

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	
Dynacraft BSC, Inc.,	)	
a Massachusetts corporation,	)	
formally known as Dynacraft Industries, Inc.	)	

CPSC Docket No. 05-C0003

SETTLEMENT AGREEMENT AND ORDER

1. This Settlement Agreement is made by and between the staff (“the staff”) of the U.S. Consumer Product Safety Commission (“the Commission”) and Dynacraft BSC, Inc., formally known as Dynacraft Industries, Inc. (“Dynacraft” or “Respondent”), a corporation, in accordance with 16 C.F.R. § 1118.20 of the Commission’s Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (“CPSA”). This Settlement Agreement and the incorporated attached Order settle the staff’s allegations set forth below.

I. THE PARTIES

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. §§ 2051 *et seq.*

3. Dynacraft is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal corporate offices located at 2550 Kerner Boulevard, San Rafael, CA 94901. Dynacraft imports bicycle products from China for sale in the United States.

## II. ALLEGATIONS OF THE STAFF

### A. Vertical XL2 Mountain Bicycle

4. In July 1999, Respondent manufactured for nationwide distribution 3,562 Vertical XL2, 26" Mountain Bicycles, Model Number 8526-26. Respondent also manufactured the JY906 bicycle fork ("fork") and incorporated it into these bicycles.

5. The bicycles described in paragraph 4 above are sold to and/or are used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and are therefore, "consumer products" as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2052(a)(1).

Respondent was a "manufacturer" of the bicycles described in paragraph 4, which were "distributed in commerce" as those terms are defined in sections 3(a)(4), (11), and (12) of the CPSA, 15 U.S.C. §§ 2052(a)(4), (11), and (12).

6. Some of the front suspension forks for these bicycles had defective welds that allegedly broke apart during normal and foreseeable use of the bicycles. The flaws in these forks are "defects" under section 15 of the CPSA, 15 U.S.C. § 2064.

7. If the fork breaks during use, it may cause the rider to lose control, fall and suffer serious injuries such as facial abrasions, concussions, other head injuries, chipped or lost teeth, broken bones, and lacerations requiring sutures. Death is also possible.

8. On or about February 29, 2000, Respondent announced the recall of 19,000 Vertical XL2 Bicycles, Model No. 8526-26 with a manufacturing date of October 11, 1999. At the time, the firm was aware of at least two failures of the bicycles with a manufacturing date of July 1999, but did not provide that information to the Commission staff. In the staff's letter of February 14, 2000 accepting Respondent's corrective action

plan, the staff said, “If the firm [Respondent] receives or learns of any information concerning other incidents or injuries, or information affecting the scope, prevalence or seriousness of the reported problem, it must report to [the Office of Compliance] immediately.”

9. Between January 2000 and July 2000, Respondent received five incident reports involving Vertical XL2, Model 8526-26 bicycles’ forks allegedly breaking apart during normal and foreseeable use of the bicycles, causing riders to lose control and fall to the ground. These bicycles had a manufacturing date of July 1999. Dynacraft knew about injuries including broken and lost teeth, fractures, and lacerations requiring sutures. Dynacraft did not report this pattern of defect to the Commission until on or about July 26, 2000.

10. Before July 26, 2000, Dynacraft had obtained information which reasonably supported the conclusion that the bicycles’ forks described in paragraph 4 above contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b) and (c).

11. By failing to provide the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), Dynacraft violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

12. Dynacraft committed this failure to timely report to the Commission “knowingly” as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d),

thus, subjecting Dynacraft to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

B. Magna Electroshock Mountain Bicycle

13. Between July 1999 and October 1999, Respondent manufactured for nationwide distribution 21,888 Magna Electroshock 24" and 26" Mountain Bicycles, Model Numbers 8504-90, 8504-96, 8548-78, and 8548-94. Respondent also manufactured the JY906 fork ("fork") and incorporated it into these bicycles.

14. The bicycles described in paragraph 13 above were sold to and/or are used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and are, therefore, "consumer products" as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2052(a)(1).

Respondent was a "manufacturer" of the bicycles described in paragraph 13, which were "distributed in commerce" as those terms are defined in sections 3(a)(4), (11), and (12) of the CPSA, 15 U.S.C. §§ 2052(a)(4), (11), and (12).

15. Some of the bicycles manufactured from July 1999 through October 1999 had forks that were allegedly not properly welded and could break apart during normal and reasonably foreseeable use of the bicycles. These flaws in the forks constituted "defects" within the meaning of section 15 of the CPSA, 15 U.S.C. § 2064.

16. If the fork breaks during use, it could cause the rider to lose control, fall and suffer serious injuries such as facial abrasions, concussions, other head injuries, broken or lost teeth, broken bones, and lacerations requiring sutures. Death is also possible.

17. Between January 8, 2000 and August 4, 2000, the date of Dynacraft's report to the Commission, Dynacraft had received 35 report alleging that the Magna Electroshock,

Model Nos. 8504-90, 8504-96, 8548-78, and 8548-94 bicycles' forks had broken apart during normal and foreseeable use of the bicycles, causing riders to lose control and fall to the ground. The manufacturing dates of the bicycles ranged from July 1999 to October 1999. Respondent had learned of several injuries in these incidents including concussions, fractures, abrasions, back strain, and chipped and lost teeth.

18. In each of the instances described in paragraphs 13 through 17 above, Dynacraft obtained information which reasonably supported the conclusion that the bicycles' forks described above contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b) and (c).

19. By failing to provide the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), Dynacraft violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

20. Dynacraft committed this failure to timely report to the Commission "knowingly" as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), thus, subjecting Dynacraft to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

#### C. Next Shockzone Mountain Bicycle

21. From September 1999 through March 2001, Dynacraft manufactured for nationwide distribution about 38,000 Next Shockzone 20" Boys' Mountain Bicycles, Model Number 8536-33. The bicycle's color was orange. Respondent also manufactured the JY906 fork ("fork") and incorporated it into these bicycles.

22. The bicycles described in paragraph 21 above were sold to and/or are used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, and are, therefore, “consumer products” as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2052(a)(1).

Respondent was a “manufacturer” of the bicycles described in paragraph 21, which were “distributed in commerce” as those terms are defined in sections 3(a)(4), (11), and (12) of the CPSA, 15 U.S.C. §§ 2052(a)(4), (11), and (12).

23. Some of the forks of these bicycles could break apart during normal and reasonably foreseeable use of the bicycles. The flaws in the forks constitute “defects” under section 15 of the CPSA, 15 U.S.C. § 2064.

24. If the fork breaks during use, it could cause a rider to lose control, fall, and suffer serious injuries such as facial abrasions, concussions, other head injuries, broken or lost teeth, broken bones, and lacerations requiring sutures. Death is also possible.

25. Between March and September 2000--the time Dynacraft was formulating its corrective action plan to expand its recall of the Vertical XL2 bicycles and its Magna Electroshock bicycles--Dynacraft learned of 19 incident reports alleging fork breakage during normal and reasonably foreseeable use of its Next Shockzone Bicycle, Model No. 8536-33, causing riders to lose control and fall to the ground. Dynacraft also learned about fractures, lacerations requiring sutures, and broken or lost teeth.

26. Between September 2000 and March 16, 2001, the date Dynacraft reported to the Commission, Dynacraft received an additional 12 reports alleging fork breakage involving its Next Shockzone bicycle. By the time Dynacraft reported to the Commission, Dynacraft had received at least 31 incident reports alleging the Next

Shockzone's, Model No. 8536-33 bicycles' forks breaking apart during normal and reasonably foreseeable use of the bicycles, causing riders to lose control and fall to the ground. Injuries alleged and known to Dynacraft included a blood clot to the brain, fractures, lacerations requiring sutures, and chipped teeth.

27. In each of the instances described in paragraphs 21 through 26 above, Dynacraft obtained information which reasonably supported the conclusion that the bicycles' forks contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b) and (c).

28. By failing to provide the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), Dynacraft violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

29. Dynacraft committed this failure to timely report to the Commission "knowingly" as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), thus, subjecting Dynacraft to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

#### D. Next Ultra Shock Mountain Bicycle

30. Between September 1999 and March 2001, Respondent manufactured for nationwide distribution about 132,000 Next Ultra Shock Mountain Bicycles. Respondent also manufactured the Ballistic 105 bicycle fork ("fork") and incorporated it into these bicycles.

31. The bicycles described in paragraph 30 were sold to and/or are used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, and are, therefore, “consumer products” as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2052(a)(1). Respondent was a “manufacturer” of the bicycles described in paragraph 30, which were “distributed in commerce” as those terms are defined in sections 3(a)(4), (11), and (12) of the CPSA, 15 U.S.C. §§ 2052(a)(4), (11), and (12).

32. Some of the forks of these bicycles could break apart during normal and reasonably foreseeable use of the bicycles. The flaws in the forks constitute “defects” under section 15 of the CPSA, 15 U.S.C. § 2064.

33. If the fork breaks during use, it could cause a rider to lose control, fall and suffer serious injuries such as facial abrasions, concussions, other head injuries, damaged teeth, broken bones, and lacerations requiring sutures. Death was also possible.

34. Between November 1999 and November 2001, Respondent received 21 incident reports alleging the Next Ultra Shock bicycles’ forks breaking apart during normal and foreseeable use of the bicycles, causing riders to lose control and fall to the ground. Injuries known to Dynacraft included abrasions, concussions, and chipped teeth.

35. Dynacraft did not report to the Commission until March 18, 2002 about the defect and incidents regarding the Next Ultra Shock bicycles’ forks. When it did report, it did not disclose that one of the incidents allegedly had resulted in the death of the rider.

36. In each of the instances described in paragraphs 30 through 35 above, Dynacraft obtained information which reasonably supported the conclusion that the bicycles’ forks described in paragraph 30 above contained a defect which could create a substantial

product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3).

37. By failing to provide the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), Dynacraft violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

38. Dynacraft committed this failure to timely report to the Commission “knowingly” as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), thus, subjecting Dynacraft to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

#### E. Magna Equator Mountain Bicycle

39. Between December 1999, and May 31, 2000, Dynacraft manufactured for nationwide distribution about 54,000 Magna Equator Mountain Bicycles, Model Nos. 8547-19 and 8546-84.

40. The bicycles described in paragraph 39 above are sold to and/or are used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, and are, therefore, “consumer products” as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2052(a)(1).

Respondent was a “manufacturer” of the bicycles described in paragraph 39 above, which were “distributed in commerce” as those terms are defined in sections 3(a)(4), and (12) of the CPSA, 15 U.S.C. §§ 2052(a)(4), (11), and (12).

41. Some of the pedals of these bicycles are defective because improper drilling and tapping of the holes caused the pedals to loosen and fall off, causing riders to lose

control, fall to the ground, and suffer serious injuries such as concussions, chest trauma, broken bones, sprains, abrasions, lacerations requiring sutures, and muscle strains. Thus, the flaws in the pedals constitute “defects” under section 15 of the CPSA, 15 U.S.C. § 2064.

42. Between December 1999 and June, 2000, Dynacraft received about six incident reports alleging the Magna Equator’s bicycle pedals falling off during normal and reasonably foreseeable use of the bicycles, causing riders to lose control and fall to the ground. Injuries known to Dynacraft include concussions, broken bones, sprains, abrasions, lacerations requiring sutures, and muscle strains.

43. On or about June 13, 2000, a retailer of the bicycles faxed an engineering report the retailer had commissioned to Dynacraft. The engineering report concluded that premature loosening of the bicycle’s pedals was attributable to manufacturing defects in the pedal cranks associated with those pedals. Dynacraft did not report to the Commission at that time.

44. By the time Dynacraft reported to the Commission in April 2001, Dynacraft had learned of at least 31 incident reports alleging the bicycles’ pedals falling off.

45. In each of the instances described in paragraph 39 through 44 above, Dynacraft obtained information which reasonably supported the conclusion that the bicycles’ pedals contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b) and (3).

46. By failing to provide the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), Dynacraft violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

47. Dynacraft committed this failure to timely report to the Commission “knowingly” as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), thus, subjecting Dynacraft to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

### III. DYNACRAFT’S RESPONSE

48. Dynacraft denies the staff’s allegations of bicycle defects and that it violated the CPSA as set forth in paragraphs 4 through 47 above.

49. Dynacraft asserts that it is the importer and distributor of the bicycles and all incorporated parts referenced in the allegations above.

50. Dynacraft denies the allegations of the Staff that the Vertical XL2, Magna Electroshock, Next Shockzone, Next Ultra Shock, and Magna Equator bicycles contain or contained a defect or defects which could create a substantial product hazard or create an unreasonable risk of serious injury or death.

51. Dynacraft denies that it obtained information that reasonably supported the conclusion that its bicycles identified above might have contained a defect or defects which could create a substantial product hazard or creates an unreasonable risk of serious injury or death, or that Dynacraft failed to report in a timely manner in violation of the reporting requirements of section 15(b) of the CPSA. Dynacraft further denies that it violated section 19(a) of the CPSA in relation to the bicycles mentioned above and that

its failure to timely report to the Commission “knowingly” subjected to it to civil penalties under section 20 of the CPSA.

52. Dynacraft denies the causal link alleged in paragraph 35 between a rider’s death and the Next Ultra Shock or any other Dynacraft product.

53. Dynacraft enters this Settlement Agreement and Order for settlement purposes only, to avoid incurring additional legal costs and expenses. In settling this matter, Dynacraft does not admit any fault, liability, or statutory or regulatory violation, and this Agreement and Order do not constitute nor are they evidence of any fault or wrongdoing on the part of Dynacraft.

54. Notwithstanding its denial that the bicycles contained defects or created an unreasonable risk of serious injury or death, Dynacraft, nevertheless, launched appropriate and timely product recalls and cooperated with the Staff in recalling the products.

55. Dynacraft further asserts as a general matter that it received very few complaints concerning the above-mentioned products relative to the numbers of products in distribution; that it implemented product improvements to address the complaints on the bicycles in question; that it considered the complaints and the reporting requirements of the CPSA; and that it made its judgments, about reporting in good faith based on its understanding of the requirements of the law and that it did not “knowingly” violate any reporting requirements.

56. Dynacraft denies that any of its bicycles have caused any injuries and does not admit to the truth of any claims or other matters alleged or otherwise stated by the Commission or any other person with respect to its bicycles. Nothing contained in this

Agreement and Order precludes Dynacraft from raising any defense in any future litigation.

#### IV. AGREEMENT OF THE PARTIES

57. The Consumer Product Safety Commission has jurisdiction over this matter and over Dynacraft under the Consumer Product Safety Act, 15 U.S.C. § 2051 et seq.

58. This Agreement is entered into for settlement purposes only and does not constitute an admission by Dynacraft or a determination by the Commission that the products referenced in paragraphs 4 through 47 contain or contained a defect or defects which could create a substantial product hazard or create an unreasonable risk of serious injury or death, or that Dynacraft knowingly violated the CPSA's reporting requirement.

59. In settlement of the staff's allegations, Dynacraft agrees to pay a civil penalty in the amount of one million, four hundred thousand dollars (\$1,400,000.00) as set forth in the incorporated Order.

60. This Settlement Agreement and Order settle all outstanding issues against Dynacraft relating to the staff's allegations set forth in paragraphs 4 through 47 above.

61. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter to (a) an administrative or judicial hearing, (b) to judicial review or other challenge or contest of the validity of the Commission's actions, (c) to a determination by the Commission as to whether Respondent failed to comply with the CPSA and the underlying regulations, (d) to a statement of findings of fact and conclusions of law, and (e) to any claims under the Equal Access to Justice Act.

62. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the Federal Register in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written objections within 15 days, the Agreement will be deemed finally accepted on the 16<sup>th</sup> day after the date it is published in the Federal Register.

63. The Commission may publicize the terms of the Settlement Agreement and Order.

64. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. § 2051 et seq., and that a violation of this Order may subject Dynacraft to appropriate legal action.

65. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

66. The provisions of this Settlement Agreement and Order shall apply to Dynacraft and each of its successors and assigns.

RESPONDENT, DYNACRAFT BSC, INC.

Dated: Oct 5, 04

By: Jerome A. Berman  
Jerome A. Berman, President  
Dynacraft BSC, Inc.  
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San Rafael, CA 94901

Dated: Oct 7, 2004

By: Daniel C. Schwartz, Esquire  
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Dated: 10/12/04

By: Dennis C. Kacoyanis  
Dennis C. Kacoyanis, Trial Attorney  
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110 days of service of the Final Order, the third payment of \$350,000 shall be made within 200 days of service of the Final Order, and the fourth payment of \$350,000 shall be made within 365 days of the date of service of the Final Order. Upon the failure by Dynacraft to make a payment or upon the making of a late payment by Dynacraft, (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 28th day of October, 2004.

BY ORDER OF THE COMMISSION



TODD A. STEVENSON, SECRETARY  
Consumer Product Safety Commission