entered the market. Based on this search, and information submitted by the petitioner and others, 53 incidents involving fires started by children under age 5 using multi-purpose lighters were reported. These fires resulted in 10 deaths and 24 injuries. The numbers of fires, deaths, and injuries are conservative since they are only the number of incidents known to CPSC rather than national estimates.

For some children, the combination of the "toy-like" shape of multi-purpose lighters and the size of the flame could enhance the attractiveness of multi-purpose lighters compared with ordinary cigarette lighters. Additionally, children can easily operate the piezo-electric mechanism of multi-purpose lighters.

Children under age 5 are typically incapable of dealing with the fire once started. This puts them and their families at special risk of injury. Almost all of the 10 fatalities were the children who started the fires. Educational efforts, warning labels, and supervision are important, but not the sole solution to the problem of child-play fires started by young children.

Based on the experience with cigarette lighters, the staff believes that manufacturers can design effective child-resistant mechanisms for multi-purpose lighters. To the extent a product can be designed at reasonable cost to address a hazard, that is the most effective approach.

The staff does not believe it is necessary to delay a standard for multi-purpose lighters until national estimates can be obtained or until the effectiveness of the cigarette lighter standard can be evaluated. Such a delay would allow the deaths and injuries associated with child-play with this product to continue unabated. Preliminary staff estimates based solely on known casualties, indicate that expected benefits could equal, or exceed, the expected costs.

TAB A

Rec'd Feb 10, 1996 in US Atch Lawn Hwy 2/23/96
EHDS/FOI
C620020
CP96-1

Judy Carr
1002 Cemetery Road
Santa Fe, Texas 77510

CPSA 6 (b)(1) Cleared
3/29/96 S
___No Mfrs/PrvtLblrs or Products Identified.
X Excepted by Pet. Prod.
___Firms Notified.
Comments Processed.
25(c) EXCISED

Honorable Ann Brown
Chairman
c/o Sadye Dunn, Secretary
Office of the Secretary
U. S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, Maryland 20207

Dear Chairman Brown:

My name is Judy Carr. On March 21, 1992 my 4-year-old daughter, Jodie, was critically burned in a fire started by a Scripto Aim 'n Flame disposable butane household lighter.

On the evening of March 20th, Will Carr, Sr. and I were out and a babysitter was at home with the children. The babysitter had permission from Will to use the Scripto Aim'n Flame kept in a high cabinet in the kitchen to light her cigarettes. When we returned home, I found the lighter on the coffee table near where the kids were sleeping on the living room floor. I deliberately put the Aim'n Flame on the back of the bar and slid the switch to off. The next morning about 7:30 a.m. the fire started that burned Jodie over 60% of her body.

Our lawsuit against Scripto-Tokai is over. A copy of the most recent petition is enclosed. I don't want to see other young children horribly burned.

During the lawsuit, we asked Scripto to tell us about other fires started by very young children with the Aim 'n Flame. They gave us information about 7 other fires, damages, deaths and injuries.

I can't understand why Scripto doesn't fix this lighter to protect little children. Why should more kids be horribly burned when they already know how to fix it, just like on their least expensive lighters?

With help from my lawyers, I submit the enclosed petition to ask you to please protect the children and require Scripto to apply the requirements of the safety standard for cigarette lighters and make the Aim 'n Flame child resistant.

Sincerely,

Judy L. Carr

Judy Carr

Judy L. Carr

f:\cg7481\carr\brown.ltr

Enclosures: United States Consumer Production Safety Commission
Petition to Amend 16 CFR 1210 - Consumer Product Safety
Standard for Cigarette Lighters CP 96-

Second Amended Original Petition

United States Consumer Product Safety Commission

Petition to Amend 16 CFR 1210

Consumer Product Safety Standard for Cigarette Lighters

CP 96-1

Petition to initiate Rulemaking Proceedings to amend 16 CFR 1210 Safety Standard for Cigarette Lighters to include the Scripto Aim 'n Flame disposable butane "multi-purpose" lighter within the scope of that standard and its child resistant performance requirements.

On July 12, 1993 the Consumer Product Safety Commission published a Consumer Product Safety Standard requiring disposable butane and novelty cigarette lighters to be child resistant, based on an established testing protocol. The standard became effective July 12, 1994.

In the preamble to the Proposed Regulations, dated August 17, 1992, the Commission stated the rule would not cover lighters "not primarily intended for use with smoking materials", because the Commission "*lacks data showing that these products present the same types of risk as lighters covered by the standard*". Based on that insufficiency of data, the subject Aim 'n Flame, a $5 (or less) disposable butane household lighter *that looks much like a toy gun* was not included in the scope of the standard.

It has recently come to light, however, that the distributor of the Aim 'n Flame, Scripto-Tokai Corporation, possessed critical fire and injury data which would be useful to the Commission during the standard development process. Scripto-Tokai knew that their product was subject to complaints and lawsuits describing infant death, severely burned

children and substantial fires caused by children operating their Aim 'n Flame lighter. The risk of injury and damage producing fires could have been substantially reduced or eliminated if the approximately $5 Scripto Aim'n Flame contained the same child resistant feature as the 99¢ Scripto Turbo Lighter, which is operated by the same piezoelectric sparking mechanism.

In the preamble to the August 17 Federal Register notice, the Commission states:

> The Commission preliminarily determines that the provisions of the CPSA are most appropriate for development of requirements for lighters to address risks of injury associated with lighters that can be operated by children. Those risks of injury arise because lighters are mechanical devices intended to produce flame and can be operated by children who do not appreciate all of the consequences of using the product. Those consequences include the ignition of clothing and other articles in the household, and may result in injury or death of the child operating the lighter, or other persons.

The Scripto Aim 'n Flame clearly demonstrates these unreasonable risks of injury or death and for the reasons stated below, we hereby petition the Commission to include the Aim 'n Flame within the scope of the standard to apply the child resistant feature already found on Scripto's least expensive lighters.

The Scripto Aim 'n Flame household lighter first came on the market in 1985, after much of the injury data the CPSC analyzed for the Hazard Analysis (1980-1985) was already collected. Information about the danger of the Aim 'n Flame to children was not readily available to the CPSC during consideration of the standard, but it was known to Scripto-Tokai. That data, including reports of severe burns and fires started by children, clearly indicates that the Aim 'n Flame may pose additional dangers:

- The trigger, trigger guard, barrel and butt creates the image of a gun. Even the name Aim 'n Flame relates to a gun. Webster's first definition of the word Aim is to "direct a weapon". Its attraction to children parallels the Commission's reasons for including novelty lighters in the standard.

- Only Scripto's description of the Aim 'n Flame as a "multi-purpose" lighter exempts it from regulations. A child makes no such determination. The gun-like shape and trigger with trigger guard makes it more attractive than a cigarette lighter as a play object. CPSC states in the Federal Register notice that *novelty lighters may have the highest risk of injury.*

- It is the only "multi-purpose" lighter to my knowledge often sold on the rack right next to the other lighters and tobacco products in drug stores. Its full retail price is $5, and sometimes sells for less. *Scripto* possesses a huge market share, estimated at 95%.

- Because it may be used somewhat less often than other lighters and has a larger reservoir of butane, it may be left lying around the house much longer, and with the colorful appearance of a gun, may be the most interesting lighter of all to a child.

- Scripto-Tokai should not use the argument that their Aim 'n Flame is not covered by the standard to imply that the Commission has determined there is no unreasonable risk and to avoid responsibility for deaths and injuries to children.

Moreover, these lighters' "safety" switch migrates from "off" to "on" very easily, by playing with the trigger. Multiple trigger clicks will disengage the safety without any touch to the switch. And, the safety is designed "backwards": it takes more force to disengage the safety than it does to engage the safety. And, in certain materials, Scripto-Tokai refers to

the Aim'n Flame as one of their "child resistant" lighters. Petitioners do not believe this lighter is adequately child resistant. See Exhibit A "Child Resistant Lighter Buyers Guide."

It appears from careful study of the standard development process that the CPSC excluded multi-purpose lighters such as the Aim 'n Flame because it did not have the necessary data to show that children were operating the Aim 'n Flame lighter, causing fires, and suffering substantial burn injuries. Scripto had such data and continues to collect it.

To this date, it appears that Scripto has withheld from the CPSC reports of at least eight fires started by young children operating the Aim 'n Flame. The fires have resulted in houses burning down and *children being critically injured and killed*, the very data that would provide a basis for the Commission to determine that the Aim 'n Flame must be included in the definition of a lighter required to be child resistant according to the CPSC test protocol.

In the case of *Carr v. Scripto-Tokai Corporation* in Galveston County, Texas, the Judge ordered Scripto to disclose Aim'n Flame fire incidents involving very young children. Reflected in the chart below and attached as Exhibit "B" in complete form is the material turned over by Scripto. The Notice to Scripto in the chart reflects only the dates on the documents received. Evidence of prior notice and additional incidents of fires and injuries to young children is unknown to us at this time.

Fire Injury Data Produced by Scripto-Tokai
In *Carr v. Scripto-Tokai*

1. [redacted]
Date of Fire: August 24, 1988
Notice to Scripto: January 25, 1990

$75,000 property damage caused by Aim 'n Flame operated by infant son.

2. [redacted]
Date of Fire: May 31, 1991
Notice to Scripto: January 28, 1992

Three-year-old *mistakes lighter for gun* and caused $80,000 damage to home.

3. [redacted]
Date of Fire: July 5, 1992
Notice to Scripto: November 17, 1992

Severe burns to child with *gun-type charcoal* lighter. Caught nightgown on fire and severely burned arms, legs and buttocks.

4. [redacted] infant child
Date of Fire: March 5, 1992
Notice to Scripto: February 1, 1993

Severe and serious burns to and about infant's body.

5. [redacted] 3 years old (deceased)
[redacted] 5 years old
Date of Fire: January 31, 1992
Notice to Scripto: November 15, 1993 (Cross-complaint filed)

[redacted] operated "*pistol lighter*" causing substantial fire and death to younger brother.

6. [redacted] son
Date of Fire:
Notice to Scripto: January 6, 1994

Son got hold of grill lighter, "*which is not very child proof*" and started fire *with switch left in "off" position by*

the parent. (Scripto letter to adjuster and telephone conversation with parent).

7. Jodie Carr (*Carr v. Scripto-Tokai Corporation*)
   Date of Fire: March 21, 1992
   Notice to Scripto: July 30, 1993
   Complaint Filed: April 12, 1994

   Down's Syndrome child (6 years old at 3 to 4-year-old developmental level) and 4 year old playing with lighter start fire and severely burns 4-year-old girl over *60%* of body, with *switch left in "off" position by the parent.*

8. [redacted] 4-year-old son
   Date of Fire:
   Notice to Scripto: March 5 (year unknown)

   Her 4 & 8 year olds think it looks like a gun and always want to use it. The four year old burned his diaper, which then burned the mother as she carried it to the bathroom. $2600 carpet damage. "*kids thing (sic) of it as toys.*" (Scripto phone message).

Michael Forys, Senior Vice-President of Administration at Scripto-Tokai was recently deposed in the *Carr* case. Excerpts of Mr. Forys' deposition make it clear (Exhibit "C"), that Scripto-Tokai now recognizes some need for appropriate action.

> Q Does Scripto Corporation to your knowledge have any corporate position disseminated to the Consumer Product Safety Commission on whether or not the Aim 'n Flame lighter, or lighters like the Aim 'n Flame lighter, should be child resistant in order to protect children?
>
> A Well, early in the rule making in 1986 or 1987 the CPSC determined that utility lighters would not be included in the rule making because they didn't find sufficient hazard, and we have had no information to - <u>at least until recently to change that</u>.

Even though Mr. Forys admits that Scripto-Tokai now has information concerning potential dangers of the Aim 'n Flame to children, to our knowledge, they have neither taken steps to produce a reasonably safe lighter nor to our knowledge have they notified the Commission under Section 15(b) of the Consumer Product Safety Act and 16 CFR 1115 that their product either contains a defect or an unreasonable risk of injury which could create a Substantial Product Hazard.

Because:

1. The Aim 'n Flame presents the same unreasonable risks of injury identified by CPSC as cigarette lighters without the child resistant features manufactured before the standard;

2. It looks like a toy gun in the eyes of a child;

3. It is sold like a cigarette lighter in a blister pack on the cigarette lighter rack;

4. It spends long periods of time in and around the home and infant children; and

5. There is clear evidence that very young children have started major fires with the Aim 'n Flame causing catastrophic injuries.

6. It is not adequately - indeed at all - child resistant.

We hereby request that the Consumer Product Safety Standard for Cigarette Lighters at 16 CFR 1210 be amended to include the Scripto Aim 'n Flame to protect young children and their families by requiring Scripto-Tokai to apply the same child resistant protocol described in the standard to the Aim 'n Flame.

Judy Carr
Mother of Jodie Carr
1002 Cemetery Road
Santa Fe, Texas 77510

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f:\cg7481\carr\petition

CAUSE NO. 94CV0287

JUDY LYNN CARR, INDIVIDUALLY AND AS NEXT FRIEND OF JODIE RENEE CARR (BROCCO), A MINOR	§	IN THE DISTRICT COURT OF
VS.	§	GALVESTON COUNTY, TEXAS
SCRIPTO-TOKAI CORPORATION, WAL-MART, INC., AND LOUIS SPEARS	§	56TH JUDICIAL DISTRICT

PLAINTIFFS' SECOND AMENDED ORIGINAL PETITION

COMES NOW Plaintiffs, and in response to special exceptions file this amended pleading:

I.

Judy Lynn Carr, individually and as next friend of Jodie Renee (Brocco) Carr, a minor, is an individual resident of Galveston County, Texas.

Jodie Renee (Brocco) Carr is a minor resident of Galveston County, Texas.

Defendant Scripto-Tokai Corporation is a Delaware corporation, not licensed to do business in the State of Texas, and may be served with delivery of citation upon the Texas Secretary of State, Austin, Texas, who shall forward same to the corporation to its registered agent in Delaware, United States Corporation Company, at the registered business address. 32 Lookerman Square, Suite L 100, Dover, Delaware 19901. Defendant has answered.

II.

This suit has become necessary as a result of an incident which occurred on or about March 21, 1992 at the residence of William James Brocco, 2909 Mariner Avenue, League City, Galveston County, Texas. The incident involved that product known as an "Aim-N-Flame" lighter containing butane gas under pressure. The product was manufactured,

distributed, placed into the stream of commerce, and marketed, with design input, by Defendants.

III.

Defendant conspired between and among themselves and Tokai Corporation to circumvent federal regulations, withhold data on use and dangers, and to mislead the consuming public, and violated 15 U.S.C. §2068 and 2064(b)(2) and (3), thereby engaging in the prohibited Act at 15 U.S.C. §2068 (a)(4) and 16 C.F.R. 1115, and between and among distributors as well as Tokai Corporation by wrongly claiming the Aim-N-Flame to be child resistant. This conduct constituted a concert of action as that term is known in the law. The Defendants acted in combination to accomplish an unlawful purpose and/or acted in order to accomplish a lawful purpose by unlawful means.

IV.

Jodie Carr, one of two children playing with an Aim N Flame lighter, was seriously burned. After the ignition of Jodie's clothing, Jodie screamed out as she was burned, and adults ran to put out the flames burning the child. As a result of these efforts, Judy Carr also suffered burns to her hands and arms. Judy Carr was also a bystander as that term is known in the law.

V.

Said lighter was defectively designed, manufactured, marketed and was unreasonably dangerous which defect or defects were the producing cause of injuries and damages for which Plaintiffs seek recompense. The product contained defects, including "afterburn," the lighter continuing to spew flame after the trigger was released, leaking butane. It did not perform in a safe manner. The product contained defects, rendering it unreasonably

dangerous taking into consideration the utility of the product and the risk involved in its use, including the presence of an off/on switch (which was itself defective) which switch was described by Defendants as a "safety" (rendering the product defective as marketed). This switch provided inadequate safety. This switch provided inadequate security. Worse still, the switch, solely by its presence, created a false sense of security. The subject lighter can release gas in the "off" position when the trigger is depressed; "off" can be disengaged by repeated pumping of the trigger, i.e. "off" is false; it contains no child resistant interlock; it afterburns unpredictability; it emanates from the company which possesses almost the entire body of knowledge regarding field performance. Yet, no information was passed on concerning hazards, not even within the company. It emanates from the company who took no steps to incorporate their piezoelectric lighter child resistant lighter concepts into the Aim-N-Flame, despite possessing knowledge superior to that of the ordinary consumer and from a company who engaged in no interactive loop to feedback performance to the entity involved in engineering. The lighter was defectively marketed. It did not disclose the foreseeable, indeed known, risk that the lighter was easily lit by young children. The warnings were misleading and inadequate. Defendant continues to this day to claim that stating "do not use to light cigarettes, cigars, or pipes" permits continued sale. In truth "not a cigarette lighter" means "not as safe," "easily operated by toddlers," "not child resistant," and "as applied by distributor to mean no child resistance required." None of these meanings for Defendant's inside code were given. To the contrary, Defendant affirmatively misled consumers and the beneficiaries of use by attaching an expressly labeled "off/on" switch which conveyed a false sense of security and/or safety. The further labeling of the switch as a "safety," independently, was an affirmative, conscious deception, false at the time

it was made, and rendered the product unreasonably dangerous as designed, marketed, and manufactured. The above referenced conduct/omissions were also negligence violations. The actual knowledge of falsity of the "safety" claim rises to the level of common law fraud. Defendant, in its marketing materials, further incorrectly claims that the Aim-N-Flame is a type of child resistant lighter.

The existence of the switch on the lighter, and independently, the word "off" on the lighter's body each give rise, negligence, and unreasonably dangerous causes of action. The switch and, independently, the word "off" also gives rise to a cause of action under §402B of the Restatement (Second) of Torts (1965). The purchaser relied on the representations created by the existence of the switch and, independently, its labelling. In fact, the switch served no safety function or, alternatively, served an inadequate safety function. In fact, the switch position "off" was a virtually meaningless statement, "off" being most easily circumvented. The reasonable implications were, in fact, not true.

VI.

Defendant was negligent which negligence proximately caused the incident in question. Defendant was negligent in the design, manufacturing and/or marketing of the product in question which negligence was a proximate cause of the incident in question. Defendant had the duty and responsibility for the selection, testing and marketing of products and the duty and responsibility for implementation of procedures and policies to ensure the selection and testing of products safe for their intended uses. Defendant was negligent in the sale, testing and selection of the product in question as suitable for use as a lighter when in fact it was defective and not so suitable and in the failure to implement and adopt adequate policies and procedures for the selection, testing and sale of products

safe for the uses represented. These acts of Defendant was the producing and proximate cause of the incident in question.

VII.

Defendant breached warranties, causing damage. Defendant breached implied warranties in connection with the product and that such breaches were the producing cause of injuries to Plaintiffs. Defendant breached the implied warranty of merchantability: the lighter in question was not suitable for ordinary use in a home, given the defects heretofore described. The lighter's defects included afterburn and other problems described in Paragraph V, supra.

Defendant breached the implied warranty of fitness for a particular purpose: the lighter, according to Defendant's terminology in litigation, is a "utility" lighter. Defendant had reason to know of the broad ranges of use, including home use, of the lighter, that the consumers and their beneficiaries would rely on Defendant for Defendant's skill and judgment in furnishing a "suitable" product, and the Aim-N-Flame described in Paragraph V supra was unfit.

Defendant further breached the express warranty, contained in packaging, labels, advertising by the use of the word "safety" and "safety switch."

VIII.

Plaintiffs would further show that Defendant was grossly negligent, which was a proximate cause of the occurrence in question. Said negligent conduct exhibited an entire want of care on the part of Defendant, and that it amounted to a conscious indifference to the rights, safety and welfare of the Plaintiffs. Plaintiffs seek exemplary and/or punitive damages for such conduct. The Defendant committed an act or omission that, when viewed

objectively, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and the Defendant had actual subjective awareness of the risk involved, but nevertheless proceeded, in conscious indifference to the rights, safety, or welfare of others.

IX.

As a result of the incident in question, Jodie suffered burns to her body, legs, arms, neck, face and back. Plaintiff Judy Lynn Carr, individually and as representative of Jodie Renee (Brocco) Carr, a minor, seeks all damages allowed by law as a result of the incident, including but not limited to the following:

1. physical pain and suffering in the past and in the future;
2. mental anguish in the past and which in all reasonable probability will be suffered in the future;
3. disfigurement in the past and future;
4. physical impairment in the past and in the future;
5. loss of earning capacity which in all reasonable probability will be incurred in the future;
6. past medical expenses and medical expenses which in all reasonable probability will be incurred in the future; and
7. punitive damages.

X.

Additionally, Judy Lynn Carr individually seeks damages allowable at law including but not limited to the following:

1. bystander recovery;

2. medical expenses incurred in the past and which in all reasonable probability will be incurred in the future for the care of Jodie;

3. damage to the parent-child relationship, and consortium-type damages; and

4. mental anguish, pain and suffering proximately resulting from the occurrence in question;

5. punitive damages.

XI.

Plaintiffs sue for pre-judgment and post-judgment interest to the maximum extent permitted under the law. Plaintiffs' damages are $75 million dollars: $25 million actual and $50 million punitive.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendant be cited to appear and answer herein, that on final hearing Plaintiffs have judgment against Defendant for actual, punitive, and additional damages, attorney's fees and costs, pre-judgment interest as allowed by law, post-judgment interest as allowed by law, and for such

other and further relief, both at law and in equity, to which they may show themselves justly entitled.

Respectfully submitted,

Mark W. Collmer
State Bar No. 04626420
1305 Prairie, Suite 100
Houston, Texas 77002
(713) 225-1530
(713) 225-4130 (Facsimile)

VINSON & ELKINS L.L.P.

By:_____
Barbara A. Radnofsky
State Bar No. 16457000
Paul S. Wells
State Bar No. 21155800
2300 First City Tower
1001 Fannin Street
Houston, Texas 77002-6760
(713) 758-3846
(713) 615-5486 (Facsimile)

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of January, 1996, a true and correct copy of the foregoing instrument was served on all attorneys of record, by certified mail, return receipt requested, or by regular mail.

_____
Barbara A. Radnofsky

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

----------X

[redacted] an infant under the age of 14 years, by his parent and natural guardian, [redacted] Individually,

Plaintiffs,

AMENDED VERIFIED COMPLAINT

-against-

ELINORE DISTLER, SCRIPTO-TOKAI CORPORATION and PERGAMENT HOME CENTER, INC.,

Defendants.

----------X

Plaintiffs, complaining of the Defendants, by their attorneys, the Law Offices of STEVEN COHN, ESQ., respectfully allege, upon information and belief, as follows:

FIRST: At all times hereinafter mentioned, Plaintiffs were residents of the County of Nassau and State of New York.

SECOND: At all times hereinafter mentioned, infant Plaintiff, [redacted] is an infant under the age of 14 years and appears in this action by his mother and natural guardian, [redacted] with whom he resides.

THIRD: At all times hereinafter mentioned, Defendant, ELINORE DISTLER, was and still is a resident of the County of Nassau and State of New York.

FOURTH: At all times hereinafter mentioned, Defendant, ELINORE DISTLER, was the owner of those premises located at 663 Wyngate Drive East, Valley Stream, County of Nassau and State of New York.

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FIFTH: At all times hereinafter mentioned, Defendant, SCRIPTO-TOKAI CORPORATION (Hereinafter referred to as "SCRIPTO"), was a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

SIXTH: At all times hereinafter mentioned, Defendant, SCRIPTO, was a foreign corporation duly authorized to do and/or doing business in the State of New York.

SEVENTH: At all times hereinafter mentioned, Defendant, SCRIPTO, was a business entity authorized to do and/or doing business in the State of New York.

EIGHTH: At all times hereinafter mentioned, Defendant, PERGAMENT HOME CENTER, INC., (Hereinafter referred to as "PERGAMENT"), was a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

NINTH: At all times hereinafter mentioned, Defendant, PERGAMENT, was a foreign corporation duly authorized to do and/or doing business in the State of New York.

TENTH: At all times hereinafter mentioned, Defendant, PERGAMENT, was a business entity authorized to do and/or doing business in the State of New York.

AS AND FOR A CAUSE OF ACTION AGAINST ELINORE DISTLER

ELEVENTH: Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "FIRST" through "TENTH" of this complaint with the same force and effect as if said paragraphs were more fully set forth herein.

TWELFTH: On or about the 5th day of March,

1992, the infant Plaintiff, [redacted] was lawfully on those premises located at 663 Wyngate Drive East, Valley Stream, County of Nassau and State of New York.

THIRTEENTH: At all times hereinafter mentioned, the Defendant, ELINORE DISTLER, failed to properly operate, manage, supervise, maintain and control the aforementioned premises.

FOURTEENTH: At all times hereinafter mentioned, the Defendant, ELINORE DISTLER, left the butane lighter, "Aim N Flame", out in plain view.

FIFTEENTH: As a result of the Defendant's negligence, at the time, date and place as aforementioned, the infant Plaintiff, [redacted] was caused to sustain severe and serious injuries to and about his body.

SIXTEENTH: As a result of the foregoing and by reason of the negligence of the Defendant, the infant Plaintiff, [redacted] has been personally injured and otherwise damaged in the sum of FIVE MILLION ($5,000,000.00) DOLLARS.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST SCRIPTO-TOKAI CORPORATION

SEVENTEENTH: Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "FIRST" through "SIXTEENTH" of this complaint with the same force and effect as if said paragraphs were more fully set forth herein.

EIGHTEENTH: At all times hereinafter mentioned, Defendant, SCRIPTO, manufactured a disposable all purpose butane lighter called "Aim N Flame".

NINETEENTH: At all times hereinafter mentioned,

Defendant, SCRIPTO, was in the business of selling "Aim N Flame".

TWENTIETH: At all times hereinafter mentioned, Defendant, SCRIPTO, negligently and improperly designed the butane lighter, "Aim N Flame".

TWENTY-FIRST: At all times hereinafter mentioned, Defendant, SCRIPTO, knew, or should have known, that the product was dangerous and harmful and capable of causing harm and/or severe injuries, to the public.

TWENTY-SECOND: At the time and place as aforementioned, Defendant, SCRIPTO, knew or in the exercise of reasonable care, should have known that the butane lighter created a hazardous and dangerous condition.

TWENTY-THIRD: At all times hereinafter mentioned, said hazardous and dangerous condition was caused by the Defendant, SCRIPTO, through its agents, servants and/or employees.

TWENTY-FOURTH: At the time, date and place as aforementioned, and as a result of the Defendant, SCRIPTO's, negligence, the infant Plaintiff, [redacted] was caused to sustain severe and serious injuries to and about his body.

TWENTY-FIFTH: As a result of the foregoing and by reason of the negligence of the Defendant, SCRIPTO, the infant Plaintiff [redacted] has been personally injured and otherwise damaged in the sum of FIVE MILLION ($5,000,000.00) DOLLARS.

AS A SECOND CAUSE OF ACTION AGAINST SCRIPTO-TOKAI CORPORATION

TWENTY-SIXTH: Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered

"FIRST" through "TWENTY-FIFTH" of this Complaint with the same force and effect as if said paragraphs were more fully set forth herein.

TWENTY-SEVENTH: At all times hereinafter mentioned, the Defendant, SCRIPTO, impliedly represented that the product was safe, of merchantable quality, and fit for the ordinary purposes for which the product was intended to be used.

TWENTY-EIGHTH: At all times hereinafter mentioned, the infant Plaintiff relied upon the skill, knowledge, judgment, representations and warranties of Defendant.

TWENTY-NINTH: At all times hereinafter mentioned, the representations and warranties were false, misleading and inaccurate, in that the product, when put to the test of actual performance, proved to be unsound and unsuitable for the purposes for which the same was intended.

THIRTIETH: At all times hereinafter mentioned, the product was unsafe, dangerous, defective and not of merchantable quality.

THIRTY-FIRST: At all times hereinafter mentioned, the Defendant, SCRIPTO, was in breach of implied warranties.

THIRTY-SECOND: At all times hereinafter mentioned, Infant Plaintiff's injuries were proximately caused by the breach of implied warranties by Defendant, SCRIPTO.

THIRTY-THIRD: By reason of the foregoing, Infant Plaintiff, [redacted] sustained damages in the sum of FIVE MILLION ($5,000,000.00) DOLLARS.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST PERGAMENT HOME CENTER, INC.

THIRTY-FOURTH: Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "FIRST" through "THIRTY-THIRD" of this Complaint with the same force and effect as if said paragraphs were more fully set forth herein.

THIRTY-FIFTH: At all times hereinafter mentioned, the Defendant, PERGAMENT, impliedly represented that the product was safe, of merchantable quality, and fit for the ordinary purposes for which the product was intended to be used.

THIRTY-SIXTH: At all times hereinafter mentioned, the infant Plaintiff relied upon the skill, knowledge, judgment, representations and warranties of Defendant.

THIRTY-SEVENTH: At all times hereinafter mentioned, the representations and warranties were false, misleading and inaccurate, in that the product, when put to the test of actual performance, proved to be unsound and unsuitable for the purposes for which the same was intended.

THIRTY-EIGHTH: At all times hereinafter mentioned, the product was unsafe, dangerous, defective and not of merchantable quality.

THIRTY-NINTH: At all times hereinafter mentioned, the Defendant, PERGAMENT, was in breach of implied warranties.

FORTIETH: At all times hereinafter mentioned, Infant Plaintiff's injuries were proximately caused by the breach of implied warranties by Defendant, PERGAMENT.

FORTY-FIRST: By reason of the foregoing, Infant Plaintiff, [redacted] sustained damages in the sum of FIVE MILLION ($5,000,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF AGAINST DEFENDANT, PERGAMENT HOME CENTER, INC.

FORTY-SECOND: Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "FIRST" through "FORTY-FIRST" of this Complaint with the same force and effect as if said paragraphs were more fully set forth herein.

FORTY-THIRD: At all times hereinafter mentioned, Defendant, PERGAMENT, is engaged in the business of selling, goods to the public, including, but not limited to, "Aim N Flame".

FORTY-FOURTH: At all times hereinafter mentioned, the product referred to was expected to and did reach consumers and infant Plaintiff, [redacted] without substantial change in the condition in which it was sold by Defendant, PERGAMENT.

FORTY-FIFTH: At all times hereinafter mentioned, the product utilized by infant Plaintiff, [redacted] was in a condition which was dangerous to users and/or consumers, and in particular to infant Plaintiff, [redacted]

FORTY-SIXTH: At all times hereinafter mentioned, the product failed to perform in accordance with its intended purpose because of its defective condition.

FORTY-SEVENTH: At all times hereinafter mentioned, the product failed to perform in accordance with the expectations of the infant Plaintiff and the consumer.

FORTY-EIGHTH: At all times hereinafter mentioned,

the defective condition caused injuries to infant Plaintiff.

FORTY-NINTH: At the time of the occurrence herein, the product was being used for the purpose and in the manner normally intended.

FIFTIETH: At all times hereinafter mentioned, Infant Plaintiff could not by the exercise of reasonable care have discovered the defects and perceived their dangers.

FIFTY-FIRST: At all times hereinafter mentioned, Defendant sold the product in a defective condition unreasonably dangerous to infant Plaintiff.

FIFTY-SECOND: As a proximate result of Defendant's sale of the defective butane lighter, infant Plaintiff sustained personal injuries.

FIFTY-THIRD: By reason of the foregoing, Defendant is strictly liable to infant Plaintiff.

FIFTY-FOURTH: By reason of the foregoing, infant Plaintiff, [redacted] was damaged in the sum of FIVE MILLION ($5,000,000.00) DOLLARS.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT, PERGAMENT HOME CENTER, INC.

FIFTY-FIFTH: Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "FIRST" through "FIFTY-FOURTH" of this complaint with the same force and effect as if said paragraphs were more fully set forth herein.

FIFTY-SIXTH: At all times hereinafter mentioned, Defendant, PERGAMENT, was in the business of selling, "Aim N

Flame".

FIFTY-SEVENTH: At all times hereinafter mentioned, Defendant, PERGAMENT, knew, or should have known, that the product was dangerous and harmful and capable of causing harm and/or severe injuries, to the public.

FIFTY-EIGHTH: At the time and place as aforementioned, Defendant, PERGAMENT, knew or in the exercise of reasonable care, should have known that the butane lighter created a hazardous and dangerous condition.

FIFTY-NINTH: At the time, date and place as aforementioned, and as a result of the Defendant, PERGAMENT's negligence, the infant Plaintiff, [redacted] was caused to sustain severe and serious injuries to and about his body.

SIXTIETH: As a result of the foregoing and by reason of the negligence of the Defendant, PERGAMENT, the infant Plaintiff, [redacted] has been personally injured and otherwise damaged in the sum of FIVE MILLION ($5,000,000.00) DOLLARS.

AS AND FOR A CAUSE OF ACTION AGAINST ALL DEFENDANTS

SIXTY-FIRST: Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "FIRST" through "SIXTIETH" of this complaint with the same force and effect as if said paragraphs were more fully set forth herein.

SIXTY-SECOND: As a result of the foregoing and due to the negligence of the Defendants, the Plaintiff [redacted] unnecessarily paid and became liable to pay for medical expenses of her infant son and has been deprived of her son's services and

society, all to her damage in the sum of FIVE HUNDRED THOUSAND ($500,000.00) DOLLARS.

Wherefore, the infant Plaintiff [redacted] demands judgment in the Cause of Action against the Defendant, ELINORE DISTLER, in the sum of FIVE MILLION ($5,000,000.00) DOLLARS; the infant Plaintiff, [redacted] demands judgment in the First Cause of Action against the Defendant, SCRIPTO, in the sum of FIVE MILLION ($5,000,000.00) DOLLARS; the infant Plaintiff, [redacted] demands judgment in the Second Cause of Action against the Defendant, SCRIPTO, in the amount of FIVE MILLION ($5,000,000.00) DOLLARS; the infant Plaintiff, [redacted] demands judgment in the First Cause of Action against the Defendant, PERGAMENT, in the amount of FIVE MILLION ($5,000,000.00) DOLLARS; the infant Plaintiff, [redacted] demands judgment in the Second Cause of Action against the Defendant, PERGAMENT, in the amount of FIVE MILLION ($5,000,000.00) DOLLARS; the infant Plaintiff [redacted] demands judgment in the Third Cause of Action against the Defendant, PERGAMENT, in the amount of FIVE MILLION ($5,000,000.00) DOLLARS and Plaintif [redacted] demands judgment in the Cause of Action against all the Defendants in the sum of FIVE HUNDRED THOUSAND ($500,000.00) DOLLARS, together with the costs and disbursements of this action and for such other and further relief as to this court may seem just and proper.

Dated: Carle Place, New York
February 1, 1993

STEVEN COHN, ESQ.
Attorney for Plaintiffs
One Old Country Road
Carle Place, N. Y. 11514

STATE OF NEW YORK, COUNTY OF ss:

, the undersigned, am an attorney admitted to practice in the courts of New York State, and

☐ Attorney's Certification — certify that the annexed has been compared by me with the original and found to be a true and complete copy thereof.

☐ Attorney's Verification by Affirmation — say that: I am the attorney of record, or of counsel with the attorney(s) of record, for . I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following:

The reason I make this affirmation instead of is

I affirm that the foregoing statements are true under penalties of perjury.
Dated:

(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF NASSAU ss:

[redacted] being sworn says: I am the Plaintiff

Check Applicable Box

☐ Individual Verification — in the action herein; I have read the annexed AMENDED COMPLAINT know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

☐ Corporate Verification — the of a corporation, one of the parties to the action; I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Sworn to before me on February 1, 19 93

Christine Colameo CHRISTINE COLAMEO
Notary Public, State of New York
No. 4964946
Qualified in Nassau County
Commission Expires April 16, 1994

[redacted]

(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF ss:

being sworn says: I am not a party to the action, am over 18 years of age and reside at

On , 19 , I served a true copy of the annexed in the following manner:

Check Applicable Box

☐ Service by Mail — by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

☐ Personal Service — by delivering the same personally to the persons and at the addresses indicated below:

Sworn to before me on , 19

(Print signer's name below signature)

0036

FILED

JAN 25 1990

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[redacted]
Upper Darby, Pennsylvania 19082

Plaintiffs:

v.

SCRIPTO - TOKAI, INC. and
SCRIPTO - TOKAI CORPORATION
9065 Haven Avenue
Rancho Cucamonga, California 91730

Defendants:

CIVIL ACTION NO. 90-0581

JURY TRIAL DEMANDED

THIS IS AN
ARBITRATION MATTER

COMPLAINT

JURISDICTIONAL ALLEGATIONS

1. Plaintif[redacted] are citizens and residents of the Commonwealth of Pennsylvania residing a[redacted]pper Darby, Pennsylvania 19082.

2. Defendant, Scripto - Tokai, Inc., is upon information and belief, a corporation organized and existing under the laws of the State of Georgia with its principal place of business located at 9065 Haven Avenue, Rancho Cucamonga, California 91730. At all times material hereto, defendant, Scripto - Tokai, Inc., was and is a citizen of the States of Georgia and California.

3. Defendant, Scripto - Tokai Corporation, is, upon information and belief, a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 9065 Haven Avenue, Rancho Cucamonga, California 91730. At all times material hereto, defendant,

Scripto - Tokai Corporation was and is a citizen of the States of Delaware and California.

4. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1332, because this is an action between citizens of the Commonwealth of Pennsylvania and citizens of different states AND the amount in controversy, exclusive of interests and costs, exceeds the sum of fifty thousand dollars ($50,000.00) as hereinafter more fully appears.

GENERAL ALLEGATIONS

5. At all times relevant herein, plaintiffs, [redacted] were the owners of the premises located a[redacted], Upper Darby Pennsylvania 19082.

6. At all times relevant herein, defendants, Scripto - Tokai, Inc. and Scripto - Tokai Corporation, were engaged in the business of, inter alia, designing, manufacturing and selling disposable butane lighters and torches.

7. Defendants were, at all times relevant herein, acting through their representatives, agents, servants and/or employees, all acting within the course and scope of their employment.

8. Sometime prior to August 24, 1988, plaintiffs purchased a "aim 'n flame" disposable butane torch, the packaging of which stated that it was manufactured by "Scripto."

9. Upon information and belief, the "aim 'n flame" disposable butane torch purchased by the Feeneys was designed,

manufactured and sold by defendant, Scripto - Tokai, Inc., or alternatively, was designed, manufactured and sold by defendant, Scripto - Tokai Corporation.

10. Upon information and belief, defendant, Scripto - Tokai, Inc., may have merged into Scripto - Tokai Corporation, such that Scripto - Tokai Corporation has successor liability for the tortious conduct of Scripto - Tokai, Inc., as more fully set forth at length herein.

11. On or about August 24, 1988, a fire originated and occurred at plaintiffs' premises, which caused substantial damage and destruction to plaintiff's real and personal property.

12. The fire was started by the foreseeable use of the Scripto "aim 'n flame" disposable butane torch by plaintiffs' infant son.

13. The fire in question was caused by the defective nature of the "aim 'n flame" torch and the negligence, strict liability and breach of warranty of the defendants as more fully set forth at length herein.

14. By reason of the aforesaid fire, plaintiffs sustained severe and extensive damage to their real and personal property and loss of use in that property in the approximate amount of seventy-five thousand dollars ($75,000.00).

COUNT I

NEGLIGENCE

15. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 14 above as though each were fully set forth at length herein.

16. The fire referred to in paragraph 11 hereof, and resulting damages sustained by the plaintiffs, were caused by the negligence, carelessness and negligent omissions of defendants in the design, manufacture and sale of the aforesaid "aim 'n flame" torch which negligence, carelessness and negligent omissions consisted of the following:

(a) supplying a defectively designed product which the defendants knew or should have known subjected the property of plaintiffs to an unreasonable risk of harm;

(b) supplying a defectively manufactured product which defendants knew or should have known subjected to the property of plaintiffs to an unreasonable risk of harm;

(c) selling the aforesaid "aim 'n flame" torch, which was in a defective condition unreasonably dangerous to plaintiffs and their property;

(d) designing the aforesaid "aim 'n flame" torch in a manner which was attractive to children and infants when it knew that the use of the torch by children and infants was dangerous;

(e) failing to provide sufficient and adequate warnings and instructions concerning the use, operation, and safety practices associated with the use of the aforesaid "aim 'n flame" torch;

(f) failing to properly, adequately and safely inspect and test the aforesaid "aim 'n flame" torch and its various integral parts which inspection and testing would have revealed that the torch was an unsafe product;

(g) failing to design, manufacture and sell the aforesaid "aim 'n flame" torch with sufficient, adequate and proper safety devices that would have prevented the torch from being operated by a child or infant;

(h) failing to hiring sufficient and appropriate agents, servants, and/or employees to perform the design, manufacture and sale of the aforesaid "aim 'n flame" torch;

(i) otherwise failing to use due and proper care under the circumstances;

(j) in such other and further particulars as may be determined during the course of discovery in this case.

17. By reason of the foregoing conduct, plaintiffs sustained severe and extensive damage to their real and personal

property, and the loss the use of that property, in the approximate amount of seventy-five thousand dollars ($75,000.00).

WHEREFORE, plaintiffs, [redacted] demand that judgment be entered in their favor and against defendants, Scripto - Tokai, Inc., and Scripto - Tokai Corporation, in the approximate amount of seventy-five thousand dollars ($75,000.00) together with interest, damages for delay and the cost of bringing this action.

COUNT II

STRICT LIABILITY

18. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 14 above as though each were fully set forth at length herein.

19. Defendants are liable to plaintiffs herein under the principles of strict liability as set forth in §402A, Restatement (Second) of Torts, for having designed, manufactured and sold the aforementioned "aim 'n flame" torch in a defective condition unreasonably dangerous to users and consumers such as plaintiffs herein.

20. The aforementioned "aim 'n flame" torch designed, manufactured and sold by the defendants was defective in the following ways:

(a) being sold in a defective condition which subjected plaintiffs and their property to an unreasonable risk of harm;

(b) being sold with defective component parts which were in a defective condition unreasonably dangerous to plaintiffs and their property;

(c) being sold without proper, adequate and sufficient warnings and instructions as to the use, operation, and safety precautions concerning the use and operation of the aforementioned "aim 'n flame" torch;

(d) being sold when proper, adequate and sufficient inspections and tests had not been performed on the aforesaid "aim 'n flame" torch and its various component parts;

(e) being sold without an adequate and proper design of the aforesaid "aim 'n flame" torch and its various component parts so that it could be safely used for the operation for which it was intended;

(f) being sold with a design, color and characteristics such that the "aim 'n flame" torch was attractive to children or infants;

(g) being sold without adequate and sufficient safety devices to prevent the operation the "aim 'n flame" torch by children or infants;

(h) such other and further particulars as may be determined during the course of discovery.

21. As a result of the design, manufacture and sale of the aforesaid "aim 'n flame" torch in a defective and

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unreasonably dangerous condition, the fire referred to in paragraph 11 above occurred, resulting in damage to plaintiff's real and personal property, and loss of use of that property, in the approximate amount of seventy-five thousand dollars ($75,000.00).

WHEREFORE, plaintiffs [redacted] demand judgment in their favor and against defendants, Scripto-Tokai, Inc. and Scripto-Tokai Corporation for compensatory damages in the approximate amount of seventy-five thousand dollars ($75,000.00) together with interest, damages for delay and the cost of prosecuting this action.

COUNT III

BREACH OF WARRANTY

22. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 21 as though each were fully set forth at length herein.

23. Defendants expressly and impliedly warranted that the aforementioned "aim 'n flame" torch was safe and fit for the purpose for which it was intended and was of merchantable quality.

24. Plaintiffs relied on the expressed and implied warranty made by the defendants in their acquisition and use of the "aim 'n flame" torch.

25. Defendants breached their expressed and implied warranty that the "aim 'n flame" torch was safe and fit for the

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purposes for which it was intended and was of merchantable quality.

26. The fire referred to in paragraph 11 above was caused by the aforesaid breaches of warranty made by the defendants and as such, the defendants are liable to plaintiffs for the damage to their real and personal property, and the loss of use of that property in the approximate amount of seventy-five thousand dollars ($75,000.00).

WHEREFORE, plaintiff[redacted] demand judgment in their favor and against defendants, Scripto-Tokai, Inc., and Scripto-Tokai Corporation for compensatory damages in the approximate amount of seventy-five thousand dollars ($75,000.00) together with interest, damages for delay and the cost for bringing this action.

COZEN AND O'CONNOR

BY: _____

DONALD A. WALTZ, ESQUIRE
The Atrium - Third Floor
1900 Market Street
Philadelphia, Pennsylvania 19103
(215) 665-2789

Attorney for Plaintiffs

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SUMMONS ON CROSS-COMPLAINT
(CITACION JUDICIAL)

CROSS-DEFENDANTS:
NOTICE TO [redacted] (Aviso a Acusado)

[redacted]

CROSS-COMPLAINANT:
YOU ARE BEING SUED BY [redacted]
(A Ud. le está demandando)

TCLI REALTY, INC.

Corporate
JAN 28 1994
Administration

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have *30 CALENDAR DAYS* after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS *para presentar una respuesta escrita a máquina en esta corte.*

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

CASE NUMBER: (Número del Caso)
710974-0

The name and address of the court is: *(El nombre y dirección de la corte es)*
SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF ALAMEDA, NORTHERN DIVISION
1225 Fallon Street, Oakland, CA 94612

The name, address, and telephone number of [redacted] cross-complainant's attorney is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

ALLEN M. GARFIELD, ESQ. (415) 566-5760
P. O. Box 27598
San Francisco, CA 94127

DATE: NOV 15 1993 (Fecha)

RON OVERHOLT Clerk, by DOROTHY DUCKETT (Actuario) Deputy (Delegado)

SEAL

NOTICE TO THE PERSON SERVED: You are served
1. [ ] as an individual defendant.
2. [ ] as the person sued under the fictitious name of *(specify)*:
3. [X] on behalf of *(specify)*: SCRIPTO-TOKAI CORPORATION
under: [X] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
[ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
[ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (individual)
[ ] other:
4. [ ] by personal delivery on *(date)*:

Form Adopted by Rule 982
Judicial Council of California
982(a)(2) [Rev. January 1, 1984]

(See reverse for Proof of Service)
SUMMONS

CCP 412.20

0046

ALLEN M. GARFIELD, ESQ. SB# 24501
P. O. Box 27598
San Francisco, CA 94127
(415) 566-5760
Attorney for defendant
and cross-complainant
TCLI REALTY, INC.

ENDORSED
FILED
ALAMEDA COUNTY

NOV 15 1993

RONALD G. OVERHOLT, Exec. Off./Clerk
By Dorothy Duckett

Corporate

JAN 20 1994

Administration

[redacted] a minor, by and throug[redacted] his Guardian Ad Litem,

Plaintiffs,

vs

RAYEE TSE; ANGELA TSE; TCLI REALTY, INC.; and DOES 1 to 10 inclusive,

Defendants.

Case No. 710974-0

CROSS-COMPLAINT FOR INDEMNITY AND DECLARATORY RELIEF

TCLI REALTY, INC.,

Cross-complainant,

vs

[redacted] minor, by and throu[redacted] his Guardian Ad Litem, ROE MANUFACTURER, ROE SELLER, ROES 1 through 10, inclusive,

Cross-defendants.

TCLI REALTY, INC. (hereafter "TCLI") cross-complains against each and all cross-defendants, and for causes of action, alleges:

GENERAL ALLEGATIONS

1. TCLI is a California corporation, with its principal office in City and County of San Francisco, CA. It is licensed as a real estate broker by California Department of Real Estate. TCLI was broker for defendants Rayee Tse and Angela Tse in purchase of home at 3274 Lynde St., Oakland, CA, and is property manager for Rayee

San Francisco, CA 94127
(415) 566-5760

Tse and Angelea Tse (hereafter "Tse"). On or about Jan. 21, 1992, TCLI acting as property manager for Tse, leased said home at 3274 Lynde St., Oakland, CA (hereafter "home") to plaintiffs and cross-defendant [redacted] and his wi[redacted]. A true copy of the written lease between Mr. and Mr[redacted]as tenants, and Tse as owner of the home is annexed hereto as Exhibit "A" and incorporated herein by reference.

2. Mr. and Mr[redacted]nd their two sons, [redacted]age 5 and [redacted]age 3, moved into the home on or about Jan. 27, 1992. The home had in it a gas range in the kitchen, and a smoke alarm in the hallway, adjacent to the kitchen.

3. [redacted]urchased a barbecue-type or pistol lighter (hereafter "lighter") at the store of Roe Seller, brought it into the home, and used it to light the kitchen gas range. Lighter is manufactured by Roe Manufacturer.

4. The morning of Jan. 31, 1992, Mr. and M[redacted]ft the home. They left their two sons in charge of babysitter, cross-defendant [redacted]

[redacted]nd his brothe[redacted]were in front room of the ho[redacted]as in the back bedroom with her baby. On or about 12:30 P.M., Jan. 31, 1992, [redacted]sed the lighter to start a fire of papers in the front room of the house. The fire was burning in the room when [redacted]went into the front room. She took [redacted]ut of the front room, and went out the back door of home, with her baby a[redacted]died in the fire in the front room. The Oakland Fire Department responded to a 911 call from a neighbor, put out the fire, and found the body of [redacted]in front room of home. Attached hereto as

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Exhibit "B" and incorporated herein by reference is a diagram of the home made by Oakland Police Department, Jan. 31, 1992.

6. Plaintiffs allege that defendants TCLI and Tse did negligently and carelessly permit the home to be without operating smoke detectors, that as a direct and proximate result of not having operating smoke detectors [redacted] was not able to discover the existence of the fire in time, thereby resulting in death of [redacted]

7. TCLI in its answer denies this allegation.

FIRST CAUSE OF ACTION - INDEMNITY

8. The General Allegations set forth above are incorporated herein by reference.

9. Roe Cross-defendants, Roe Manufacturer and Roe Seller are sued as such pursuant to C.C.P. §474. TCLI does not now know the true names and capacities of each of the fictitious cross-defendants. Upon ascertainment of true name and capacity of each fictitious cross-defendant, this cross-complaint will be amended accordingly. Each of the fictitious cross-defendants is jointly and severally liable with named cross-defendants on all causes of action herein.

10. The written lease, Exhibit "A", for the lease of the home by Tse to Mr. and M[redacted]rovides in paragraph 10 thereof, as follows:

> "10. MAINTENANCE, REPAIRS, ALTERATIONS: Tenant acknowledges that premises are in good order and repair, unless otherwise indicated herein....Tenant shall, at his own expense, and at all times maintain the premises in a clean and sanitary manner, including all equipment, appliances, furniture and furnishings therein....Tenant shall be responsible for

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damages caused by his negligence, that of his family, invitees and guests...."

11. [redacted] or about Jan. 30, 1992, purchased from Roe Seller, and brought into the home, the lighter. She and her husband [redacted] used the lighter to light the gas flame on the kitchen range. Mr. or Mrs [redacted] carelessly and negligently placed the lighter in a place that was accessible to their 5-year old son [redacted] On Jan. 31, 1992, [redacted] took the lighter, and used it to start a fire of papers in the front room of the home. This fire caused the death of his 3-year old broth[redacted] who was in the front room wit[redacted] and who was unable to escape the fire, and caused substantial damage to the home.

12. Mr. and Mr[redacted] left the home in morning of Jan. 31, 1992. They entrusted the care, safey, and supervision of their two sons 5 year ol[redacted] and 3 year old [redacted] to [redacted] TCLI is informed and believes, and thereon alleges that [redacted] did not stay with the two boys, but remained in the back bedroom, 30 to 40 feet away from the front room of the home. [redacted] was careless and negligent in not preventing [redacted] from obtaining the lighter and using it to start the fire in the front room,, which fire caused the death o[redacted] The negligence of [redacted] is attributable to [redacted] under principle of respondeat superior.

13. The proximate cause of the death [redacted] and the damage to their personal property, was the negligent and careless act of Mr. o[redacted] after using the lighter in the kitchen, to place the lighter in a place in the home accessible to their 5-year old so[redacted] and their negligence in entrusting care and

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supervision [redacted] on Jan. 31, 1992, when they were both out of the home. Mr. and Mrs. [redacted] did not return to the home until after the fire was being put out by the Oakland Fire Department.

14. Cross-defendant Roe Manufacturer is the manufacturer of the lighter. Cross-defendant Roe Seller is the store that sold the lighter [redacted] which she brought into the home to use to light the gas range. TCLI is informed and believes that said lighter did not have on it an adequate warning. The warning on the lighter, if there was a warning, is inadequate if (1) it does not specify the risk presented by the product; (2) is inconsistant with how a product would be used; (3) do not provide a reason for the warning; or (4) do not reach forseeable users. The lighter was defective due to inadequacy of its warning. The inadeuacy of the warning was a proximate cause of the injury and loss of which plaintiffs complain.

15. TCLI alleges that the lighter is defective in design so as to subject Doe Manufacturer and Doe Retailer to strict liability for the resulting injuries to plaintiffs.

16. If it is found in this case that TCLI has any liability to any of the plaintiffs in this case, then TCLI is entitled to be indemnified by cross-defendants, and each of them, in proportion to their respective negligence or strict liability.

SECOND CAUSE OF ACTION - DECLARATORY RELIEF

17. TCLI repleads all of First Cause of ction as if set forth word for word herein.

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(415) 566-5760

18. An actual and present controversy exists between TCLI and cross-defendants herein. TCLI contends and cross-defendants deny the following:

As between TCLI and cross-defendants, and each of them, responsibility and liability for plainitff's damages and losses, including the claim by [redacted] for damages for his emotional distress caused by the tragic death of his broth[redacted]n the fire on Jan. 31, 1992, in the home at 3294 Lynde St., Oakland, CA, is primarily and exclusively with cross-defendants, and each of them, and only secondarily, if at all, with TCLI.

19. That as a result of this action, cross-defendants and each of them, are obligated and required to reimburse TCLI for necessary and reasonable attorney fees and costs incurred and paid by TCLI in defending against the claims of plaintiffs and prosecuting this cross-complaint, and to indemnify and hold harmless TCLI from any or all sums which it might be compelled to pay as a result of any damages, judgments, or awards recovered by plaintiffs, or any of them.

20. TCLI desires a judicial interpretation and determination of the respective rights and duties of TCLI and cross-defendants and each of them, with respect to damages claimed by plaintiffs herein. TCLI desires a judicial declaration that, as between it and cross-defendants, and each of them, full and exclusive responsibility and liability for such damages, if any, rest primarily and ultimately on cross-defendants, and each of them, and only secondarily, if at all, on TCLI.

21. That as a result of such judicial interpretation and

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determination, cross-defendants and each of them, are obligated to reimburse TCLI for defending against the claims of plaintiffs, each of them herein, and to indemnify and hold harmless TCLI against any and all sums which TCLI may be compelled to pay as a result of any damages, judgments, or awards recovered by plaintiffs, or any of them, against it.

22. Such a declaration is necessary and appropriate at this time in order that TCLI and cross-defendnats, and each of them, may ascertain their respecitve rights and duties with respect to the claims of plaintiffs, and each of them, for damages herein. Furthermore, the claim of TCLI and the claims of plaintiffs arise out of the same transaction, and the determination of both in one proceeding is necessary and appropriate in order to avoid a multiplicity of actions, which would result if TCLI was required to bring a separate action or actions to recover for any damages, judgments or awards recovered by plaintiffs, or any one of them, against it.

WHEREFORE, cross-complainant TCLI prays for judgment against cross-defendants and each of them, as follows:

A. For a declaration that as between TCLI and cross-defendants and each of them, full responsibility and liability, if any, is determined to exist for the damages claimed by plaintiffs, or any of them rests primarily and ultimately on cross-defendants, and each of them, and only secondarily, if at all, on TCLI; that cross-defendants, and each of them, are required and obligated to reimburse TCLI for the necessary and reasonable attorney fees and costs incurred and paid by TCLI in defending against the claims of plaintiffs, and each of them, and to indemnify and hold harmless

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San Francisco, CA 94127
(415) 566-5760

TCLI for any and all sums which TCLI may be required to pay as a result of any damages, judgments or awards recovered by plaintiffs or any of them, against TCLI.

B. For reasonable attorney fees and costs incurred and paid by TCLI in prosecution of this cross-complaint.

C. For costs of suit incurred herein.

D. For any other and further relief as the court may deem just and proper.

November 15, 1993.

Allen M. Garfield, attorney
for cross-complainant
TCLI Realty, Inc.

ALLEN M. GARFIELD, ESQ.
P. O. Box 27592
San Francisco, CA 94127
(415) 566-5760

RESIDENTIAL LEASE-RENTAL AGREEMENT AND DEPOSIT RECEIPT

RECEIVED FROM [redacted]

the sum of $ 1835.00 (one thousand eight hundred thirty five) DOLLARS,

evidenced by CASH as a deposit which, upon acceptance of this rental agreement, the Owner of the premises, hereinafter referred to as Owner, shall apply said deposit as follows:

	DEPOSIT RECEIVED	BALANCE DUE PRIOR TO OCCUPANCY
Rent for the period from JAN. 15TH 1992 to FEB. 14TH 1992	$ 760.50	$
Security deposit (not applicable toward last month's rent)	$ 1135.50	$
Other	$	$
TOTAL	$ 1896.00	$ $611.00 TO BE PAID PRIOR TO OCCUPANCY

In the event that this agreement is not accepted by the Owner or his authorized agent, within _____ days, the total deposit received shall be refunded.

Tenant hereby offers to rent from the Owner the premises situated in the City of OAKLAND County of ALAMEDA State of CALIFORNIA described as [redacted]

and consisting of 2 BEDROOM SINGLE FAMILY HOUSE upon the following TERMS and CONDITIONS:

1. **TERM:** The term hereof shall commence on 15TH January, 1992 and continue (check one of the two following alternatives): [X] until JANUARY 14TH 1993 for a total rent of $ 9126.00 NINE THOUSAND ONE HUNDRED TWENTY SIX DOLLARS dollars. [ ] on a month-to-month basis thereafter, until either party shall terminate the same by giving the other party ____ days written notice delivered by certified mail.
2. **RENT:** Rent shall be $ 760.50 per month, payable in advance, upon the 15TH day of each calendar month to Owner or his authorized agent, at the following address: T.C.L. REALTY INC. 1951 TRAVAL STREET, SAN FRANCISCO, CA 94116 or at such other places as may be designated by Owner from time to time. In the event rent is not paid within 5 days after due date, Tenant agrees to pay a late charge of $ 25 plus interest at 18 % per month on the delinquent amount. Tenant further agrees to pay $ 15 for each dishonored bank check. The late charge period is not a grace period, and Owner is entitled to make written demand for any rent unpaid on the second day of the rental period. Any unpaid balances remaining after termination of occupancy are subject to 1½% interest per month or the maximum rate allowed by law.
3. **MULTIPLE OCCUPANCY:** It is expressly understood that this agreement is between the Owner and each signatory jointly and severally. In the event of default by any one signatory each and every remaining signatory shall be responsible for timely payment of rent and all other provisions of this agreement.
4. **UTILITIES:** Tenant shall be responsible for the payment of all utilities and services, except: GARBAGE which shall be paid by Owner.
5. **USE:** The premises shall be used exclusively as a residence for no more than 4 persons. Guests staying more than a total of 7 days in a calendar year without written consent of Owner shall constitute a violation of this agreement.
6. **ANIMALS:** No animals shall be brought on the premises without the prior consent of the Owner.
7. **HOUSE RULES:** In the event that the premises are a portion of a building containing more than one unit, Tenant agrees to abide by any written house rules, whether promulgated before or after the execution hereof, including, but not limited to, rules with respect to noise, odors, disposal of refuse, animals, parking, and use of common areas. Tenant shall not have a waterbed on the premises without prior written consent of the Owner.
8. **ORDINANCES AND STATUTES:** Tenant shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the use of the premises. If you are located in a rent control area, contact Rent and Arbitration Board for your legal rights.
9. **ASSIGNMENT AND SUBLETTING:** Tenant shall not assign this agreement or sublet any portion of the premises without prior written consent of the Owner.
10. **MAINTENANCE, REPAIRS, OR ALTERATIONS:** Tenant acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Owner may at any time give Tenant a written inventory of furniture and furnishings on the premises and Tenant shall be deemed to have possession of all said furniture and furnishings in good condition and repair, unless he objects thereto in writing within five (5) days after receipt of such inventory. Tenant shall, at his own expense, and at all times, maintain the premises in a clean and sanitary manner including all equipment, appliances, furniture and furnishings therein and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Tenant shall be responsible for damage caused by his negligence and that of his family or invitees and guests. Tenant shall not paint, paper or otherwise redecorate or make alterations to the premises without the prior written consent of the Owner. Tenant shall irrigate and maintain any surrounding grounds, including lawns and shrubbery, and keep the same clear of rubbish and weeds. If such grounds are a part of the premises and are exclusively for the use of the Tenant, Tenant shall not commit any waste upon said premises, or any nuisance or act which may disturb the quiet enjoyment of any tenant in the building.
11. **INVENTORY:** Any furnishings and equipment to be furnished by Owner shall be set out in a special inventory. The inventory shall be signed by both Tenant and Owner concurrently with this Lease and shall be a part of this Lease.
12. **DAMAGES TO PREMISES:** If the premises are so damaged by fire or from any other cause as to render them uninhabitable then either party shall have the right to terminate this Lease as of the date on which such damage occurs, through written notice to the other party, to be given within fifteen (15) days after occurrence of such damage; except that should such damage or destruction occur as the result of the abuse or negligence of Tenant, or its invitees, then Owner only shall have the right to terminate. Should this right be exercised by either Owner or Tenant, their rent for the current month shall be prorated between the parties as of the date the damage occurred and any prepaid rent and unused security deposit shall be refunded to Tenant. If this Lease is not terminated, then Owner shall promptly repair the premises and there shall be a proportionate deduction of rent until the premises are repaired and ready for Tenant's occupancy. The proportionate reduction shall be

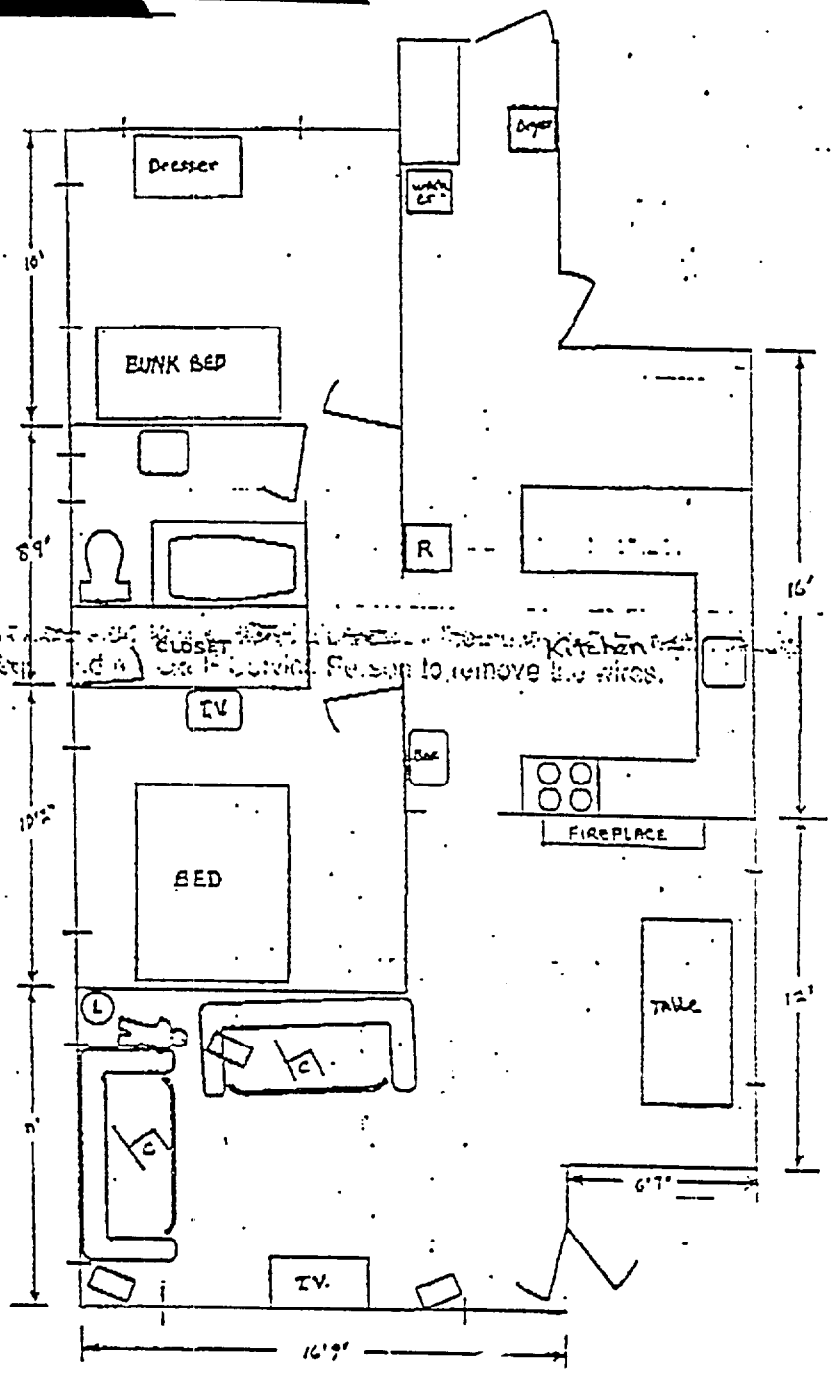
0055

#92-11848

31 Jan 92

S/C UNEXPLAINED DEATH

[redacted]



NOT DRAWN TO EXACT SCALE

Drawn by: D. Hutchinson 7523P

EXHIBIT B

0056

PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO:

I am an active member of the State Bar of California. I am not a party to the within action. My business address is P.O. BOX 27598, San Francisco, CA 94127. Phone (415) 566-5760.

On November 15, 1993 I served the within document described as:

Cross-complaint for Indemnity and Declaratory Relief (Action No. 710974-0)

on the interested parties in this action:

( ) By placing true copies thereof enclosed in a sealed envelope as stated on the attached mailing list.

(x) By placing ( ) the original (x) a true copy thereof enclosed in sealed envelopes, addressed as follows:

Gillin, Jacobson, Ellis & Larson
2030 Addison Street, Seventh Floor
P.O. Box 523
Berkeley, CA 94704-0523

P. Randall Noah, Esq.
Noah & Nerland
1981 N. Broadway, Suite30
Walnut Creek, CA 94596

Kincaid, Gianunzio, Caudle & Hubert
500 Ygnacio Valley Road, Suite 400
Walnut creek, CA 94596

(x) (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Francisco, California. Executed on November 15, 1993, at San Francisco, California

( ) (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee. Executed on _____, at San Francisco, California

(x) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

( ) (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Allen M. Garfield SB# 24501

ALLEN M. GARFIELD, ESQ. SB# 24501
P. O. Box 27598
San Francisco, CA 94127
(415) 566-5760
Attorney for defendant
and cross-complainant
TCLI REALTY, INC.

SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF ALAMEDA

NORTHERN DIVISION

[redacted] a minor, by and throug[redacted] his Guardian Ad Litem,

Plaintiffs,

vs

RAYEE TSE; ANGELA TSE; TCLI REALTY, INC.; and DOES 1 to 10 inclusive,

Defendants.

TCLI REALTY, INC.,

Cross-complainant,

vs

[redacted] minor, by and throug[redacted] his Guardian Ad Litem, ROE MANUFACTURER, ROE SELLER, ROES 1 through 10, inclusive,

Cross-defendants.

Case No. 710974-0

AMENDMENT TO CROSS-COMPLAINT (C.C.P. §474)

Upon filing the cross-complaint herein, cross-complainant being ignorant of true name of a cross-defendant, and having designated said cross-defendant in the cross-complaint by a fictitious name, to wit: ROE MANUFACTURER, and having discovered the true name of cross-defendant to be: SCRIPTO-TOKAI CORPORATION hereby amended its cross-complaint by inserting such true name

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0058 72

wherever it appears in said cross-complaint.

Jan. 17, 1994.

Allen M. Garfield
Attorney for defendant and
cross-complainant
TCLI REALTY, INC.

Good Cause Appearing, cross-complainant TCLI Realty, Inc. is allowed to file above amendment to its cross-complaint.

Date:

( ) Judge of the Superior Court

( ) Court Commissioner of Alameda County

P. O. Box 27598
San Francisco, CA 94127
(415) 566-5760

PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO:

I am an active member of the State Bar of California. I am not a party to the within action. My business address is P.O. BOX 27598, San Francisco, CA 94127. Phone (415) 566-5760.

On Jan. 18, 1994 I served the within document described as:

1 Amendment to Cross-complaint: (C.C.P. §474)
Substitute Scripto-Tokai Corporation in place of Roe Manufacturer.

2 Amendment to Cross-complaint (C.C.P. §§&§)
Substitute Payless Drug Store in place of Roe Seller.

on the interested parties in this action:

( ) By placing true copies thereof enclosed in a sealed envelope as stated on the attached mailing list.

(x) By placing ( ) the original (x) a true copy thereof enclosed in sealed envelopes, addressed as follows:

Gillin, Jacobson, Ellis & Larsen
2035 Addison Street, 7th Floor,
Berkeley, CA 94704

Kincaid, Gianunzio, Caudle & Hubert
500 Ygnacio Valley Road, Suite 400
Walnut Creek, CA 94596

P. Randall Noah, Esq.
Noah & Nerland
1981 N. Broadway, Suite 300
Walnut Creek, CA 94596

Krivis, Passavoy & Spile
16830 Ventura Blvd., #310
Encino, CA 91436

(x) (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Francisco, California. Executed on Jan. 18, 1994, at San Francisco, California

( ) (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.
Executed on _____, at San Francisco, California

(x) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

( ) (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Allen M. Garfield SB# 24501

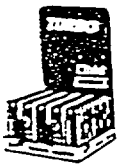
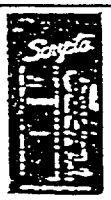
Scripto

RETAIL ACCOUNT
Effective April 1, 1994

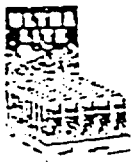
EXHIBIT
B
PENGAD-Bayonne, N. J.

CHILD RESISTANT LIGHTER BUYER'S GUIDE

ELECTRIC LIGHTERS

PRODUCT	ITEM NO.	UPC CODE 3-70257	DESCRIPTION	PACK	CASE DIMENSIONS CUBE WEIGHT	SUGG RETAIL
ELECTRA®						
	AP270-C	00585-1 (Lighter)	Display-A-Tray (D.A.T.) Counter Display. Contains: 50 uncarded electric lighters. Assortment of vibrant colors.	12-50 Ct.	18 [illegible] x 13 [illegible] x 8 [illegible] Cube: 1.23 cu. ft. Weight: 31.5 lbs.	1.39 each
	HP544	00023-8 (Card)	Open Stock Contains: 144 carded electric lighters. Assortment of 5 vibrant colors. Packed: 12 inner cartons x 12 single pack cards/inner.	12-12 Packs	12 [illegible] x 11 [illegible] x 5 [illegible] Cube: .47 cu. ft. Weight: 9.2 lbs.	1.39 each
	HP560	00023-8 (Card)	Open Stock Contains: 48 carded electric lighters. Assortment of 5 vibrant colors.	1-48 Ct.	13 [illegible] x 3 [illegible] x 5 [illegible] Cube: .14 cu. ft. Weight: 3 lbs.	1.39 each
TURBO®						
	*AP220-C*	00161-7 (Lighter)	Display-A-Tray (D.A.T.) Counter Display. Contains: 50 uncarded electric lighters. Assortment of 5 fashion designs.	12-50 Ct.	18 [illegible] x 13 [illegible] x 8 [illegible] Cube: 1.23 cu. ft. Weight: 32.3 lbs.	1.69 each
	*HP520-C*	10161-4 (Card)	Open Stock Contains: 144 carded electric lighters. Assortment of 5 fashion designs. Packed: 12 inner cartons x 12 single pack cards/inner.	[illegible]-12 Packs	12 [illegible] x 11 [illegible] x 5 [illegible] Cube: .47 cu. ft. Weight: 9.5 lbs.	1.69 each
	HP554-C	10161-4 (Card)	Open Stock Contains: 48 carded electric lighters Assortment of 5 fashion designs	[illegible] Ct.	13 [illegible] x 3 [illegible] x 5 [illegible] Cube [illegible] Weight: 3 lbs	1.69 each

SPARKWHEEL LIGHTERS (continued)

			DESCRIPTION	PACK	[illegible]	[illegible]
ULTRA LITE®						
	AM250-C	[illegible] Lighter	Display-A-Tray (D.A.T.) Counter Display. Contains: 50 uncarded sparkwheel lighters. Assortment of 5 fashion wraps.	12-50 Ct.	[illegible] Cube: [illegible] Weight: [illegible]	[illegible] each
	HM146-C	20010-2 (Card)	Open Stock. Contains: 144 carded sparkwheel lighter single packs. Assortment of 5 fashion wraps. Packed: 12 inner cartons x 12 single pack cards/inner.	12-12 Packs	[illegible] Cube: .47 cu. ft. Weight: [illegible] lbs.	1.09 each
	HM241-C	20010-2 (Card)	Open Stock. Contains: 48 carded sparkwheel lighter single packs. Assortment of 5 fashion wraps.	1-48 Ct.	[illegible] Cube: .14 cu. ft. Weight: 2.7 lbs.	1.09 each

SPARKWHEEL & ELECTRIC RACKS

RACKS						
	PL400-C	00585-1 (Lighter)	Two Tier Modular Rack. Contains: 2-D.A.T. (100 pcs.) of Electra®. Assortment of vibrant colors.	1-2x50 Ct.	[illegible] Cube: .26 cu. ft. Weight: 7 lbs.	139.00 1.39
	PL500	00585-1 (Lighter) 00585-1 (Lighter)	Two Tier Modular Rack. Contains: 1-D.A.T. (50 pcs) of Mighty Match®, 1-D.A.T. (50 pcs) of Electra®. Assortment of colors.	1-2x50 Ct.	[illegible] Cube: .37 cu. ft. Weight: 6 lbs.	114.00 .89 1.39

UTILITY LIGHTERS

AIM 'N FLAME®						
	HF12	63012-1	Open Stock. Contains: 12 carded utility lighters.	1-12 Ct.	[illegible] Cube: .25 cu. ft. Weight: 2.9 lbs.	5.99 each
	AF24-2	63012-1	Counter Display. Contains: 24 carded utility lighters (2-12 pc. plastic trays).	2-12 Ct.	[illegible] Cube: .66 cu. ft. Weight: 6.4 lbs.	5.99 each

0456

Scripto®

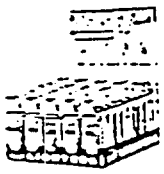
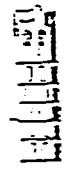
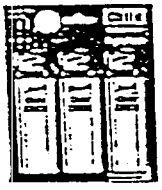
DIRECT ACCOUNT
Effective April 1, 1994

CHILD RESISTANT LIGHTER BUYER'S GUIDE

ELECTRIC LIGHTERS

PRODUCT	ITEM NO	UPC CODE	DESCRIPTION	PACK	CASE DIMENSIONS CUBE WEIGHT	SUGG RETAIL	DEALER COST
ELECTRA®							
	AP270-C	00565-1 (Lighter)	Display-A-Tray (D.A.T.) Counter Display. Contains: 50 uncarded electric lighters. Assortment of vibrant colors.	12-50 Ct.	18 [illegible] x 13 [illegible] x 8 [illegible] Cube: 1.23 cu. ft. Weight: 31.5 lbs.	1.39 each	33.50 per tray
	HP544	00023-8 (Card)	Open Stock Contains: 144 carded electric lighters. Assortment of 5 vibrant colors. Packed: 12 inner cartons x 12 single pack cards/inner	12-12 Packs	12 [illegible] x 11 [illegible] x 5 [illegible] Cube: .47 cu. ft. Weight: 9.2 lbs.	1.39 each	93.60 per case
	HP560	00023-8 (Card)	Open Stock Contains: 48 carded electric lighters. Assortment of 5 vibrant colors.	1-48 Ct.	13 [illegible] x 3 [illegible] x 5 [illegible] Cube: .14 cu. ft. Weight: 3 lbs.	1.39 each	31.20 per case
TURBO®							
	AP220-C	00161-7 (Lighter)	Display-A-Tray (D.A.T.) Counter Display. Contains: 50 uncarded electric lighters. Assortment of 5 fashion designs.	12-50 Ct.	18 [illegible] x 13 [illegible] x 8 [illegible] Cube: 1.23 cu. ft. Weight: 32.3 lbs.	1.69 each	37.00 per tray
	HP520-C	10161-4 (Card)	Open Stock Contains: 144 carded electric lighters. Assortment of 5 fashion designs. Packed: 12 inner cartons x 12 single pack cards/inner.	12-12 Packs	12 [illegible] x 11 [illegible] x 5 [illegible] Cube: .47 cu. ft. Weight: 9.5 lbs.	1.69 each	108.00 per case
	HP554-C	10161-4 (Card)	Open Stock Contains: 48 carded electric lighters. Assortment of 5 fashion designs	1-48 Ct.	13 [illegible] x 3 [illegible] x 5 [illegible] Cube: .14 cu. ft. Weight: 3 lbs.	[illegible] each	[illegible] per case

U458

MIGHTY MATCH®							
	AM150-C	00165-5 (Lighter)	Display-A-Tray (D.A.T.) Counter Display. Contains: 50 uncarded sparkwheel lighters. Assortment of 5 bright colors.	12-50 Ct.	18 [illegible] x 13 [illegible] x 6 Cube: 1.23 cu. ft. Weight: 28.6 lbs.	89 each	22.50 per tray
	HM125-C	00068-9 (Card)	Open Stock Contains: 144 sparkwheel lighters. Assortment of 5 bright colors. Packed: 12 inner cartons x 12 single pack cards/inner.	12-12 Packs	12 [illegible] x 11 [illegible] x 5 [illegible] Cube: .47 cu. ft. Weight: 8.5 lbs.	89 each	64.50 per case
	HM148-C	00068-9 (Card)	Open Stock Contains: 48 carded sparkwheel lighters. Assortment of 5 bright colors.	1-48 Ct.	13 [illegible] x 3 [illegible] x 5 [illegible] Cube: .14 cu. ft. Weight: 2.6 lbs.	89 each	21.60 per case
	HM449-C	10251-2 (Card)	Open Stock Contains: 144 carded sparkwheel lighter twin packs. Assortment of 5 bright colors. Packed: 12 inner cartons x 12 twin pack cards/inner.	12-12 Packs	13" x 10 [illegible] x 11 [illegible] Cube: .90 cu. ft. Weight: 15.56 lbs.	1.49 each	123.84 per case
	HM449-1C	10251-2 (Card)	Clip Strip Contains: 144 carded sparkwheel lighter twin packs. Assortment of 5 bright colors. Packed: 12 clip strips x 12 twin pack cards/clip strip.	12-12 Packs	15 [illegible] x 10 [illegible] x 7 [illegible] Cube: 0.73 cu. ft. Weight: 15.7 lbs.	1.49 each	123.84 per case
	AM372-C	10253-6 (Card)	Floor Display Contains: 72 carded sparkwheel lighter 3-packs. Assortment of 5 bright colors. Packed: 6 inner cartons x 12 triple pack cards/inner.	6-12 Packs	16 [illegible] x 12 [illegible] x 8" Cube: 1.00 cu. ft. Weight: 14 lbs.	1.99 each	90.72 per case
	HM348-C	10253-6 (Card)	Open Stock Contains: 48 carded sparkwheel lighter 3-packs. Assortment of 5 bright colors. Packed: 4 inner cartons x 12 triple pack cards/inner.	4-12 Packs	13 [illegible] x 8 [illegible] x 5 [illegible] Cube: .41 cu. ft. Weight: 7.5 lbs.	1.99 each	60.48 per case
	HM672-C	10256-7 (Card)	Open Stock Contains: 72 carded sparkwheel lighter 5-packs. Assortment of 5 bright colors. Packed: 6 inner cartons x 12 five pack cards/inner.	6-12 Packs	22 [illegible] x 9 [illegible] x 10" Cube: 1.28 cu. ft. Weight: 22.6 lbs.	2.99 each	147.60 per case

0459

ULTRA LITE®							
	AM250-C	00200-3 (Lighter)	Display-A-Tray D.A.T. Counter Display. Contains: 50 uncarded sparkwheel lighters. Assortment of 5 fashion wraps.	12-50 Ct.	18 [illegible] x 13 [illegible] x 6 [illegible] Cube: 1.23 cu. ft. Weight: 29.7 lbs.	[illegible] each	[illegible] per [illegible]
	HM146-C	20010-2 (Card)	Open Stock Contains: 144 carded sparkwheel lighter single packs. Assortment of 5 fashion wraps. Packed: 12 inner cartons x 12 single pack cards/inner	12-12 Packs	12 [illegible] x 11 [illegible] x 5 [illegible] Cube: .47 cu. ft. Weight: 5.7 lbs.	[illegible] each	[illegible] per case
	HM241-C	20010-2 (Card)	Open Stock Contains: 48 carded sparkwheel lighter single packs. Assortment of 5 fashion wraps.	1-48 Ct.	13 [illegible] x 3 [illegible] x 5 [illegible] Cube: .14 cu. ft. Weight: 2.7 lbs.	[illegible] each	33.52 per case

SPARKWHEEL & ELECTRIC RACKS

RACKS							
	PL400-C	00585-1 (Lighter)	Two Tier Modular Rack Contains: 2-D.A.T. (100 pcs.) of Electra®. Assortment of vibrant colors..	1-2x50 Ct.	7 [illegible] x 7 [illegible] x 8 [illegible] Cube: .26 cu. ft. Weight: 7 lbs.	139.00 [illegible]	65.00 per case
	PL500	00165-5 (Lighter) 00585-1 (Lighter)	Two Tier Modular Rack Contains: 1-D.A.T. (50 pcs) of Mighty Match®, 1-D.A.T. (50 pcs) of Electra®. Assortment of colors.	1-2x50 Ct.	12 [illegible] x 11 [illegible] x 4 [illegible] Cube: .37 cu. ft. Weight: 6 lbs.	114.00 [illegible] [illegible]	55.00 per case 22.50 32.50

UTILITY LIGHTERS

AIM 'N FLAME®							
	HF12	63012-1	Open Stock Contains: 12 carded utility lighters.	1-12 Ct.	11 [illegible] x 8 [illegible] x 4 [illegible] Cube: .25 cu. ft. Weight: 2.9 lbs.	5.99 each	33.60 per dozen
	AF24-2	63012-1	Counter Display Contains: 24 carded utility lighters (2-12 pc. plastic trays).	2-12 Ct.	11 [illegible] x 10 [illegible] x 9 [illegible] Cube: .66 cu. ft. Weight: 6.4 lbs.	5.99 each	67.20 per case

0460

AIM 'N FLAME®							
	AF72-PPF	63012-1	Floor Display Contains 72 carded utility lighters.	1-72 Ct.	31 [illegible] x 16" x 13 [illegible] Cube: 2.98 cu. ft Weight: 21.0 lbs	5.99 each	[illegible] per case
	AF360	63012-1	Pallet Display Contains 360 carded utility lighters.	360 Ct.	25" x 18 [illegible] x 56 [illegible] Cube: 15.02 cu. ft Weight: 105 lbs	5.99 each	1,008.00 per case

STANDARD TERMS AND CONDITIONS

TERMS OF PAYMENT:	2% 30 Days. Net 40.
MINIMUM ORDER:	$750.00.
ORDER ACCEPTANCE:	All orders subject to credit approval and acceptance by Scripto®.
FREIGHT POLICY:	Prepaid on all orders of $750.00 or more. Orders of $250.00 to $749.99 will be charged a 15% handling charge.
RETURNS POLICY:	No returns will be accepted without prior written authorization. Returns must have proper labels supplied by Scripto®. Authorized returns of saleable, current products are subject to a 15% handling charge. All authorized returns must be sent freight prepaid. Unauthorized returns will be refused and returned to sender at his expense. When it is not possible to refuse an unauthorized return, a 25% handling charge will be assessed.
GENERAL INFORMATION:	Scripto's manufacturer's UPC # is 70257. Above terms and conditions apply to shipments within the Continental United States. Prices subject to change without notice. Please Note: Order DAT'S (Display-A-Trays) by the display in multiples of twelve, all other items to be ordered in full case increments.

Scripto.

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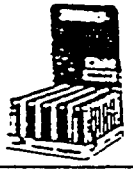
0461

Scripto®

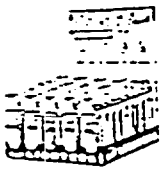
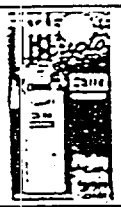
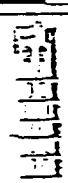
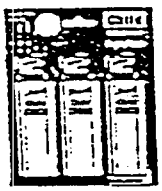
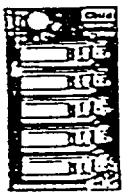
DIRECT ACCOUNT
Effective April 1, 1994

CHILD RESISTANT LIGHTER BUYER'S GUIDE

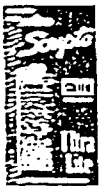
ELECTRIC LIGHTERS

PRODUCT	ITEM NO	UPC CODE 3-70257	DESCRIPTION	PACK	CASE DIMENSIONS CUBE WEIGHT	SUGG RETAIL	DEALER COST
ELECTRA®							
	AP270-C	00585-1 (Lighter)	Display-A-Tray (D.A.T.) Counter Display. Contains: 50 uncarded electric lighters. Assortment of vibrant colors.	12-50 Ct.	18 [illegible] x 13 [illegible] x 8 [illegible] Cube: 1.23 cu. ft. Weight: 31.5 lbs.	1.39 each	[illegible] per tray
	HP544	00023-8 (Card)	Open Stock Contains: 144 carded electric lighters. Assortment of 5 vibrant colors. Packed: 12 inner cartons x 12 single pack cards/inner	12-12 Packs	12 [illegible] x 11 [illegible] x 5 [illegible] Cube: .47 cu. ft. Weight: 9.2 lbs.	1.39 each	[illegible] per case
	HP580	00023-6 (Card)	Open Stock Contains: 48 carded electric lighters. Assortment of 5 vibrant colors.	1-48 Ct.	13 [illegible] x 3 [illegible] x 5 [illegible] Cube: .14 cu. ft. Weight: 3 lbs.	1.39 each	[illegible] per case
TURBO®							
	AP220-C	00161-7 (Lighter)	Display-A-Tray (D.A.T.) Counter Display. Contains: 50 uncarded electric lighters. Assortment of 5 fashion designs.	12-50 Ct.	18 [illegible] x 13 [illegible] x 8 [illegible] Cube: 1.23 cu. ft. Weight: 32.3 lbs.	1.69 each	[illegible] per tray
	HP520-C	10161-4 (Card)	Open Stock Contains: 144 carded electric lighters. Assortment of 5 fashion designs. Packed: 12 inner cartons x 12 single pack cards/inner.	12-12 Packs	12 [illegible] x 11 [illegible] x 5 [illegible] Cube: .47 cu. ft. Weight: 9.5 lbs.	1.69 each	[illegible] per case
	HP284-C	10161-4 (Card)	Open Stock Contains: 48 carded electric lighters. Assortment of 5 fashion designs	1-48 Ct.	13 [illegible] x 3 [illegible] x 5 [illegible] Cube: .14 cu. ft. Weight: 3 lbs.	[illegible] each	[illegible] per [illegible]

0458

MIGHTY MATCH®							
	AM150-C	00165-5 (Lighter)	Display-A-Tray (D.A.T.) Counter Display. Contains: 50 uncarded sparkwheel lighters. Assortment of 5 bright colors.	12-50 Ct.	18 [illegible] x 13 [illegible] x 6 Cube: 1.23 cu. ft. Weight: 28.6 lbs.	89 each	22.50 per tray
	HM125-C	00068-9 (Card)	Open Stock Contains: 144 sparkwheel lighters. Assortment of 5 bright colors. Packed: 12 inner cartons x 12 single pack cards/inner.	12-12 Packs	12 [illegible] x 11 [illegible] x 5 [illegible] Cube: .47 cu. ft. Weight: 8.5 lbs.	89 each	64.80 per case
	HM148-C	00068-9 (Card)	Open Stock Contains: 48 carded sparkwheel lighters. Assortment of 5 bright colors.	1-48 Ct.	13 [illegible] x 3 [illegible] x 5 [illegible] Cube: .14 cu. ft. Weight: 2.6 lbs.	89 each	21.60 per case
	HM449-C	10251-2 (Card)	Open Stock Contains: 144 carded sparkwheel lighter twin packs. Assortment of 5 bright colors. Packed: 12 inner cartons x 12 twin pack cards/inner.	12-12 Packs	13" x 10 [illegible] x 11 [illegible] Cube: .90 cu. ft. Weight: 15.56 lbs.	1.49 each	123.84 per case
	HM449-1C	10251-2 (Card)	Clip Strip Contains: 144 carded sparkwheel lighter twin packs. Assortment of 5 bright colors. Packed: 12 clip strips x 12 twin pack cards/clip strip.	12-12 Packs	15 [illegible] x 10 [illegible] x 7 [illegible] Cube: 0.73 cu. ft. Weight: 15.7 lbs.	1.49 each	123.84 per case
	AM372-C	10253-6 (Card)	Floor Display Contains: 72 carded sparkwheel lighter 3-packs. Assortment of 5 bright colors. Packed: 6 inner cartons x 12 triple pack cards/inner.	6-12 Packs	16 [illegible] x 12 [illegible] x 8" Cube: 1.00 cu. ft. Weight: 14 lbs.	1.99 each	90.72 per case
	HM348-C	10253-6 (Card)	Open Stock Contains: 48 carded sparkwheel lighter 3-packs. Assortment of 5 bright colors. Packed: 4 inner cartons x 12 triple pack cards/inner.	4-12 Packs	13 [illegible] x 8 [illegible] x 5 [illegible] Cube: .41 cu. ft. Weight: 7.5 lbs.	1.99 each	60.48 per case
	HM672-C	10256-7 (Card)	Open Stock Contains: 72 carded sparkwheel lighter 5-packs. Assortment of 5 bright colors. Packed: 6 inner cartons x 12 five pack cards/inner.	6-12 Packs	22 [illegible] x 9 [illegible] x 10" Cube: 1.28 cu. ft. Weight: 22.6 lbs.	2.99 each	147.60 per case

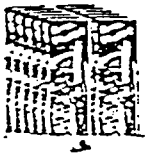
U459

ULTRA LITE®							
	AM250-C	00300-3 (Lighter)	Display-A-Tray (D.A.T.) Counter Display. Contains: 50 carded sparkwheel lighters. Assortment of 5 fashion wraps	12-50 Ct.	[illegible] Cube: [illegible] cu. ft. Weight: [illegible] lbs	[illegible] each	[illegible] per case
	HM146-C	20010-2 (Card)	Open Stock Contains: 144 carded sparkwheel lighter single packs. Assortment of 5 fashion wraps. Packed: 12 inner cartons x 12 single pack cards/inner	12-12 Packs	[illegible] Cube: [illegible] cu. ft. Weight: [illegible] lbs	[illegible] each	[illegible] per case
	HM241-C	[illegible] (Card)	Open Stock Contains: 48 carded sparkwheel lighter single packs. Assortment of 5 fashion wraps.	1-48 Ct.	[illegible] Cube: [illegible] cu. ft. Weight: [illegible] lbs	[illegible] each	[illegible] per case

SPARKWHEEL & ELECTRIC RACKS

RACKS							
	PL400-C	00585-1 (Lighter)	Two Tier Modular Rack Contains: 2-D.A.T. (100 pcs.) of Electra®. Assortment of vibrant colors..	1-2x50 Ct.	[illegible] Cube: .26 cu. ft. Weight: 7 lbs.	[illegible] [illegible]	[illegible] per case
	PL500	00165-5 (Lighter) 00585-1 (Lighter)	Two Tier Modular Rack Contains: 1-D.A.T. (50 pcs) of Mighty Match®, 1-D.A.T. (50 pcs) of Electra®. Assortment of colors.	1-2x50 Ct.	[illegible] Cube: [illegible] cu. ft. Weight: 6 lbs.	[illegible] [illegible] [illegible]	[illegible] per case [illegible] [illegible]

UTILITY LIGHTERS

AIM 'N FLAME®							
	HF12	63012-1	Open Stock Contains: 12 carded utility lighters.	1-12 Ct.	[illegible] Cube: .25 cu. ft. Weight: 2.9 lbs	5.99 each	[illegible] per case
	AF24-2	63012-1	Counter Display Contains: 24 carded utility lighters (2-12 pc. plastic trays).	2-12 Ct.	[illegible] Cube: .66 cu. ft. Weight: 6.4 lbs	5.99 each	[illegible] per case

0460

AIM 'N FLAME®							
	AF72-PPF	63012-1	Floor Display Contains 72 carded utility lighters.	72 Ct.	31 1/4" x 16" x 13 1/4" Cube: 2.98 cu. ft. Weight: 21 lbs	5.99 each	431.41 per case
	AF360	63012-1	Pallet Display Contains 360 carded utility lighters.	360 Ct.	25" x 18 1/2" x 55 1/4" Cube: 15.02 cu. ft. Weight: 105 lbs	5.99 each	1,008.00 per case

STANDARD TERMS AND CONDITIONS

TERMS OF PAYMENT:	2% 30 Days. Net 40.
MINIMUM ORDER:	$750.00.
ORDER ACCEPTANCE:	All orders subject to credit approval and acceptance by Scripto®.
FREIGHT POLICY:	Prepaid on all orders of $750.00 or more. Orders of $250.00 to $749.99 will be charged a 15% handling charge.
RETURNS POLICY:	No returns will be accepted without prior written authorization. Returns must have proper labels supplied by Scripto®. Authorized returns of saleable, current products are subject to a 15% handling charge. All authorized returns must be sent freight prepaid. Unauthorized returns will be refused and returned to sender at his expense. When it is not possible to refuse an unauthorized return, a 25% handling charge will be assessed.
GENERAL INFORMATION:	Scripto's manufacturer's UPC # is 70257. Above terms and conditions apply to shipments within the Continental United States. Prices subject to change without notice. Please Note: Order DAT'S (Display-A-Trays) by the display in multiples of twelve, all other items to be ordered in full case increments.

Scripto.

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1 IN THE DISTRICT COURT OF GALVESTON COUNTY, TEXAS

2 56TH JUDICIAL DISTRICT

3

4 JUDY LYNN CARR, INDIVIDUALLY)
AND AS NEXT FRIEND OF JODIE)
5 RENEE CARR (BROCCO), A MINOR,)
)
6 Plaintiff,)
)
7 vs.) No. 94-CV-0287
)
8 SCRIPTO-TOKAI CORPORATION,)
WAL-MART, INC., AND LOUIS)
9 SPEARS,)
)
10 Defendants.)
)
11

12

13

14 Deposition of MICHAEL G. FORYS, taken on
15 behalf of the Plaintiffs, at 725 South Figueroa
16 Street, Suite 1200, Los Angeles, California,
17 commencing at 10:00 a.m., on Wednesday, November 8,
18 1995, before ALENE M. CASTRO, Certified Shorthand
19 Reporter No. 4847, pursuant to Notice.

20

21

22

23

24

25

EXHIBIT
C

Sarnoff DEPOSITION SERVICE INC.
Los Angeles Orange County San Diego 1-800-888-6949

1 A I have no idea.

2 Q Does Scripto-Tokai -- does the

3 Scripto-Tokai corporation to your knowledge have any

4 information on whether a child age 5 can operate an

5 Aim 'n Flame lighter?

6 A Not that I'm aware of.

7 Q Does Scripto-Tokai Corporation care

8 whether or not children age 5 can operate an Aim 'n

9 Flame lighter?

10 A Of course.

11 Q What have they done to manifest that

12 concern?

13 A I don't know.

14 Q Does Scripto Corporation to your

15 knowledge have any corporate position disseminated to

16 the Consumer Product Safety Commission on whether or

17 not the Aim 'n Flame lighter, or lighters like the Aim

18 'n Flame lighter, should be child resistant in order

19 to protect children?

20 A Well, early in the rule making in 1986 or

21 1987 the CPSC determined that utility lighters would

22 not be included in the rule making because they didn't

23 find sufficient hazard, and we have had no information

24 to -- at least until recently to change that.

25 Q And was there a report written out by the

Sarnoff DEPOSITION SERVICE INC.
Los Angeles 213.938.2461 Orange County 714.834.1571 San Diego 619.544.9955 1.800.888.6949

10 RESEARCH PARKWAY • WALLINGFORD, CONNECTICUT 06492
HOME OFFICE, COLUMBUS, OHIO

NATIONWIDE INSURANCE
Nationwide is on your side

January 28, 1992

Scripto Tokai
P. O. Box 5555
Fontana, California 92334-5555

Claim Number: 51 18 HO 053 753
Loss Date: May 31, 1991
Our Insure[redacted]

Dear Sir/Madam:

Please be advised that I have been assigned to handle a claim involving one of your products, the Scripto grill lighter.

Our insured purchased the lighter for use when igniting camp fires on family camping trips. This lighter's physical appearance closely resembles a toy gun, which apparently was what our insured's three-year old son mistook it for when he activated it.

Our records indicate that Maine legislation, the location in which this loss occurred, is attempting to combat the sale of these types of lighters through the passing of the legislative bill prohibiting their sale. A physical examination of the lighter also indicates there were no safety shut-offs to prevent the accidental discharge of this lighter by the child.

The fire that resulted at our insured's home caused approximately $80,000 worth of damage to the dwelling and its contents.

Please forward this information onto your liability carrier so we might discuss this in further detail. I may be reached at (203) 294-7873.

Thank you for your anticipated cooperation.

Very truly yours,

Anne F. Ennis

(Ms.) Anne F. Ennis
Senior Claims Representative
Nationwide Mutual Insurance Company

AFE/esp

f/r2-10

0060

CARSON, CARSON & CARSON
ATTORNEYS AND COUNSELORS AT LAW
239 WEST 16TH PLACE
TULSA, OKLAHOMA 74119

(918) 583-4155
(918) 587-5583

TELECOPIER
(918) 582-4376

Kainor Carson
Beverly Pierce Carson
David Sommers Carson

November 17, 1992

Scripto-Tokai Corporation
P. O. Box 5555
Fontana, California 92334-5556

RE: Our Client: [redacted] by and through her [redacted] and Guardian: [redacted]

Date of Loss: July 5, 1992

Gentlemen:

This is hereby notice to you that we represent [redacted] a minor, to recover damages for personal injuries sustained as a result of severe burns when she picked up your gun type charcoal lighter to throw it in the trash, as it had not been working since July 4, 1992..

She apparently, accidentally, pushed the button as she was carrying it across the room. It burst into flames, caught her night gown on fire and severely burned her on the arms, mainly on both legs and buttocks. Her night garment caught on fire and her dad had to put the fire out.

She incurred medical expenses for medical attention and was otherwise psychologically injured and damaged as a result of this occurrence. We are, therefore, looking to you for the recovery of all damages sustained. Please have your representative get in touch with us in regard to this matter.

Very truly yours,

CARSON, CARSON & CARSON

Davis S Carson /KT

By: Davis S. Carson for
Kainor Carson

DSC:nit

0061

R-96%

To: LORI

Date 3-5 Time 11:30 ☒ AM ☐ PM

WHILE YOU WERE OUT

[redacted]

of [redacted]

Area Code	Number	Extension

TELEPHONED		PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		URGENT	
RETURNED YOUR CALL			

Message

RE: AIM N FLAME

WANTS TO TALK ABOUT IT. HER SON BURNED SOME OF HOUSE BECAUSE HE THOUGHT IT WAS A GUN. WANTED TO DISCUSS HER CONCERNS WITH YOU.

Operator

23-0005

INLAND OFFICE PRODUCTS

302 HERSHEY ST. POMONA, CA 91767 (909) [illegible]

AIM 'N FLAME 4 & 8 year old boys

Looks like gun - always want to use it - couple of weeks ago - put on top of refrigerator

4 year old got chair and played with it burned diaper in room - he wasn't burned - she burned her hands carrying diaper to bathroom

KIDS thing of it as toys!!

BEDROOM CARPET & HALL BURNED CARPET $2600 IN DAMAGE!!

NOTHING WRONG WITH "AIM N FLAME"

[redacted]

Williamson, NY 14589

→ will we reimburse us

0062A

Scripto® TOKAI

P. O. Box 5555
Fontana, California 92334-5555
Telephone: (909)360-2100

January 6, 1994

Mr. Jon Semancik
Toplis and Harding, Inc.
5670 Wilshire Boulevard
20th Floor
Los Angeles, CA 90036

VIA FAX

Re: Claimant: [redacted]

Dear Jon:

I just received a phone message from the above mentioned claimant she stated that her son got a hold of a grill lighter, which is not very child proof, started a fire in her apartment.

Could you please give her a call right away and report back to us.

Thanks for your help.

Lori Doeppel
Corporate Administrative
Coordinator

Attachments

c: Fred Ashley
Mark Suzumoto

FAX • Sales & Administration: (909) 360-2131 • Accounting & Finance: (909) 360-2130

Possible Petition, Officer, chron, gc, epds **1604 cigarette lighters**

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

February 23, 1996

Ms. Judy Carr
1002 Cemetery Road
Santa Fe, Texas 77510

RE: Petition to Amend 16 CFR 1210 - Cigarette Lighters

Dear Ms. Carr:

Thank you for your recent letter to Chairman Brown. Your letter was received on February 15, 1996.

We are forwarding your letter to the Commission's Off of General Counsel as a possible petition. They will review your letter and inform you of their decision regarding your request to amend 16 CFR 1210.

We also consider your letter a reported incident and are forwarding a copy to the appropriate office. That staff will review the information you provided and add it to the CPSC's data bases and/or the appropriate agency project file. In determining whether to take action, the Commission considers the likelihood of injury, the nature and degree of injury, and whether action by CPSC can correct the problem.

Our staff will contact you if additional information is needed about the reported incident.

Sincerely,

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

TAB B

Proposed Rules

Federal Register
Vol. 61, No. 89
Tuesday, May 7, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1210

Petition CP 96–1 Requesting a Child-Resistance Standard for Multi-Purpose Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Petition for rulemaking.

SUMMARY: Judy L. Carr has petitioned the Commission to begin a rulemaking proceeding to amend the Safety Standard for Cigarette Lighters, 16 CFR part 1210, so it would apply to a "multi-purpose" lighter. The Commission solicits written comments concerning the petition from all interested parties.

DATES: Comments on the petition should be received in the Office of the Secretary by July 8, 1996.

ADDRESSES: Comments on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East-West Highway, Bethesda Maryland 20814. Comments should be captioned "Petition CP 96–1 for Child-Resistant Multi-Purpose Lighters." Copies of the petition are available by writing or calling the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Rockelle S. Hammond, Docket Control Specialist, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0800 ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has docketed correspondence from Judy L. Carr as a petition for rulemaking under the Consumer Product Safety Act ("CPSA"). Ms. Carr asks that the Commission begin a rulemaking proceeding to amend the Safety Standard for Cigarette Lighters, 16 C.F.R. § 1210, so that the standard would apply to a particular "multi-purpose" lighter.

This type of product is commonly purchased for lighting charcoal or gas grills and fireplaces. The particular product referred to by the petitioner is a butane-fueled lighter with a handle, a trigger for actuating the lighting mechanism and fuel flow, and a long nose from which the flame extends. The device has a "safety" that can be manually moved to the "off" position to block actuation of the trigger. If the Commission grants the petition, the rulemaking would develop a generic description of the product to be regulated, in order to cover similar products made by others. For the purposes of this notice, the product category will be referred to as "multi-purpose lighters."

The cigarette lighter safety standard requires that lighters subject to the standard have child-resistant features to prevent operation by most children under age 5. The child-resistant mechanism must reset itself automatically after each operation of the lighter's ignition mechanism. 16 CFR 1210.3(b)(1). However, multi-purpose lighters are currently excluded from the cigarette lighter regulation. See 16 CFR 1210.2(c).

The petition sets forth facts in the form of petitioner's personal knowledge of an incident involving her children. Petitioner asserts that her children started a fire while playing with the lighter, resulting in burns to a 4-year-old girl on over 60% of her body. The petition also contains information concerning other incidents where young children started fires using a multi-purpose lighter. That information was obtained by the petitioner through discovery in litigation with the product's manufacturer.

The Commission solicits comments on the issues raised by the petition. The Commission is particularly interested in comments on the following topics:

1. The types and numbers of multi-purpose lighters currently sold to consumers;
2. The manufacturers and distributors of the product;
3. The number of persons injured or killed in fires started by children under the age of 5 years using multi-purpose lighters;
4. The circumstances under which these injuries and deaths occur, including the ages of the children who started the fires, the ages of the victims, the locations from which the children obtained the lighters, and physical descriptions of the products involved (including identification of the manufacturers and models, if available);
5. Ways in which the products could be modified to be child resistant;
6. Characteristics of the product that could or should not be used to define which products might be subject to the requested rule;
7. Other information on the potential costs and benefits of the requested rule; and
8. Steps that have been taken by industry or others to reduce the risk of injuries from the product.

Comments on the petition should be received in the Commission's Office of the Secretary by July 8, 1996. Comments should be captioned "Petition CP 96–1 for Child-Resistant Multi-Purpose Lighters."

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, room 502, 4330 East-West Highway, Bethesda Maryland 20814.

Dated: April 29, 1996.

Sayde E. Dunn,
Secretary of the Commission.

[FR Doc. 96–11121 Filed 5–6–96; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[A–4 1–93]

RIN 1545–AS04

Automatic Extension of Time for Filing Individual Income Tax Returns; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public

TAB C

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

MEMORANDUM

DATE: NOV 12 1996

TO : Barbara Jacobson, EHHS
Project Manager, Multi-Purpose Lighter Petition

Through: Mary Ann Danello, Ph.D., AED, Directorate for Epidemiology and Health Sciences

Through: Robert Frye, Director, Hazard Analysis Division (EHHA)

FROM : Linda E. Smith, EHHA

SUBJECT: Fire Incidents Involving Multi-Purpose Lighters

This memorandum provides fire incident data in response to Petition-CP 96-1 that requests a child-resistant standard for multi-purpose lighters.

Background/Methodology

The petitioner requested amendment of the existing Safety Standard for Cigarette Lighters, 16 CFR, part 1210, to include multi-purpose lighters. This standard requires that lighters subject to the standard have child-resistant features to prevent operation by most children under age 5.

The relevant Consumer Product Safety Commission(CPSC) data bases[1] were searched starting in January 1985 to identify fires involving multi-purpose lighters in which the fire was started by a child under age 5.

Results

EHHA staff identified a total of 53 fires started by children under age 5 using multi-purpose lighters from January 1988 to the present. These fires resulted in a total of 10 deaths and 24 injuries. From 1988 through 1994, 5 or fewer fires were reported annually(Figure 1). In 1995, 11 fires were reported that resulted in 2 deaths and 3 injuries.

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[1]Data bases searched include consumer complaints, newspaper clippings, death certificates, hospital emergency room-treated injuries, and investigation reports.

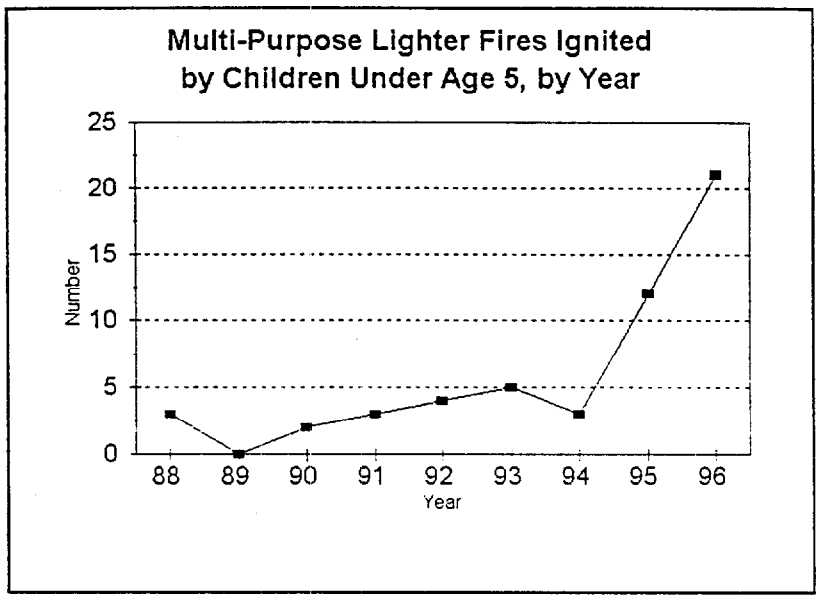

Figure 1

In 1996 to date, 22 fires were reported that resulted in 4 deaths and 15 injuries. This increase in the number of incidents may be related to the increase in number of units sold. In 1985, one million units were sold. Total industry sales for 1995 were estimated at 16 million lighters and projected at 17 to 18 million for 1996.[2]

In addition to the casualties involved, the fires also caused property damage. Although many of the reports did not indicate the amount of property damage, 12 reports cited property damage over $50,000.

Almost all of the 10 fatalities were the children who started the fire. At least 3 of the injured persons required hospitalization for treatment. The most serious involved a 15-month-old infant hospitalized for second and third degree burns over 80 percent of his body when his two-year-old brother ignited the playpen in which he was sleeping. Children under age 5 typically are incapable of dealing with a fire once started. This puts them (and their families) at special risk of injury.

It is noted that the incidents cited above are conservative counts of the number of incidents known to CPSC. Based on available data, some multi-purpose lighter fires were initially reported as "lighter" fires. For example, seven incidents

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[2]Memorandum from Terrance Karels, EC, to Barbara Jacobson, EHPS, "Market Information on Multipurpose Lighters," November 1, 1996.

involving multi-purpose lighters were identified only after the follow-up investigation was completed. Several other uninvestigated reports of multi-purpose lighter fires cited "child play" but not the age of the child. These were not included in this memorandum but may have involved children under age 5. Two additional incidents involved fires started by children, ages 5 and 6, with Downs Syndrome, a condition that affects mental development. These children, while over 5 years old, might have been protected by a child-resistant lighter. The 6-year-old was reported as being at the 3 to 4-year-old developmental level.

The scenarios in these incidents are similar to those known to involve disposable cigarette lighters. Among the 49 fires in which the sex of the fire starter was known, 5 were girls, 44 were boys. The children typically found the multi-purpose lighters in a variety of locations such as kitchen counters or tops of furniture. Others, however, searched out the lighters in more inaccessible locations, such as high shelves or cabinets, where parents tried to hide them. Three investigation reports indicated that the children involved had demonstrated that they were capable of operating the on/off switch.

Comments

Given the limited number of incidents reported, it is not possible to make a national estimate of the total number of fires and casualties related to multi-purpose lighters at this time. Development of a national estimate would require follow-up of a large sample of child-play fires involving both multi-purpose lighters and lighters in general. A 24-month period of follow-up may be required because of the relatively low frequency of incidents involving multi-purpose lighters.

TAB D

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

MEMORANDUM

DATE: November 25, 1996

TO : Barbara Jacobson, EHPS
Project Manager

Through: Warren J. Prunella, AED, EC WJP

FROM : Terrance Karels, EC TK

SUBJECT: Economic Considerations of the Petition on Multipurpose Lighters

In response to Petition CP 96-1, to require certain all-purpose lighters to be child-resistant, we have developed some information for use in the evaluation of that petition.

The product

Multipurpose lighters are butane-filled lighters with an extended tube or nozzle (4 to 8 inches in length). They are most often not refillable. The lighters are activated by applying pressure to a trigger or button mechanism, which initiates a piezo-electric spark at the end of the nozzle. The product's design allows the resulting flame to be a significant distance from the hand, which makes the product attractive in a number of applications.

The most common uses of multipurpose lighters are to ignite charcoal for outdoor grilling and to start a fireplace fire. The lighters are used in camping and in recreational vehicles to ignite campfires and LP gas ranges and grills. They are also used to reignite pilots in household gas appliances and in churches to light candles that may be difficult to reach.

Multipurpose lighters are sold at retail for $2.50 to $8 each. The average retail price is about $4, which is the suggested retail price of the market leader, Scripto.

One group of multipurpose lighters has additional special features, such as refillable fuel chambers and flexible extended nozzles and piezo-electric spark mechanisms powered by replaceable batteries. Two marketers of these "high-end" multipurpose lighters are Olympian and Donnel. These lighters retail for about $40 each and are most likely to be used in commercial applications, such as in installing or repairing gas appliances.

Readily available substitutes for multipurpose lighters include matches and disposable butane lighters. The closest substitutes probably are long stem matches, sometimes called fireplace matches. These matches commonly retail for about $5 for a box of 50, which, on a per-light basis, are substantially more costly than multipurpose lighters (at about 0.4 cents per light). Disposable butane lighters are less costly on a per-light basis, at about 0.1 cents or less.

Sales

The U.S. International Trade Commission (ITC) has not assigned a specific data reporting category for multipurpose lighters. According to the ITC analyst for lighters, these products would be classified under HTS 9613.8080, "Lighters, other, other, valued at more than $5 per dozen." The two "other" designations indicate that the lighters in this group are not of precious metal, and are not table-top lighters.

Domestic shipments of multipurpose lighters also do not have a specific Standard Industrial Classification (SIC) code. These products are included under SIC 3999, "Manufactured Products, not elsewhere classified."

Multipurpose lighters were introduced to the U.S. market in 1985 by Scripto. According to Scripto, one million units were sold in that first year of sales. Since that time, sales have trended steadily upward. Scripto estimated that total industry sales reached 16 million units in 1995. The Lighter Association noted in its written submission for comment on the petition that over 100 million of these lighters have been sold since their introduction. These industry sources expect that sales of multipurpose lighters will continue to increase, at the rate of 5-10 percent annually, for the foreseeable future.

Manufacturers

The largest marketer of multipurpose lighters is Scripto Tokai, which imports its product from Mexico. Scripto estimated that it accounts for 90 percent or more of total U.S. sales of these lighters. Cricket imports its lighters from the Philippines. About a dozen other firms market multipurpose lighters under private label; all of these are produced in China by two other manufacturers.

Only one firm, Donnel, produces its lighters domestically. However, its product (a high-end multipurpose refillable lighter called "Long-Lites") has only a minimal market share, less than one percent of the market according to Scripto.

The two largest marketers of multipurpose lighters, Scripto and Cricket, are represented by the Lighter Association. Thus, the trade association represents firms which account for in excess of 90% of total annual sales of these products. The Lighter Association is located in Washington, DC.

Numbers In use

The service life of multipurpose lighters depends on how they are used. Lighters purchased solely for use with home fireplaces may experience infrequent use and, therefore, have useful lives of two years or more. Lighters purchased for use in camping (and stored with camping gear) are likely to be used only seasonally. If used in everyday applications, the useful life would be similar to that of disposable butane lighters: less than one year.

For the purpose of estimating the number of multipurpose lighters available for use, an average useful life in the range of one to two years (or used for one season and then stored for use during the next season) seems reasonable. Based on this assumption and a linear estimation of sales growth from 1985 forward, we preliminarily estimate that there were in the range of 23-36 million multipurpose lighters available for use at the end of 1995.

Economics of adding child protection devices

The petition asks that multipurpose lighters be required to incorporate a child protection device in its design. Most multipurpose lighters now sold include some type of safety device; usually, this is a slider-type switch which must be engaged before the lighter can be triggered. However, it is unlikely that the current safety device would comply with the existing requirements for disposable lighters.

Industry sources estimate that the inclusion of such a safety device which would comply with the disposable lighter standard could add 20 to 40 cents to the retail price of multipurpose lighters. This relatively high cost is due to the difficulty in designing a safety feature that would still provide enough fuel to allow for ignition at the end of the nozzle. Based on estimated 1995 sales of 16 million units, the incremental cost of such a safety device would have been $3-6 million in 1995.

Additionally, there would be retooling costs necessary to accommodate any design change. Industry sources estimate that one-time retooling costs for the four producers (excluding Donnel) could total about $5 million. These costs can be amortized over several years of production.

EHHA staff identified 11 fires associated with childplay with multipurpose lighters in 1995. These resulted in three injuries and two deaths in that year.[1]

The societal costs of fires associated with childplay with multipurpose lighters include the costs of property damage, injury and death. The analysis of the safety standard for disposable lighters estimated the average cost of property damage for fires involving childplay at about $15,000 per occurrence and the average cost of fire burn injury at about $50,000. The estimated statistical value of life is $5 million. Therefore, the total estimated societal costs of childplay with multipurpose lighters was about $10.3 million in 1995.[2]

Several factors determine the range of benefits that would result from the inclusion of a CR feature on multipurpose lighters. The useful life of the product (which has been estimated at one to two years) determines how many multipurpose lighters are in use. Additionally, the effectiveness of the CR feature (estimated at between 73 and 82 percent) determines the overall reduction in incidents.[3]

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[1] Staff noted that these were reported incidents from a number of sources, rather than a national estimate of the total number of events. Given the small number of incidents, staff was not able to develop an estimate of the total number of fires and casualties. The number of actual events is likely to be greater than that reported.

[2] These benefits were derived from two known deaths in 1995.

[3] The estimated range of effectiveness is derived from child testing of non-child resistant disposable "roll and press" and "pushbutton" lighters, respectively. The testing showed that 55 percent of children were able to operate non-CR "roll and press" lighters, and 84 percent were able to operate non-CR "pushbutton"

If these lighters have a one year useful life, then there were 23 million lighters in use in 1995, and each lighter had an expected accident cost of about 45 cents ($10.3 million in societal costs ÷ 23 million lighters). If CR lighters are 73 percent effective, the benefits will be about 33 cents per lighter.

If these lighters have a two year life, then there were 36 million multipurpose lighters in use, and each lighter had an expected accident cost of about 57 cents ($10.3 million ÷ 36 million lighters for each of two years). If CR lighters are 82 percent effective, then the benefits would be about 47 cents per lighter.

Thus, the preliminary estimate of the potential benefits are $0.33 to $0.47 per lighter, compared to estimated costs of $0.20 to $0.40 per lighter.[4]

---

lighters. Staff estimated the effectiveness to reflect that, after a CR standard, 85 percent of children under age 5 would be unable to operate the CR device. Therefore, the estimate for "roll and press" lighters would be 0.73 [(.85-.45)/(.55)]. The estimate for "pushbutton" lighters would be 0.82 [(.85-.16)/(.84)]. It should be noted that multipurpose lighters have not been tested to determine the proportion of children which is able to operate them. We have assumed that the range derived from all lighters encompasses that for multipurpose lighters.

[4] Incomplete data for 1996 show four deaths, with sales projected at 17 to 18 million units. Therefore, based on 1996 data (and total benefits of $20.5 million) and using the same methodology (including the .73-.82 range of effectiveness), the range of potentially achievable benefits per lighter would be $.65-$.93.

TAB E

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

MEMORANDUM

DATE: September 19, 1996

TO : Barbara Jacobson, Project Manager, Multi-Purpose Lighter Petition

Through: Andrew G. Stadnik, P.E., Associate Executive Director, Directorate for Engineering Sciences
Dr. Robert B. Ochsman, Director, Human Factors Division

FROM : Carolyn Meiers, Engineering Psychologist, Human Factors Division Directorate for Engineering Sciences (x1281) CM

SUBJECT: Attractiveness and Appeal of Multi-Purpose Lighters to Children (Petition CP 96-1)

This memorandum provides a response to the petitioner's statement that the Aim 'n Flame's "gun-like shape and trigger with trigger guard makes it more attractive than a cigarette lighter as a play object."

The multi-purpose lighter cited in the petition has similar physical characteristics to a gun (barrel, trigger, and trigger guard). It is also functionally similar in that it is activated by pulling a trigger mechanism. It seems likely that children might play with the lighter by "shooting" it as they would a toy gun.

Reports of fire incidents attributed to children playing with a multi-purpose lighter indicate that the design of the multi-purpose lighter could have attracted children to it. Some examples are:

1. A three-year-old boy saw the lighter on a basement workbench and thought it was a toy gun. His mother reported the child called it a "trigger gun" (1).

2. A father reported that his three-year-old child had not previously played with lighters, but instead, if he found one would take it to an adult. The father said his son had just been given a toy gun which may have contributed to his curiosity in the multi-purpose lighter. According to the father, both the multi-purpose lighter and the gun made the same "clicking" sound (2).

3. A three-year-old boy took a multi-purpose lighter out of a tool box and hid it in his toy box two weeks prior to setting a fire. The father said the child had apparently thought it was a toy, possibly a toy gun.

4. A mother complained that the multi-purpose lighter, with its plastic, bright red handle could easily be mistaken for a toy (3).

In addition to the shape, the flame of the multi-purpose lighter is also an attractive feature to children. Children's curiosity about fire is a normal, appropriate stage in their development (4). Fire appeals to young children because it is bright, warm and exciting (5). In the case of multi-purpose lighters, the flame produced is larger than those of ordinary cigarette lighters. This might heighten the multi-purpose lighter's appeal to children.

In situations where children have not seen the multi-purpose lighter operated, and are, therefore, not attracted to it by the flame, the shape of the lighter could appeal to them and arouse their curiosity to experiment with the lighter. An example from the multi-purpose-lighter fire incidents is the two-year old boy who had not seen a lighter like this before and removed it from a hook near a fireplace to play with it (6).

In situations where children have seen multi-purpose lighters operated, the combination of the shape and the flame could interact to enhance the attractiveness and appeal of the lighter. As such, multi-purpose lighters could have more appeal than ordinary matches or cigarette lighters. The fire incidents show that children have ample opportunities to see multi-purpose lighters in operation. Multi-purpose lighters were used to light candles on a birthday cake, grills, other types of candles, stoves, pilot lights, and cigarettes.

Conclusion

The appeal and attractiveness of multi-purpose lighters relies, in part, on their "toy-like" appearance. Incident data show some children were first attracted to the product because of its shape. If children have not seen the lighters operated, this "toy-like" appearance could catch their attention and lead them to experiment with the lighter.

The attractivess of the flame produced by the multi-purpose lighters must also be considered. If the shape of the multi-purpose lighter were changed, the flame would still attract children. A CPSC study showed that 96% of the lighters involved in child-play fires were ordinary, disposable, butane lighters with no distinctive shapes (7).

The combination of the shape and the flame of the lighter could enhance the attractiveness of multi-purpose lighters for some children.

REFERENCES

1. IDI# 940520CBB1490

2. IDI# 960613HAA5249

3. IDI# 960424CCC5139

4. Lerner, N.D., Sedney, C. and Cannon-Bowers, J.C. (1988). Abilities of Young Children to Operate Butance Cigarette Lighters. U.S. Consumer Product Safety Commission.

5. Interviewing and Counseling Juvenile Firesetters - The Child Under Seven Years of Age (1980). Federal Emergency Management Agency

6. IDI# 940609CBB1528

7. Harwood, B. (1987). Fire Hazards Involving Children Playing with Cigarette Lighters. U.S. Consumer Product Safety Commission

TAB F

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

MEMORANDUM

DATE: NOV 12 1996

TO : Barbara Jacobson, EHHS
Project Manager, Multi-Purpose Lighter Petition

Through: Mary Ann Danello, Ph.D., AED, Directorate for Epidemiology and Health Sciences

Through: Robert E. Frye, Director, Hazard Analysis Division

FROM : Linda E. Smith, EHHA

SUBJECT: Response to Public Comments, Multi-Purpose Lighter Petition-CP 96-1

Issue: "With approximately 100,000,000 units sold, 10 alleged personal injury incidents in 11 years,...does not suggest an unreasonable risk factor." (Scripto) "Ten incidents in ten years with one hundred million units is an extremely low rate of risk. It would be hard to understand how the agency could institute a rulemaking on a product which on average has fewer than one incident per year, when there are numerous other open flame products which have hundreds of incidents per year and go unregulated."(Lighter Association)

"We encourage. . .review of matches since. . .there are substantially fewer incidents caused by multi-purpose lighters versus matches." (Colibri)

Response: At this time fire data involving multi-purpose lighters are limited to counts of cases known to CPSC which are, by nature, conservative. It is not possible to estimate adequately the magnitude of the fire hazard or the per-unit risk associated with multi-purpose lighters without a special study. Even if the per-unit risk was identical for lighters, matches, and multi-purpose lighters, there would be many times more fires with matches and lighters solely because of the larger number of these products in use. A 1991 CPSC report, "Lighters and Matches: An Assessment of Risks Associated with Household Ownership and Use," cited an estimated 104 million lighters and 1.1 billion books or boxes of matches present in households at that time. In comparison, the number of multi-purpose lighters in use was estimated at 23-36 million in 1995.[1]

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[1]Memorandum from Terrance Karels, EC, to Barbara Jacobson, EHPS, dated November 1, 1996.

Available data indicate that fewer than five child-play fires involving multi-purpose lighters were reported annually through 1994. In 1995, 11 fires, 2 deaths, and 3 injuries were reported. The staff is aware of 22 fires, 4 deaths, and 15 injuries in 1996 to date. The number of fires, deaths, and injuries are conservative counts since some multi-purpose lighter fires are being reported only as "lighter" fires. Additionally, given the limited number of incidents and the variety of sources from which these incidents were reported, it is not possible to make a national estimate at this time of the total number of fires and casualties.

Issue: "...some consumers are switching to less safe means of lighting tobacco products, such as matches. The number of fires started by children using matches has not declined and in fact may have even increased since the adoption of 16 CFR, Part 1210. The Commission receives significantly more reports of children being injured each week by fire play with matches.(compared to 10 over 11 years) More fires are started each year by children playing with matches than with any other source..." (Scripto)

"...The difficulty in using child-resistant multi-purpose lighters may cause some users to move to long stem matches. The statistics on both child play and adult injuries and deaths associated with matches are horrendous. Historically, there have been over 300 deaths a year associated with match usage."(Lighter Association)

Response: As stated by one commenter, the number of estimated match-related fires is higher than estimated lighter-related fires. However, in both 1993 and 1994, child-play fires involving matches and lighters were at about the same level. In 1994, the most recent year for which fire data are available, matches were involved in an estimated 9,100 child-play fires while lighters were involved in an estimated 10,600 child-play fires.[2]

When evaluating the possible benefits of regulatory action to reduce child-play fires, a comparison of risk is appropriate only for fires started by children under age 5, those potentially addressable by a safety standard. A CPSC study in the late 1980's found that the proportion of child-play fires caused by children under age 5 was considerably smaller for matches than for lighters. Children under age 5 were the fire starters in 43 percent of match child-play fires compared to 73 percent of lighter child-play fires.

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[2]Estimates were derived by applying proportions observed in national fire data, National Fire Incident Reporting System (NFIRS), obtained from the U.S. Fire Administration, to aggregate national estimates from a survey conducted by the National Fire Protection Association (NFPA). The term "lighters" is generic but predominantly involves cigarette lighters.

The 1991 CPSC report cited earlier evaluated the risk associated with both matches and lighters in households with children under age 5. It concluded that lighters were 1.4 times as likely as matches to be involved in a child-play fire, 3.3 times as likely to be involved in a child-play death, and 3.9 times as likely to be involved in a child-play injury. Thus, for the child-play hazard involving children under age 5, lighters are the more hazardous products.

Since there have been no recent changes to matches to make them child-resistant, there is no reason to expect the number of child-play match fires to be declining. Nor are there data to indicate that child-play fires have increased, as speculated by the commenter. As pointed out by the commenter, it is too soon to evaluate the effects of the safety standard on cigarette lighters.

Issue: "Incidents ...appear to be limited to one particular product on the market." (Pinkerton Group,Inc.)

Response: It is believed that one manufacturer produces the large majority of U.S. sales. Among the 25 fires in which the product was identified, that producer accounted for 19 of the fires, about 80 percent. It appears, then, that the child-play hazard involves more than one manufacturer.

Issue: "There is no basis for stating or concluding that the current standard is effective." (Lighter Association, Inc.)

Response: Until an evaluation is complete there are no data available to indicate that the standard is either effective or ineffective.

TAB G

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

MEMORANDUM

DATE: SEP 0 6 1996

TO : Barbara Jacobson
Manager, Multi-Purpose Lighter Petition Team
Directorate For Epidemiology And Health Sciences

Through: Andrew Stadnik
Assistant Executive Director Engineering Sciences

Nicholas Marchica
Director Mechanical Engineering

FROM : Eleanor Perry
Directorate For Engineering Sciences

SUBJECT: Response to Comments on Multi-Purpose Lighters

Responses to comments on Multi-Purpose Lighter issues identified for Engineering Science's consideration are attached.

Attachment(s)

Issue : Consumer resistance/reaction to current standard
Negative impact on consumer convenience and utility
(Design Improvements)

1. Colibri Corporation writes that there has been consumer resistance to the lighters produced by the child resistance rule. They cite a new product called "Quick Fix" designed to override the child resistance of most of the major disposable lighters.

2. The Lighter Association, Inc. cites a strong adverse consumer reaction to child resistant cigarette lighters. They indicate that their member companies have received tens of thousands of letters and calls about the difficulty of lighting the child resistant lighters. They cite: a. articles written in California advocating banning the use of child resistant lighters in cars because they distract the driver; b. marketing of a device that defeats the child resistant mechanism on several manufacturer's lighters; and c. a patent, 5,513,98-," Method and Apparatus to Override the Child-Resistant Mechanism of Disposable Lighters". Additionally, they say distributors are buying child resistant lighters, disabling the mechanism and selling them at a premium. They also express a belief that non child resistant lighters are still being imported.

3. Scripto Tokai cites daily letters and phone calls from upset lighter users who feel their child resistant lighters are too hard or inconvenient to operate. They mention the patent and the "Quick Fix" device for disarming the child resistant mechanism and indicate that it has been reported that consumers are switching to matches for lighting tobacco products.

4. Dr. John O. Geremia in a letter to Ms. Barbara A Radnofsky, attorney, Vinson & Elkins writes that it appears to him that child resistant features have become simpler to operate. This statement was made in the context of wondering if they are still child resistant as indicated. Dr. Geremia's letter was submitted to the Commission by Vinson & Elkins.

Response:

Child resistant mechanisms have been evolving during the period the rule has been in effect. Originally, most of the lighters used some type of lock operated by moving a lever. These designs were sometimes cumbersome and for some people may have required the use of two hands. While some of these lighters are still on the market, the trend now is toward more subtle movement such as pressure on the flint wheel or pressing a button to remove the lock.

Issue: Potential for creating other hazards by requiring multi-purpose lighters to be child-resistant

1. Scripto Tokai indicates that piezo-electric technology is not completely reliable in producing a flame each time it is activated. They say it could take two or more activations to achieve a flame. They indicate that the use of cigarette lighters and multi-purpose lighters are different. While cigarette lighters are used to ignite tobacco products, multi-purpose lighters are used to create a safe distance buffer between the operator and the substance ignited. They cite a risk of flashback fire or mini-explosion from igniting pressurized gas that is not a factor in tobacco product ignition. They say a child resistant mechanism that must be reset each time could result in delayed ignition and increase the potential for mini-explosion or flashback fire from accumulated pressurized gas if its flow is not interrupted. They believe that existing technology for child resistant lighters would be unsafe for multi-purpose lighters.

2. The Lighter Association, Inc. indicates that a child resistant mechanism on a multi-purpose lighter might delay the ignition of a fire in charcoal grills and result in the user being burned. They say that when the lighter is used to ignite a gas grill the user typically turns the gas on and then lights the grill with the lighter. They believe that delays caused by the lighter having to be reignited while the gas continues to be emitted from the grill present a risk of flame up or explosion.

Response:

Staff agrees that the Aim 'N Flame does not produce a flame every time it is activated and this could cause a delay in ignition. Staff is also aware that: 1. delayed ignition could allow an accumulation of compressed gas if the gas flow is not interrupted; 2. an accumulation of compressed gas could present an increased risk of a "mini explosion" or "flashback fire" under certain conditions. The probability and the severity of this type of reaction depends on the flammability limits of the gas involved, the size of the container holding the gas to be ignited, the length of time the gas flows, and the air circulation within the container. As presently configured the Aim 'N Flame is an unreliable ignition source. The addition of a properly designed child resistant feature should not add significantly to the delay already inherent in the device.

Issue: Incident data provided (Dunbar Engineering Corporation report and piezo-electric mechanism failure rate)

1. The Dunbar Engineering Corporation report relates their findings on Scripto Aim 'N Flame multi-purpose lighters. This firm was retained by Carson, Carson and Carson for support in a case involving second and third degree burns to a child's thighs, legs, foot, wrist and thumbs caused by accidental ignition of an Aim 'N Flame lighter. A summary of some of their observations about the lighter involved in the incident follow.

A. The lighter's flame can be extinguished by swinging the lighter or blowing the flame. This allows butane to flow out as long as the trigger is depressed.

B. The lighter releases fuel even when the on/off switch is "off" at nearly the same flow rate as when the switch is "on".

C. Rapidly pulling the trigger can cause the lighter not to light.

D. The on/off switch remains in whatever configuration it was left. It is not a safety switch.

E. Shaking the lighter when the flame gets small after about 900 ignitions restores a longer flame.

F. The lighter failed to light 19.1% of the time when normal ignition was attempted, 20.7% of the time when the 20 consecutive rapid pulls of the trigger are added in and 42% of the time when operating under small flame conditions because of low fuel.

G. A butane cloud can be accumulated and ignited with a mild explosion.

Dunbar Engineering Corporation offered theories for the ignition of the lighter in the accident. Their more likely scenario says the eight year old daughter turned the switch to "on" and lit the lighter she found within her reach. They believe the father was careless about keeping the lighter away from children either because he thought the off switch would prevent its ignition and/or because the lighting failures caused him to believe the lighter was defective and would not light.

2. Scripto Tokai indicates that piezo-electric technology is not completely reliable in producing a flame each time. A consumer may have to attempt to light the device two or more times before achieving a flame. During ignition delays accumulation of compressed gas, if the flow of gas is not stopped, increases the potential for flashback fire or mini-explosion.

3. Vinson & Elkins cite cases of fires caused by children activating piezo-electric, butane-fueled multi-purpose lighters. One involved a little girl who was reportedly able to light a lighter believed to be an Aim 'N Flame with the switch on "off" and catch her clothes on fire.

Response:

Staff agrees that the Aim 'N Flame does not light every time the trigger is pulled. The staff also agrees that the flame is easily extinguished under some conditions. The flame can be extinguished by shaking the lighter while holding the trigger. Additionally, tests of ten Aim 'N Flame lighters found a 4 inch flame difficult to sustain. A slight motion extinguished the flame. The staff also agrees that continued pressure on the trigger after the flame is extinguished will allow a continued flow of fuel and a possible gas accumulation that could ignite with energy release under the correct conditions. The lower flammable limit of butane at room temperature is 1.6% by volume in air. Contact of a butane/air mixture at this or a higher percentage with a flame would result in ignition with a degree of energy output similar to that described by Scripto Tokai above.

Staff could not confirm that fuel can be released from the lighter when the on/off switch is "off" or that the Aim 'N Flame lighter could be lit with the on/off switch in the "off" position. Even extreme force on the trigger during tests of ten sample lighters did not release any fuel or result in any ignitions.

Staff also was not able to confirm that rapidly pulling the trigger causes the lighter not to light.

Staff agrees that the on/off switch, which does not reset after use, is not a child resistant switch as defined in 16CFR1210.3(b) criteria.

Issue: Evaluation of "safety switch" problems

1. Judy L. Carr's petition indicates that the safety switch on the Aim 'N Flame lighter migrates from the "off" to the "on" position very easily as a result of playing with the trigger. The petition also claims that the safety is designed backwards in that it takes more force to disengage the safety than it does to engage the safety.

2. Carson, Carson and Carson submitted an analysis of an Aim 'N Flame lighter by Dunbar Engineering Corporation. It reports fuel release from the lighter with the "smallest pull on the trigger" even when the on/off switch is "off" at nearly the same flow rate as when the switch is on.

3. Vinson & Elkins report a fire in which a little girl caught her clothes on fire by igniting a lighter with its safety engaged. The lighter is believed to be an Aim 'N Flame.

Response:

Commission staff evaluated ten samples of the Aim 'N Flame lighter and reported the following findings relevant to the comments.

1. After repeatedly pulling the trigger very hard with the "safety switch" in the "off" position the switch migrates to the "on" position in some of the lighters. It takes about 10 very forceful pulls to cause the switch to migrate. The switch migrates with difficulty the first time but it appears to move easier with each successive migration.

2. It is easier to place the safety switch in the "on" position than the "off" position because of a detent that holds it in the "on" position.

3. The safety was completely effective when it was in the "off" position. Even extreme force on the trigger did not result in gas release or igniter operation.

None of the samples had an after burn flame, the lighters immediately extinguished when the trigger was released.

TAB H

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

MEMORANDUM

DATE: September 16, 1996

TO : Barbara Jacobson, Project Manager, Multi-Purpose Lighter Petition

Through: Andrew G. Stadnik, P.E., Associate Executive Director, Directorate for Engineering Sciences
Dr. Robert B. Ochsman, Director, Human Factors Division

FROM : Carolyn Meiers, Engineering Psychologist, Human Factors Division
Directorate for Engineering Sciences (x 1281)

SUBJECT: Response to Public Comments on Requiring Multi-Purpose Lighters to be Child-Resistant (Petition CP 96-1)

The Consumer Product Safety Commission (CPSC) was petitioned in March 1996 (Petition CP 96-1) to require certain multi-purpose lighters to be child-resistant. The purpose of this memorandum is to provide staff comments on issues raised in response to a Federal Register notice published May 7, 1996 that requested public comments regarding this petition. To provide responses for some of the issues, Human Factors staff analyzed 30 available CPSC in-depth-investigations of fire incidents attributed to children under five years of age playing with multi-purpose lighters.

Issue: "False Sense of Security"

The Lighter Association, Inc. contends that "there is always the possibility that parents and caretakers will be more careless with child-resistant lighters, erroneously thinking them child-proof." Scripto-Tokai contends that child-resistant lighters are "viewed frequently as 'childproof' leading parents to a false sense of security."

Response:

The argument is that caregivers would be less careful in their handling of lighters, relying on the child-resistant feature to protect children from starting fires. The argument implies that this would lead to a greater exposure to lighters that could therefore, minimize the effectiveness of a standard.

Until an evaluation of the Safety Standard for Cigarette Lighters is complete, there are no data to establish that child-resistant lighters have impacted child-play fires, nor that they have contributed to a false sense of security. However, the

same argument could be applied to any child-resistant packaging. Research shows that child-resistant packaging has reduced childhood poisonings (1). Therefore, it is not likely that the issue of a "false sense of security" will prevent the expected reduction of lighter-related, child-play fires.

Issue: Accessibility of Multi-Purpose Lighters

Scripto-Tokai states that multi-purpose lighters are not handled in the same way as disposable lighters and that this type of handling makes them less accessible to children and therefore, multi-purpose lighters do not present as great a risk. Scripto-Tokai states that multi-purpose lighters have specialized applications and are not intended for lighting smoking materials. They "are typically stored away in the same manner as tools or implements" and "are not carried in a pants or shirt pocket, or in a purse." Since they cost more than disposable lighters, they are "less likely to be left laying around."

Response: The Human Factors analysis of the available fire incidents showed that children found the multi-purpose lighters in a variety of locations, some easily accessible and others less accessible. In the fire incidents, children started fires with multi-purpose lighters that they retrieved from locations such as kitchen cabinets, a six foot high cabinet, a garage shelf, a bathroom medicine chest, a bookcase, a bedroom dresser, tops of microwave ovens, a basement workbench, and the top of a water heater that was enclosed in an utility closet.

Multi-purpose lighters are sometimes stored in accessible locations convenient to their use. For instance, a two-year-old boy was burned with a multi-purpose lighter that he took off a hook near a fireplace in his grandmother's home (2). Some of the fire incidents indicated that multi-purpose lighters were used to light cigarettes and were located in places easily accessible to children. In one incident a woman had two multi-purpose lighters she received free as a promotion with her purchase of cigarettes. The lighter that was used to start the fire was on a footstool in the living room (3). In another incident where the multi-purpose lighter was reportedly used as a cigarette lighter, the lighter had been left on the coffee table in the living room (4).

Multi-purpose lighters can be accessible to children even if they are stored as a "tool." In one incident a three-year-old boy took a multi-purpose lighter out of a relative's tool box and hid it in his toy box. Two weeks later he took it out to play with it and started a fire in the family's living room (5).

Also, it does not necessarily hold that these devices are "less likely to be left laying around" based on cost as they are fairly inexpensive. In fact, in some of the incidents available to CPSC, the lighters were obtained free as part of a cigarette promotion (3,6,7). Further, since these lighters are not commonly carried in a

pocket or purse, they are likely to be either in their normal storage locations, some of which, as noted above, are accessible to children, or left "laying around."

Issue: Parental Supervision and Educational Efforts

Scripto-Tokai contends that education and supervision is the "first line of defense" in lighter-related fires. They state that parents and children must be "repeatedly reminded to keep fire sources out of the reach of children, and never leave small children unsupervised." They say warnings and labels must be used "to adequately inform consumers of applicable hazards." They state that the Commission has ignored educational efforts and has narrowly focused on product design.

Colibri Corporation wants the CPSC to review educational materials to consumers on multi-purpose lighters.

Calico Brands, Inc. states that their company "always places a warning label on all of its lighters and lighter packaging to keep lighters out of the reach of children." However, they also say that they are "aware the warning is not "foolproof" and the added feature of a mandatory requirement for the lighters to be child resistant is also necessary to further protect the safety of our children."

The Lighter Association, Inc. states that " ultimately the issue of fire safety is an issue of parental supervision" and "Prior to initiating a rule-making, it would seem prudent to consider whether this issue could be dealt with through educational efforts."

Response: Educational efforts and supervision are important, but not the sole solution to the problem. Available incidents indicate that many consumers were aware of the danger of lighters and took precautions to keep them out of the reach of their children. However, children are creative and can be determined in accessing the lighters.

In some instances, it appeared that the lighter was normally stored in a particular space, but for whatever reason, it was not returned there after its latest use. This is a foreseeable scenario, since people can be expected to be forgetful.

Children of the ages of those involved in the incidents are old enough to engage in play activities in rooms other than where their parents or guardians are present. At the time of the incidents, the children were under reasonable levels of supervision. Fires were started with multi-purpose lighters while parents or guardians were present in the house. One mother was downstairs fixing lunch at the time of the incident (8). In other cases the child started a fire while the parent

was showering or asleep. These are foreseeable scenarios since people cannot be expected to directly supervise their children every moment of the day.

Issue: Easy Operability of Multi-Purpose Lighters

Diane Denton, petitioner for the current standard on disposable lighters, stated that multi-purpose lighters are easier to operate than small, more common lighters.

Response: While there is no comparison data on the ease of operability between the two types of lighters, the available incident reports show how easy it is for children from two to four years to activate multi-purpose lighters. Some examples follow.

A. After her children started a fire with a multi-purpose lighter, one mother tested the ease of operability of the lighter with the children aged two and four. She found that both children could operate the lighter with little difficulty. The lighter was identified as an Aim 'n Flame (9).

B. Multi-purpose lighters can easily be operated with one hand vs two hands for most disposable lighters. Fire investigators asked a three-year-old child to demonstrate how he used the lighter. The child switched the on/off switch to "on" and pulled the trigger with one hand. The lighter was identified as an Aim 'n Flame. The father of this child said he did not now how his son learned to use the lighter except that the on/off switch was similar to that on some of his son's toys and the trigger pull action was similar to that of toy guns the boy had played with in the past (5).

It should be noted that among various types of non-child resistant lighters, piezo-electric mechanisms, such as found on the multi-purpose lighter cited in the petition, are the easiest to operate. Forty-six out of 50 children on a panel tested during the development of the cigarette lighter standard were able to operate lighters with piezo-electric mechanisms (10).

REFERENCES

1. Rodgers, Gregory B. (1996). The safety effects of child-resistant packaging for oral prescription drugs: Two decades of Experience. JAMA, Vol. 275, No. 21, pp. 1661-1665.

2. IDI# 940609CBB1528

3. IDI# 960626CCC5287

4. IDI# 960315CCN0747

5. IDI# 960626CCC5285

6. IDI# 960613HAA5249

7. IDI# 960620CBB5269

8. IDI# 951107HCC1030

9. IDI# 960424CCC5139

10. Memorandum from B. Jacobson, HS, to A. Ulsamer, HS, "Report on Baseline Testing of Non-Child-Resistant Cigarette Lighters," June 19, 1990.

TAB I

UNITED STATES GOVERNMENT

Memorandum

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

Date: 18 SEP 1996

To: Barbara Jacobson, Division of Poison Prevention and Scientific Coordination

Through: David Schmeltzer, Assistant Executive Director
Office of Compliance D. Schmeltzer by CLB

From: Robert G. Poth, Director - Ext. 1375

Subject: Comments In Response Petition CP 96-1 For Child-Resistant Multi-Purpose Lighters

I am responding to your request for CE's response to the six specific issues which you have identified as raised by comments to the petition.

1. Effectiveness of the current standard.

Staff does not believe that sufficient time has elapsed to evaluate the effectiveness of the current safety standard for cigarette lighters at 16 CFR 1210. The effectiveness of the standard in reducing the fires, injuries and deaths attributed to young children playing with lighters cannot be measured until all of the non-child-resistant, pre-standard lighters have passed through the distribution channels and are no longer in use by consumers.

The standard became effective in July of 1994, as to all lighters manufactured domestically or imported after that date. Therefore, we would expect that allowable, pre-standard lighters in the channels of distribution and in the inventory of domestic manufacturers and importers would continue to be sold and used by consumers through 1994 and 1995. Data for 1996 is not yet available. Nonetheless, staff has no reason to believe that the current standard will not significantly reduce the incidents resulting from young children playing with lighters.

2. Consumer resistance to the current standard.

The Commission staff is aware that some consumers were dissatisfied with the safety standard for cigarette lighters when it initially went into effect. Some consumers had written to the Commission initially expressing dissatisfaction and some manufacturers had reported receiving complaints from consumers.

This initial consumer reaction to a product change is not unlike the initial consumer reaction to the requirements for child-resistant packaging of prescription drugs under the Poison Prevention Packaging Act in the early 1970's. This is not

unusual when new technology is introduced which may result in some inconvenience for product users. However, as with the child-resistant packaging required under the Poison Prevention Packaging Act, the consumer dissatisfaction with child-resistant lighters appears to have virtually disappeared. The Commission staff rarely receives letters from consumers complaining of inconvenience or difficulty in using the child-resistant lighters on the market and believes that such consumer dissatisfaction has lessened substantially. Additionally, manufacturers have refined and modified early designs to result in more user-friendly, child-resistant lighter designs.

3. Products designed to defeat the child-resistant features of disposable lighters.

The Commission staff is aware of the one manufacturer of a device promoted to defeat the child-resistant mechanism of some lighters. While the marketing of such a device may not specifically violate Commission regulations, the staff has written to the manufacturer involved and requested that the firm discontinue the marketing of the device.

Once again however, we believe that the decline in consumer dissatisfaction with child-resistant lighters along with the development of more user-friendly child-resistant designs will eliminate the market for such products.

4. CPSC enforcement of the current standard.

The Commission staff have aggressively enforced both the anti-stockpiling provisions and the safety standard itself since it became effective. In enforcing the anti-stockpiling provisions, the Commission in cooperation with U.S. Customs prevented the importation of millions of nonchild-resistant lighters. The Commission continues to vigorously enforce the lighter standards and investigate any reports of possible noncompliance brought to our attention.

It should be noted that the current standard at 16 CFR 1210.12(c) requires each lighter to be labeled with the identification of the manufacturer or a code which will permit the seller of the lighter to identify the manufacturer to the purchaser upon request.

5. Recommendations for requirements for utility lighters.

The Commission staff does strive to evenly enforce all of its regulations. This has been done in the case of the current cigarette lighter standard. The staff does routinely work with the U.S. Customs service as well as with other government agencies in enforcing its regulations. Import surveillance is particularly useful in enforcing regulations which apply to

products which are predominantly imported.

While the standards require manufacturers to certify compliance through a reasonable testing program, the Commission does have the authority to test and take action against any product which does not comply with its tests. In fact, the Commission does plan to conduct its own tests where appropriate.