

## Test Procedure Used for Forward/Reverse Switch in Battery-Operated Toy Vehicle

### Test Conditions:

Vehicle, including battery, stored and operated in summertime, outdoor environment with daytime temperatures of approx. 32°C (90°F). Stored in shed; operated in fair weather.

Fuse and thermal breaker by-passed to avoid replacing these elements. Copper jumper wires inserted in holders.

Motor prevented from rotating by positioning vehicle against obstacles while weighted down with approx. 180 lb. to avoid wheel slippage.

Average sustained current measured and monitored while motor blocked from rotating. Current value measured = 50-55 amperes @ higher speed setting (with 6 volt batteries in series for a nominal 12 volt circuit). Measured with clamp-on ammeter.

Battery changed every 50 cycles of switch operation with a charged battery.

Switch lever (gear shift) manually cycled 10 times per minute from 2nd to reverse, going through 1st gear.

150 cycles completed each day.

### Test Results:

Motor heated during testing, but did not fail open.

At 760 cycles, the ignition switch (not the forward/reverse switch) overheated and failed in the open position. Test terminated.



(10)

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

Melissa Hampshire  
Acting General Counsel

Phone 301-504-0980  
Fax 301-504-0403

June 21, 2002

Gary Eiben, Esq.  
The McDonald Group, L.L.P.  
456 West 6<sup>th</sup> Street  
P.O. Box 1757  
Erie, PA 16507-0757

Re: FOIA Appeal S2030157 on Craftsman radial arm saws

Dear Mr. Eiben:

'By letter dated June 7, 2002 (received on June 17), you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request on Craftsman radial arm saws that were sold by Sears Roebuck & Company and manufactured by Emerson Tool Company.

Under authority delegated to me by the Commission, 16 C.F.R. 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold the file on these saws based on FOIA Exemptions 3 and 7(A), 5 U.S.C. §§ 552(b)(3) and (b)(7)(A). For now, this file is part of an ongoing enforcement investigation.

Exemption 3 of the FOIA provides for withholding information that is specifically exempted from disclosure by another statute. In applying Exemption 3 to the withheld file, I am relying on sections 6(a) and 6(b) of the Consumer Product Safety Act. 15 U.S.C. §§ 2055(a) and (b). Section 6(a)(2), which incorporates FOIA Exemption 4, expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission which contains or relates to trade secrets or other confidential commercial information. The Commission has not yet processed any possible claims of confidentiality under this provision for information in the requested file. Section 6(b)(1) requires that, before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The Commission has not yet taken the reasonable steps that might permit disclosure of information in the requested file.

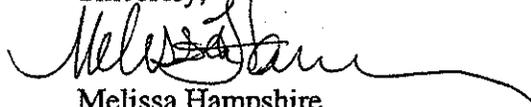
Gary Eiben, Esq.

Page 2

Exemption 7(A) of the FOIA provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that its production could reasonably be expected to interfere with enforcement proceedings. Currently, this exemption applies to the requested file. However, when it is closed, our FOI Officer will process it under sections 6(a) and (b). Some information may then become available to the public, and other information may continue to be exempt from disclosure under Exemptions 3, 7(A), or other FOIA exemptions. I suggest that you check periodically with our FOI Officer, Sandy Bradshaw, on the status of the requested file.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Melissa Hampshire", with a long horizontal flourish extending to the right.

Melissa Hampshire  
Acting General Counsel



THE MCDONALD GROUP, L.L.P.  
ATTORNEYS AT LAW

June 7, 2002

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

**Re: FOIA Request S-2030157: Copy of the Compliance Plan for the Recall of Craftsman Radial Arm Saws by Sears Roebuck & Company manufactured by Emerson Tool Company**

Dear Sir or Madam:

This letter is being submitted as our appeal from the denial of our request for information pursuant to the Freedom of Information Act.

Enclosed herein you will find a copy of our letter of March 12, 2002, requesting a copy of the compliance plan for the recall of Craftsman radial arm saws sold by Sears Roebuck & Co. Further, enclosed herein you will also find copies of letters received from Todd A. Stevenson, Director and Freedom of Information Officer denying the request. We do not know why we received so many copies of these letters and note that only the top letter is signed. These letters were dated May 9, 2002, the envelope from the Consumer Product Safety Commission is postmarked May 10, 2002, and was received in this office on May 14, 2002.

The final document you will find enclosed is a copy of a portion of a web site maintained by Emerson Tool Company.

We are filing this appeal because we are currently requesting a copy of the plan for compliance for the recall of the radial arm saws manufactured by Emerson Tool Company. We do not believe that this request falls within the exemptions for inter-agency and intra-agency memoranda or information compiled for law enforcement purposes when the request is for the document by which Emerson Tool Company is currently conducting a public recall campaign.

456 WEST 6TH STREET  
P.O. BOX 1757  
ERIE, PA 16507-0757  
814/456-5318  
FAX: 814/456-3840  
E-MAIL: [tmg@tmgattys.com](mailto:tmg@tmgattys.com)

RECEIVED OF THE SECRETARY  
2002 JUN 17 P 3-47

JAMES D. MCDONALD, JR.  
GARY EIBEN  
THOMAS J. BUSECK  
JOSEPH P. CONTI  
BRIAN M. MCGOWAN  
JOHN J. ESTOK  
*Of Counsel*  
JOHN G. GENT

FRANK J. SCUTELLA (1949-2000)

DIRECT E-MAIL:  
[geiben@tmgattys.com](mailto:geiben@tmgattys.com)

FOIA Appeal, General Counsel  
Attention: Office of the Secretary  
June 7, 2002  
Page 2

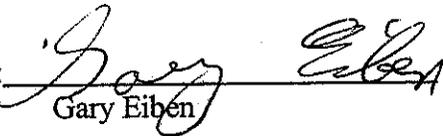
Further, to the extent any actual materials which do fall within exemptions 5 and 7(A), 5 U.S.C. §§552(b)(5) and (b)(7)(A), we believe there would be reasonably segregable portions which can be provided after deletion of exempt portions.

We therefore respectfully request that you review the decision to deny our request carefully and provide us with those portions of the requested document(s) which do not fall within the exemption provisions relied upon to justify the nondisclosure of requested documents.

We thank you very much for your consideration of this request.

Very truly yours,

THE McDONALD GROUP, L.L.P.

By:   
Gary Eiben

GE/csc

Enclosures: Our letter of 3/12/02  
Letters from Mr. Stevenson  
Portion of Emerson's web site

Copy to:

Mr. Terry Melquist  
P. O. Box 523  
20 Center Street  
Sheffield, PA 16347  
(w/enclosures)



456 WEST 6TH STREET  
P.O. BOX 1757  
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THE McDONALD GROUP, L.L.P.  
ATTORNEYS AT LAW

JAMES D. McDONALD, JR.  
GARY EIBEN  
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JOSEPH P. CONTI  
BRIAN M. MCGOWAN  
JOHN J. ESTOK  
*Of Counsel*  
JOHN G. GENT  
DANIEL J. PASTORE

March 12, 2002

United States Consumer Products Safety Commission  
Freedom of Information Office  
Washington, D.C. 20207

FRANK J. SCUTELLA (1949-2000)

Re: Emerson Tool Company Radial Arm Saws 084/ 11A

Dear Sir or Madam:

We are submitting this request under the Freedom of Information Act for a complete copy of the compliance plan for the recall of Craftsman radial arm saws sold by Sears Roebuck & Company, which recall is being carried out by the Emerson Tool Company of Saint Louis, Missouri. ERC/5 J-4

If any charge is involved, please advise and it will be remitted promptly.

You may send the requested information to the address set forth above. Thank you.

Very truly yours,

THE McDONALD GROUP, L.L.P.

By: Gary Eiben  
Gary Eiben

GE/csc

S-2030157



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

May 9, 2002

**CERTIFIED MAIL**

Gary Eiben  
The McDonald Group, LLP  
456 West 6<sup>th</sup> Street  
PO Box 1757  
Erie, PA 16507-0757

**Re: FOIA Request S-2030157: Copy of the Compliance Plan for the Recall of Craftsmen Radial Arm Saws by Sears Roebuck & Company manufactured by Emerson Tool Company**

Dear Mr. Eiben:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). We must withhold all of the records regarding the Commission's Office of Compliance's active litigation and law enforcement investigatory file, CA990090, Emerson Tool Company, Craftsmen Radial Arm Saws, pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both pre-decisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

The file also contains proprietary and confidential information submitted by the company under investigation that we must withhold pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor.

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

The file information may be subject to disclosure once the case is closed. You may want to resubmit your request in a few months. Processing this request, performing the file searches and reviewing the information, cost the Commission \$60.00. In this instance, we have decided to waive all of the charges.

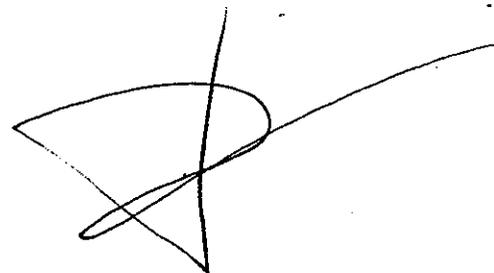
Sincerely

A handwritten signature in black ink, appearing to read 'Todd A. Stevenson', written over a white rectangular area.

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

DEN 2030157

May 9, 2002



**CERTIFIED MAIL**

Gary Eiben  
The McDonald Group, LLP  
456 West 6<sup>th</sup> Street  
PO Box 1757  
Erie, PA 16507-0757

**Re: FOIA Request S-2030157: Copy of the Compliance Plan for the Recall of Craftsmen Radial Arm Saws by Sears Roebuck & Company manufactured by Emerson Tool Company**

Dear Mr. Eiben:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). We must withhold all of the records regarding the Commission's Office of Compliance's active litigation and law enforcement investigatory file, CA990090, Emerson Tool Company, Craftsmen Radial Arm Saws, pursuant to the FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings.

The records being withheld consist of internal staff memoranda and correspondence containing recommendations, opinions, suggestions and analyses of the Commission's technical and legal staffs. The records constitute both pre-decisional and deliberative discussion that clearly falls within the attorney-client and attorney-work product privileges. Any factual materials in the records not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of these certain law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) prematurely reveal information used in the investigation, thereby interfering with this and other matters by disclosing the government's basis for pursuing this matter.

The file also contains proprietary and confidential information submitted by the company under investigation that we must withhold pursuant to Exemptions 3 and 4 of the FOIA, 5 U.S.C. §§ 552(b)(3) and (b)(4), and section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor.

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

The file information may be subject to disclosure once the case is closed. You may want to resubmit your request in a few months. Processing this request, performing the file searches and reviewing the information, cost the Commission \$60.00. In this instance, we have decided to waive all of the charges.

Sincerely,

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



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JOHN G. GENT  
DANIEL J. PASTORE

March 12, 2002

United States Consumer Products Safety Commission  
Freedom of Information Office  
Washington, D.C. 20207

FRANK J. SCUTELLA (1949-2000)

Re: Emerson Tool Company Radial Arm Saws

0841

11A

Dear Sir or Madam:

ERC/5

We are submitting this request under the Freedom of Information Act for a complete copy of the compliance plan for the recall of Craftsman radial arm saws sold by Sears Roebuck & Company, which recall is being carried out by the Emerson Tool Company of Saint Louis, Missouri.

D-4

If any charge is involved, please advise and it will be remitted promptly.

You may send the requested information to the address set forth above. Thank you.

Very truly yours,

THE McDONALD GROUP, L.L.P.

By: Gary Eiben  
Gary Eiben

GE/csc

S-2030157

2002 MAR 27 4 46

SECRETARY

(-11)

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

OFFICE OF THE GENERAL COUNSEL

Melissa V. Hampshire  
Acting General Counsel  
Tel: 301-504-0980 ext. 2208  
Fax: 301-504-0403

July 26, 2002

Mr. William Wise #981240  
Indiana Department of Correction  
Pendleton Correctional Facility  
PO Box 30  
Pendleton, Indiana 46064

Re: FOIA Appeal 2040093 on baby monitors

Dear Mr. Wise:

On June 19, 2002 (received on July 1), you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold 20 unconfirmed consumer complaints and the names/identities of some consumers from the complaints that you received, based on FOIA Exemptions 3 and 6. 5 U.S.C. §§ 552(b)(3) and (6).

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

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

When consumers submit complaints to the Commission, the

Mr. William Wise  
July 26, 2002

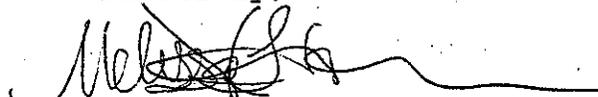
Page 2

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

In applying Exemption 3 to the names/identities of the consumers, I am relying on section 25(c) of the CPSA, 15 U.S.C. § 2074(c), which prohibits such disclosure absent consent. The consumers have not given their consent. In addition, I am relying on Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6), which applies to "clearly unwarranted invasion[s] of personal privacy."

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

Sincerely,



Melissa V. Hampshire



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

Todd A. Stevenson  
Director  
Office of the Secretary

JUN - 4 2002

Tel: 301-504-0785X1239  
Fax: 301-504-0127  
Email: tstevenson@cpsc.gov

CERTIFIED MAIL

William Wise #981240  
Indiana Department of Correction  
Pendleton Correctional Facility  
PO BOX 30  
Pendleton, IN 46064

Re: FOIA Request S2040093: Baby Monitors / Complaints, Reported Incidents or Investigations of Incidents / File Search 1990 to Present

Dear Mr. Wise:

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

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

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

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

FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3, we are relying on section 6(b)(1) of the CPSA. That section prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure that the information is accurate, that disclosure is fair in the circumstances, and that disclosure will be reasonably related to effectuating the purposes of the laws that the Commission administers. See Commission regulation, 16 C.F.R. § 1101.32. The Commission's policy is to withhold each consumer complaint and reported incident unless: (1) the Commission has conducted an investigation of the complaint and reported incident, and the investigation corroborates the substance of the complaint and reported incident; (2) the Commission has conducted or obtained a technical, scientific, or other evaluation of the product that is the subject of the complaint and reported incident, and evaluation corroborates the substance of the information contained in the complaint and reported incident; or (3) the consumer or person reporting or submitting the incident confirms the accuracy of the information. The Commission did not take any of these steps with regard to these certain consumer complaints and reported incidents responsive to your request. While it has been Commission practice since June 1983 to seek confirmation of incoming consumer complaints and incidents, the Commission does not have the resources to seek confirmation of the complaints and incidents where a consumer has not responded to our request for confirmation of the information.

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

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

William Wise #981240  
Indiana Department of Correction  
Pendleton Correctional Facility  
Page 3

Processing this request, performing the file searches and preparing the information, cost the Commission \$120.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Enclosures



0555  
BIBY

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

Todd A. Stevenson  
Director  
Office of the Secretary

Tel: 301-504-0785X1239  
Fax: 301-504-0127  
Email: tstevenson@cpsc.gov

June 5, 2002

William Wise #981240  
Indiana Department of Correction  
Pendleton Correctional Facility  
PO BOX 30  
Pendleton, IN 46064

Re: FOIA Request S2040093: Baby Monitors / Complaints, Reported Incidents or Investigations of Incidents / File Search 1990 to Present

Dear Mr. Wise:

This is in further response to your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). Enclosed are documents that were inadvertently not provided with our previous disclosure letter. The enclosed records include four Epidemiologic Investigation Reports with the underlying and supporting documentation. The Commission has received this information from its formal investigation systems. Through these systems the Commission hopes to learn when specific products are associated with illness, injury or death. The Commission believes that it has taken reasonable steps to assure the accuracy of this information. While conducting the interviews for the investigation reports, Commission staff or contractors have spoken with the individuals involved or with others who witnessed or are familiar with the incidents. Where possible, Commission staff has examined the products reportedly involved in the incidents. Although the Commission has investigated the incidents described in the investigation reports, the Commission has not necessarily determined the cause of the incidents.

Also enclosed are records pertaining to one product complaint and reported incident submitted to the Commission by a consumer. The consumer or submitter has confirmed the accuracy of the information in the complaint and reported incident. The Commission has neither investigated the incident nor conducted or obtained any evaluations of the product that corroborates the substance of the information contained in the complaint and reported incident.

Sincerely,

Todd A. Stevenson

Enclosures

4/8/02

To Mr. Stevenson,

March 21st, 2002

APR -5 A 11:

I wanted to thank you for your letter you sent on March 14<sup>th</sup> 2002 to acknowledge my request. On the same day I received a letter and update of incidents and investigations that were printed on March 7<sup>th</sup> 2002 from Ida Harper-Brown which have increased from 59 in May 2001 to 81 in 2002.

The same incident reports as were released in 2001 I would request to see any of the information on the reported incidents and investigations to update the records.

We have gotten hundreds of E-mails and advised of the other Baby Monitors that have had many other problems to question as well from 1990 to present date.

I need to see these reports in able to make motion of

52040093 (OVER)

Page 2-

Indiana Rule 403. to file  
reference to possible physical  
new evidence may be submitted.

(Article  
sent.)

I'm sure you have heard of  
Electro-Kindling". The investigation  
and article written by Mr.  
Jesse Anonstein, PhD, P.E., ref. to  
the Easily Ignited free burning  
of plastic materials in Electrical  
Appliances. This is on that  
the Judge used could not be  
spoken about in my trial  
and Investigators have now  
found "Reasonable Doubt" in many  
ways that show prejudice and  
confusion of the jury. (

I have received unreasonable  
Justice and have been advised  
of improper defence by the  
Civil Liberties Union and  
attorneys working on the  
Post Conviction Motion.

The Supreme Court Judges  
advise of Indianapolis  
having a very weak case  
(NEXT to P-3)

- Page 3 -

and have taken 30 years off the case at this point in time.

I request all incident reports that have been reported to show that others do also have manufacturing defects not just the one made by Fisher-Price.

Also, the letters showing I could not get the reports released at the time of my trial by Fisher-Price Corp. request in 1996 and 1998.

Please help me with this information as soon as possible to show I was not able to get any of the reports with the Fisher-Price Corp. NAME or Mfg. on it as the Judge ordered we could not discuss or state the name of any "Baby Monitor" just  
(OVER)

- Puget -

a few days prior to the trial as requested by the City Prosecutor (with the advice of the Fisher Price atty's, setting behind them) out of the jury's ears.

As your fine of the "Hot Wheels products" to the Fisher Price Co. came to be for not advising and withholding all information I believe they did the same thing with the "Baby Monitors" as do many who have E-mailed from across the country.

Please send to the mfg. and to me as soon as possible

I'm sure all companies dispute any manufacturing defect as I do that they do not happen and have taken my life as well now.

Sincerely,

Wm. L. S.

#2/2

Dear Ms. Ida Harper-Brown,

Re: Copy of Incident Reports/Informa

In reference to your recent update of Baby Monitors sent on March 18<sup>th</sup>, 2000 I wanted to thank you very much!

As the 59 incidents that were sent in March 2001 has increased in the incidents that have been reported to 81 now; I would request a copy of the reported incidents of 1<sup>st</sup> products (SSSS-Raidos/ Self contained) Baby Monitors that have been reported as hazards in the date of 1990 to present date.

In March 2001 I requested to see the reports and you sent copies of all that had had the mfgn. as Fisher-Price and I would request to see all incident reports and also investigation reports regardless of the manufacturer, product, location sold, etc. so I may

(OVER)

Page 2

compare reports as to time reported and as to the type of manufacturer and location sold in the time period of 1990 thru the present date.

The appeal court has question as to why the court has issued the fact that incidents that were recorded as 6555-Radios (self contained) not be allowed to have the jury hear unless it had only Fisher-Prices Mfg. Co. during the trial and the letters from Fisher-Price requesting incidents reports not be released until Sep, 2001.

I request all Baby Monitors a copy to view who the mfg. and what type of hazard they present. I undoubtedly did not get proper justice and have gone to prison for a product that has a mfg. defect and has been reported previously.

Sincerely,  
Wm. White

# Electro-Kindling

2  
all

Easily-ignited free-burning plastic materials in electrical appliances, devices, applications are described and photographs included in this article.

## ELECTRO-KINDLING

Easily-Ignited Free-Burning Plastic Materials in Electrical Applications

Jesse Aronstein, Ph.D., P.E.

(Tel. 914-462-6452 E-mail: Protune@aol.com)

Original: May 14, 1993 This Revision: July 19, 1996

see Next to  
last page!  
Sent by M. Lane

The use of highly combustible plastics in the construction of today's electrical products is increasing. This is a major trend backward in fire safety. Minor electrical failures are more likely to cause serious fires when easily-ignited free-burning plastic materials are close at hand. Fire and safety professionals should understand how easily these "electro-kindling" materials ignite and how vigorously they burn. This article discusses several examples covering a broad-range of electrical products.

Older samples of most electrical items are made of non-combustible or self-extinguishing materials. Today, many electrical products that used to simply "burn out" (become non-functional) on failure now will "burn up" (ignite) on failure, because they are made with electro-kindling.

A TV program about coffee maker fires included a demonstration that showed the danger vividly. [Prime Time Live, October 17, 1991 (ABC).] The coffee maker's plastic housing burned vigorously for about 1/4 hour after igniting from its own heating element. (The heating element was continuously energized, simulating a component malfunction.) Flaming plastic flowed on the test bench surface. "It's like pouring diesel fuel on your counter top and letting it burn," said the engineer conducting the demonstration. This effect is shown in Figures 1A and 1B.

FIGURE 1 BELOW: COFFEE MAKER IGNITION AND BURN TEST

[Figure 1 photos courtesy of M.Fitz, Machine Design Engineers, Seattle, WA]



FIGURE 1A - Ignition Occurs Under continuously energized hot plate.



FIGURE 1B - Burning Plastic Flows on Countertop

A small amount of free-burning plastic "electro-kindling" fuels a substantial fire. The old saying, "a little goes a long way," has never

been more appropriate. As an example, the portable electric heater shown in Figure 2 is mostly metal. Plastic trim pieces on the front panel are held in place by integral mounting fingers inserted into holes in the metal front panel. The mounting fingers are inside the electrical enclosure.

For the fire spread test shown in Figure 2, one of the plastic fingers next to the thermostat was ignited inside the panel enclosure, as happens from certain electrical component failures. [Recall announcement: Oil-Filled Portable Heaters, as reported in the New York Times, National Edition, August 15, 1991, p.A18]

After about two minutes, the plastic finger burned through its opening in the front panel, spreading the fire to the outside of the metal enclosure (Figure 2A). More plastic became involved, and the fire grew (Figure 2B). Burning plastic fell to the floor, igniting another plastic trim piece near the bottom of the front panel (Figures 2C and 2D). This fire burned for more than 1/4 hour. In an actual household setting, a fire of this magnitude is likely to spread further.

FIGURE 2 BELOW: IGNITION TEST, PLASTIC TRIM OF PORTABLE ELECTRIC HEATER



FIGURE 2A - Fire Spreads from Inside Front panel.



FIGURE 2B - Fire Grows as Plastic Panel Burns Vigorously.



FIGURE 2C - Fire Spread, Flaming Plastic Drops to Floor.



FIGURE 2D - Plastic Power Cord Cage on Bottom of Panel Burns.

In the past, portable heaters were made mainly of metal. Today, many have housings and grills made entirely of free-burning plastics. Now the heater itself can ignite, where previously only nearby furnishings and fabrics were the major concern. An example is shown in Figure 3. The heater's fan and resistance wire assembly, its central core, is supported by the plastic rear grill. Loosening of the mounting screws or breakage of the rear grill can cause the core to drop. The fan blade then rests against the housing and cannot rotate.

Without airflow, the heater wires become red hot. Heater wires resting against the housing melt and penetrate the plastic. An overtemperature (safety) thermostat cuts power, but resets itself automatically upon cooling. The cycle then repeats. Each time, the heater wires become red hot before the safety thermostat cuts the power. This continues until the unit is turned off or, in the worst case, until the housing ignites. Figure 3 shows a test of this type of failure. The plastic shroud and housing ignited after several on-off cycles, and then burned vigorously, emitting thick noxious smoke.

FIGURE 3 BELOW: IGNITION TEST, PORTABLE ELECTRIC HEATER WITH PLASTIC HOUSING.

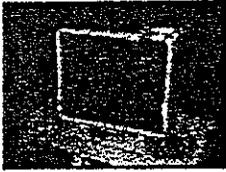


FIGURE 3A - Core Displaced Against Housing, Heater Wires Red Hot.

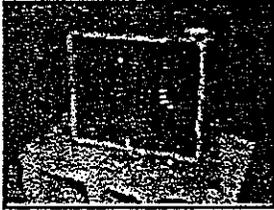


FIGURE 3B - Plastic housing Ignited, Hole Burned/Melted through Bottom.

Even in small amounts, electro-kindling materials can be hazardous. The insulating shell of the splicing connector in Figure 4A is made of a type of thermoplastic sometimes called "drip self-extinguishing." When the insulator is ignited in a laboratory test, a flaming drop of melted plastic falls off, extinguishing itself as it drops or after it hits the floor. The rest of the connector insulator remains intact.

The fire scenario may be quite different when the connector is used in a typical wiring system. Ignition can occur from failure of the splice connection itself or from failure of an adjacent component. There may be no safe place for a burning drop of plastic to fall. The sequence in Figure 4 is a test of this situation.

Shortly after the shell is ignited in this test, a flaming drop forms and falls to the junction box floor just below the connector (Figure 4B). The flaming drop then re-ignites the connector shell. This cycle repeats several times. More flaming plastic falls to the floor of the box. The continuing fire heats and ignites the wire insulation. Although nominally self-extinguishing, the wire insulation combustion is supported by heat from the flaming plastic shell. At the stage shown in Figure 4D, the wire insulation and the cable jacket and filler materials are involved. A small amount of electro-kindling has served to develop and spread the fire.

FIGURE 4 BELOW: BURN TEST, CONNECTOR INSULATING SHELL



FIGURE 4A - Initial Setup of Test



FIGURE 4B - Connector Shell Ignited



FIGURE 4C - Flaming Drop of Plastic on Floor of Junction Box



FIGURE 4D - Fire Grows and Spreads



The wall thermostats shown below in Figure 5 are used to control heat pumps. The top (unburned) unit shows what the bottom one originally looked like before it ignited. According to eyewitnesses, there was a short circuit in the wiring of the heat pump. Soon afterward, the occupant came into the living room to find the thermostat on fire and flaming globs of plastic dripping onto the couch. Whatever internal component in the thermostat failed due to the downstream short circuit is not known. What is known, however is that the thermostat housing did not safely contain the event. The housing ignited and served to spread the fire to the couch below. The bill for fire and smoke damage was in excess of \$20,000. [Sample and incident report courtesy of M. Lane, Corporate Investigative Services.]

It could have been worse. Early detection and fast response limited the damage, and nobody was injured. Change the circumstances slightly, however, and it could have been a tragedy. The savings to the manufacturer of a few pennies on each case, by using of a free-burning (instead of self-extinguishing) plastic, turns out to be a poor buy when the reduction in fire safety factor is considered.

Failure of this type of equipment is not so rare that the fire ignition potential can be ignored. In the same large housing community as the above fire incident, there had been several other hazardous failures of the same type of thermostat.

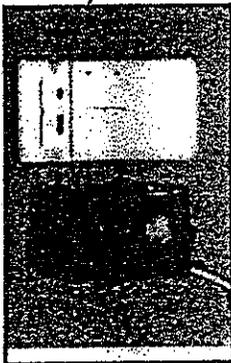


FIGURE 5 - THERMOSTAT WITH "ELECTRO-KINDLING" HOUSING

(Bottom unit ignited and burned due to downstream short circuit in heat-pump wiring.)

Some large appliances are constructed mainly of combustible plastic. The water heater shown in Figure 6 ignited and burned in a home. An electrical failure occurred at the lower thermostat assembly. The plastic electrical enclosure, the foam thermal insulation, and plastic outer shell of the water heater all burned. This failure could have been reasonably contained, and fire avoided, if the materials in the immediate vicinity of the thermostat had been non-combustible. Instead, the thermostat in this design is surrounded with electro-kindling, and the result was fire ignition and spread. [Sample and incident report courtesy of M. Lane, Corporate Investigative Services.]



FIGURE 6 - FIRE IN WATER HEATER WITH PLASTIC ELECTRICAL ENCLOSURE, FOAM THERMAL INSULATION, AND PLASTIC OUTER SHELL.

Potential ignition sources for electro-kindling also exist in low-power electrical apparatus. The "baby monitor" (wireless intercom) transmitter shown in Figure 7 (below) is an example. There are several possible internal failures that can result in ignition of the housing if it is made of an easily-ignited material. One possible failure sequence can cause shorting of the power cord that enters the case under the transformer. The cord is knotted to prevent it from being pulled out. At the knot, the power cord is in contact with the transformer (Figure 7A).

A simple component failure - for instance the shorting of a power supply diode on the circuit board - can cause the transformer to run hot. Insulation on the power cord can then soften and flow where it is pressed against the overheated transformer, allowing the wires to short together. The resulting momentary arc can cause a brief internal flame which can ignite the housing. A test of the plastic housing on this sample demonstrates (Figure 7B) that it ignites easily and burns vigorously. The housing is made of electro-kindling. Flaming drops of molten plastic fall from burning housing and continue to burn on the floor below.

Any Metropolitan Fire Department Investigation Bureau and Professionals should have known this

FIGURE 7 BELOW: BABY MONITOR, FIRE HAZARD AND BURN TEST

FIGURE 7A - Baby Monitor, Power Cord Touching Transformer (arrow).



FIGURE 7B - Baby Monitor, Burn Test of Plastic Housing.



Figure 8 (below) shows how a light fixture made of electro-kindling can bring the house down. [Figure 8 photos and incident report courtesy of D.Friedman, Poughkeepsie NY.] The undamaged fixture to the right of the door is one of two identical units on either side of the door. Its companion on the left side ignited. Flaming plastic dropped to the ground spreading the fire to the siding.

A passer-by saw the fire and smothered it with dirt from the flower bed. lucky break. Luck, though, is an unreliable substitute for an adequate built-in safety factor. Fixtures like this used to be constructed of metal and glass, providing a substantial fire safety factor relative to this modern version made almost entirely of free-burning plastic. An identical unit could be constructed of self-extinguishing (rather than free-burning) plastic.

Overlamping may have caused this fire. Or, perhaps a bird got in through a broken lens and built a nest inside. If the fixture is non-combustible, need only be concerned with possible ignition of nearby material. Here, however, the fixture itself ignites. Worse, once ignited, the plastic behaves as a sort of "consumer napalm," spreading the flame and greatly increasing the possibility of a penalty of death by fire for overlamping.

(or for failing to replace a damaged lens).

FIGURE 8 BELOW: FIRE, EXTERIOR LIGHT FIXTURE

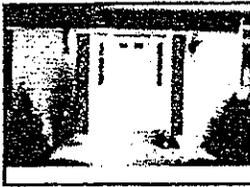


FIGURE 8A - Plastic Light Fixture Fire, Overall View



FIGURE 8B - Remains of Fixture



FIGURE 8C - Fire Spread to Siding

The implications for the fire investigator are significant. The behavior of these materials must be carefully considered in analyzing the progress of a fire. Concepts such as lowest and most intense burn may be ambiguous indicators in a fire involving electro-kindling. The thermostat fire described above and the lamp fire of Figure 8 are examples. Imagine the scene if either of those fires had progressed. The lowest and most intense burn might only indicate where the flaming electro-kindling had landed.

Investigators should also know that seemingly identical plastic items may vary enormously in combustion behavior. Subtle variations in composition can change a plastic from self-extinguishing to free-burning without noticeable difference in appearance. A burn test on a seemingly identical sample may not reflect the behavior of an item that was actually involved in a fire. For example, the baby monitor shown above in Figure 7 was produced at different times with two different plastics, one of which is a superior self-extinguishing plastic and the other - identical in appearance - is electro-kindling.

The applicable product standards permit the use of electro-kindling materials in many electrical applications, and their use is expanding. An opposite trend exists in other areas, such as carpets, and tent fabrics. The standards for these (and many other) products now require more fire resistant materials than previously allowed.

The United States Consumer Product Safety Commission has taken an interest in the subject. Industry and Underwriters Laboratories (UL) representatives have met with CPSC staff and expressed their position that the problem is due to inappropriate choice of materials by product designers. In their view, it can be dealt with by educating product designers. This position ignores the reality of today's product design and marketing environment, in which lowest cost for a given function is a major driving factor. One can easily derive dollar savings and profit margin figures to justify cheaper materials. Data and cost figures that might justify (to a marketing manager or accountant) the added expense of a higher fire safety factor are hard to come by and, most certainly, are beyond the reach of the average product design engineer.

Since greater fire safety factor in plastic materials generally comes at higher cost, use of materials with only the minimum performance allowed by the applicable (most often UL) standards has become the rule. The standards are serving to define what the designers will specify. Designers who cut cost to the absolute minimum are considered to be doing a good job, while designers who add materials cost by attempting to increase product safety

(12)

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

OFFICE OF THE GENERAL COUNSEL

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September 9, 2002

Matthew F. Hall, Esq.  
Dunaway & Cross  
Suite 800  
1700 K Street, N.W.  
Washington, D.C. 20006

Re: FOIA Appeal of Requests 2060074 and 2070031

Dear Mr. Hall:

By letter dated August 9, 2002, you appealed the July 10, 2002 decision of the Commission's Freedom of Information (FOI) Officer to withhold information responsive to your Freedom of Information Act (FOIA) requests. Under authority delegated to me by the Commission, 16 C.F.R. § 1015.7, and by the Acting General Counsel, I have reviewed your appeal and the responsive information. As explained below, I affirm the FOI Officer's decision to withhold the information pursuant to FOIA Exemptions 5 and 7(A). 5 U.S.C. §§ 552(b)(5) and 7(A).

1. Your appeal describes meetings and discussions that you had with CPSC Acting General Counsel Melissa Hampshire and Department of Justice attorney Jeffrey Steger. Whether you did or did not seek information from them on those occasions is not within the scope of the two FOIA requests you have appealed. And I have not considered your descriptions of those events in this appeal. Similarly, I have not considered, because it is not relevant, what Ms. Hampshire or Mr. Steger might or might not have understood about your requests.

2. Your appeal disputes FOI Officer Sandra K. Bradshaw's understanding of the telephone conversation that you and she had on June 18, 2002. She believes that you narrowed the scope of your June 11 FOIA request and you believe that you did not. Rather than attempting to resolve this "he said/she said" disagreement, I have asked the FOI Office to now process your original (unmodified) request. After the FOI Office completes

Matthew F. Hall, Esq.  
September 9, 2002

--Page Two--

its processing of that request, you will of course have the opportunity to appeal any decision to withhold information.

3. I am deciding whether you are entitled to any information that the FOI Office withheld in response to your June 11 (as modified) or June 13 requests. After reviewing the information responsive to your June 11 request (#2060074) and your June 13 request (#2070031), I conclude that it falls within FOIA Exemptions 5 and 7(A), as discussed in sections A and B below.

Your appeal correctly points out that staff briefing materials, at least to the extent that they are not records of Commission decisions to refer civil penalty or subpoena cases to the Department of Justice, are not within the scope of your request. I am not including such documents in my response to your appeal.

A. FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents and incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions that are part of the deliberative, consultative, and decisionmaking processes of the agency. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. Exemption 5 incorporates the attorney work-product doctrine, which protects certain documents prepared by an attorney, or someone supervised by an attorney, in anticipation of litigation. And Exemption 5 incorporates the attorney-client privilege, which protects certain confidential communications between an attorney and his or her client. The information being withheld pursuant to FOIA Exemption 5 consists of (1) vote sheets concerning a recommendation from the Commission to its attorneys in the Department of Justice and (2) a communication from a CPSC attorney to a Justice attorney.

B. FOIA Exemption 7(A) provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings. The same information being withheld under Exemption 5, described in section A, is being withheld under Exemption 7(A).

4. Your appeal argues strenuously that a CPSC regulation (16 C.F.R. §§ 1000.6) requires all Commission decisions to be made available in the CPSC's public reading room. I find,

Matthew F. Hall, Esq.  
September 9, 2002

--Page Three--

however, that this general (and perhaps too broadly-worded) statement does not supersede the Freedom of Information Act or the Commission's authority to withhold certain privileged information from the public. If it did, we would be required to waive such FOIA exemptions as attorney-client privilege and to prematurely disclose our communications with our Justice attorneys about contemplated litigation.

I refuse to decide in the context of this FOIA appeal that we must place all "records of Commission action" (or "minutes") in the public reading room. To do so would ignore the exemption provisions in the Freedom of Information Act, applicable case law, and longstanding Commission practice. If you believe that the Commission has improperly disregarded one of its regulations, you can certainly make a separate complaint to that effect.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'ASL'.

Alan Shakin

# DUNAWAY & CROSS

A PROFESSIONAL CORPORATION

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MAC S. DUNAWAY  
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\* NOT ADMITTED IN D.C.

1464 WEED

August 9, 2002

## FOIA APPEAL

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

RECEIVED  
CPSC  
MAILROOM  
2002 AUG -9 PM 2: 20

Re: FOIA Requests S2060074 and S2070031

Dear General Counsel:

Pursuant to 16 CFR 1015.7, this letter appeals the decision dated July 10, 2002 from the Freedom of Information Officer for the U.S. Consumer Product Safety Commission ("CPSC" or "the Commission") denying the two above-referenced Freedom of Information Act ("FOIA") requests. For the reasons discussed herein, the CPSC's decision should be reversed and the Commission should provide the requested information.

### Background

On the afternoon of June 10, 2002, counsel for Weed Wizard Acquisition Corporation ("WWAC"), Easy Gardener, Inc. ("EGI"), and U.S. Home & Garden, Inc. ("USHG") (jointly referred to as "the companies") visited the CPSC reading room located on the fourth floor of the Commission's headquarters at 4330 East West Highway in Bethesda, Maryland. That visit was prompted by a statement made by Jeffrey Steger, Trial Attorney in the Office of Consumer Litigation, U.S. Department of Justice ("Justice"), to counsel for WWAC, EGI and USHG that CPSC staff had referred a subpoena enforcement matter against the companies and Robert Kassel under the authority of the "Directives System," identified at 16 CFR 1000.13 of the Commission's internal regulations. According to 16 CFR 1000.13, the "complete set of directives is available for inspection in the public reading room at Commission Headquarters." Despite the assistance of staff, neither the directives nor records of Commission decisions were found in the brief time that the reading room remained open that afternoon.<sup>1</sup>

Counsel returned to the CPSC reading room on the morning of June 11 to make a more thorough search for the directives and records of Commission action. Again, the records could

<sup>1</sup> In addition to the Directives System, CPSC regulations also address records of Commission decisions: "Copies of Minutes or of a Record of Commission Action . . . may be examined in the public reading room at Commission Headquarters." 16 CFR 1000.6.

FOIA APPEAL

August 9, 2002

Page 2

not be found with staff's assistance, and counsel was advised by staff to submit a written FOIA request for the materials being sought. Counsel's June 11, 2002 written request sought, for the period from December 11, 1999 to June 11, 2002, (i) "All Directives issued pursuant to the "Directives Program" (16 CFR 1000.13)" and (ii) "Record of Commission decisions (possibly called "minutes") to refer matters to the U.S. Justice Department for civil penalty or subpoena/special order enforcement." In response, the CPSC Office of the Secretary issued a letter dated June 11, 2002 that acknowledged receipt of this FOIA request. Copies of counsel's June 11 written request and CPSC's June 11 acknowledgment are attached as Exhibits A and B, respectively.

On June 13, 2002, counsel for the companies wrote to Melissa Hampshire, Acting General Counsel for the CPSC, and requested Ms. Hampshire to provide "copies of Minutes and the Record of Commission Action concerning Weed Wizard Acquisition Corporation, Robert Kassel, U.S. Home and Garden, Inc., Easy Gardener, Inc., and Ampro Industries, Inc." See attached Exhibit C. On June 19, 2002, counsel wrote to Jeffrey Steger to confirm a discussion during a teleconference with Mr. Steger of that same date. Counsel's June 19 letter, a copy of which was sent to Ms. Hampshire, stated that "[t]he purpose of the call was to again request copies of the Commission's decisions to refer this matter to DOJ for civil penalty enforcement and enforcement of the Commission's Special Order and Subpoena." See attached Exhibit D. Mr. Steger responded by letter dated June 25, 2002, a copy of which also was sent to Ms. Hampshire, stating that "[w]ith respect to your request to the U.S. Consumer Product Safety Commission ("Commission") for Commission documents, it is my understanding that the Commission staff will be responding directly to you." See attached Exhibit E. Consequently, it is clear that the CPSC understood, or reasonably should have understood, that counsel's June 13 letter asked Ms. Hampshire to provide copies of CPSC documents relating to (i) a Commission referral to the Department of Justice concerning a subpoena/special order enforcement matter involving the companies and (ii) a Commission referral to the Department of Justice concerning a civil penalty enforcement matter involving the companies.

During a meeting on July 2, 2002, Ms. Hampshire stated that counsel's June 13 letter was being treated as a second FOIA request. This statement came as a surprise because the CPSC had not, to that time, responded with its standard acknowledgment letter. In any event, the July 2 meeting was the first time that the CPSC indicated that it considered counsel's June 13 letter to be a FOIA request. Later that day, Ms. Hampshire faxed a letter to counsel confirming the FOIA treatment. The CPSC Office of the Secretary also sent a letter dated July 2, 2002 acknowledging receipt of a FOIA request from counsel, which presumably was in reference to the June 13 letter. Copies of Ms. Hampshire's letter and CPSC's acknowledgment are attached as Exhibits F and G, respectively.

By letter dated July 10, 2002, Ms. Sandra Bradshaw, the CPSC Freedom of Information ("FOI") Officer, responded substantively to counsel's June 11 FOIA request and June 13 letter. See attached Exhibit H. With regard to the June 11, 2002 FOIA request, Ms. Bradshaw stated that "counsel reduced this request to seek only information about the date when the Commission referred a civil penalty case on Weed Wizard Acquisition Corporation, *et al.*," that information responsive to the "modified" request had been found in the form of CPSC staff's briefing

materials to the Commission, and that such materials were being withheld pursuant to FOIA exemptions 5 (interagency and intra-agency memoranda) and 7(A) (information compiled for law enforcement purposes.) Concerning counsel's June 13 letter, Ms. Bradshaw stated that she was interpreting the request to encompass only records of Commission actions to refer the subpoena/special order enforcement matter against the companies to Justice, and that there was no information responsive to such request.

### Discussion

The July 10, 2002 CPSC FOIA response is based upon a mischaracterized record, and as a result it reaches conclusions regarding issues that are wholly inapposite to the counsel's actual requests for information. Rather than address counsel's actual requests, the CPSC response reworks counsel's June 11 request for publicly available records into an inquiry directed at staff's internal processes and takes an unnaturally restrictive view – especially in light of the Commission's actual knowledge – of counsel's June 13 letter. The result is a strikingly unresponsive response that fails to meet CPSC's FOIA obligations.

With respect to counsel's June 11 FOIA request, CPSC's response first omits the fact that counsel sought responsive documents only from the past 30 months, thereby creating the impression that this initial request placed a significant burden on staff. Rather than seeking "all" Commission directives and records of Commission decisions to refer to matters to Justice, however, counsel's request clearly was time limited and easily manageable. Next, CPSC's response inaccurately states counsel "reduced" this request. On the contrary, counsel spoke with Ms. Bradshaw on June 18 and stated that he was particularly interested in documents that reflected whether and when the Commission referred to Justice any enforcement matters involving the companies. Counsel never agreed to modify the June 11 request. Then, in apparent contradiction to the asserted reduction in scope, the Commission's July 10 response unilaterally – and inaccurately – expands counsel's June 11 request to seek staff's briefing materials.

Although there may be circumstances when it might be appropriate to withhold staff briefing materials from disclosure pursuant to FOIA exceptions concerning internal memoranda and law enforcement materials, those exceptions are inapplicable to counsel's June 11 request. Counsel's request sought records pertaining to official Commission actions, which include Commission actions to refer matters to Justice for enforcement. According to CPSC's own regulations, the records sought by counsel – Directives and Commission decisions – are available for inspection and examination "in the public reading room at Commission Headquarters." 16 CFR 1000.13 and 1000.6. There is, of course, no exception to this mandate for Commission actions to refer enforcement matters to Justice

It was only because the sought-after records inexplicably were not present in the public reading room that counsel was forced to make a FOIA request.<sup>2</sup> The fact that CPSC's public

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<sup>2</sup> The reading room did not contain any of the directives issued pursuant to the Directives System. It contained a record of Commission decisions but only through 1995.

reading room did not contain the records that it should have contained, however, did not turn counsel's request for public records into a request for internal CPSC documents. As clearly stated by the June 11 FOIA request itself, counsel requested (i) all directives issued pursuant to the Directives System over the previous 30 months and (ii) records of Commission decisions to refer to Justice subpoena/special order and civil penalty enforcement matters over the previous 30 months. Nothing in counsel's June 11 request indicated an attempt to obtain "internal staff memoranda and correspondence containing recommendations, opinions, suggestions or analyses" of the Commission's technical and legal staffs," which CPSC's July 10 response characterizes as privileged work-product material.

By recasting counsel's request for public records as one that instead seeks potentially withholdable documents, CPSC's July 10 response reflects, at best, a careless reading of the actual FOIA request. At worst, CPSC's response indicates a deliberate effort to evade counsel's effort to determine whether CPSC's referral of a civil penalty enforcement matter comported with the Consumer Product Safety Act and its implementing regulations. The briefing materials generally described by CPSC's FOIA response may or may not contain privileged information or attorney work-product; counsel does not concede that the briefing materials are subject to such protections. Nevertheless, even if the information sought by counsel's June 11 request is contained in or among the briefing materials, and even if these materials are privileged to some degree, it is inconceivable that the CPSC could not extract the information that, according to CPSC's own regulations, is *publicly available*.

Similarly, there can be no reasonable misunderstanding that counsel's June 13 letter to Ms. Hampshire was directed not only at records of Commission decisions to refer to Justice subpoena/special enforcement matters involving the companies, but also Commission decisions to refer Justice civil penalty enforcement matters involving the companies. First, as recognized by CPSC's July 11 response, the June 13 letter is not limited on its face to referrals or particular types of referrals, but instead asks for "copies of Minutes and the Record of Commission Action concerning" the companies. Second, it is abundantly clear from the context and background of counsel's June 13 letter that Ms. Hampshire was aware that counsel was interested in documents that reflected Commission decisions to refer any matters to Justice that concerned the companies. Again, CPSC's July 10 FOIA response letter reflects either minimal attention to the issues or a deliberate attempt to be evasive.<sup>3</sup>

#### Conclusion

CPSC's July 10, 2002 FOIA response letter mischaracterizes counsel's June 11 written FOIA request, misinterprets the June 18 telephone conversation in which that request supposedly was "modified," and ignores both the words and context of counsel's June 13 letter to Melissa Hampshire. Counsel's June 10, 2002 FOIA request and June 13 letter to Ms. Hampshire clearly are limited to records that reflect official Commission action to refer matters to the U.S. Department of Justice for enforcement. Just as clearly, CPSC regulations require that those

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<sup>3</sup> Like counsel's June 11 FOIA request, counsel's June 13 letter sought documents that, according to CPSC's regulations, are required to be kept available for public inspection in the CPSC reading room.

FOIA APPEAL

August 9, 2002

Page 5

records be publicly available. Accordingly, we request that the General Counsel reverse the FOI Officer's July 10, 2002 decision and provide copies of the materials requested by counsel on June 11, 2002 and June 13, 2002.

Respectfully submitted,

DUNAWAY & CROSS

A handwritten signature in black ink, appearing to read 'Matthew F. Hall', written in a cursive style.

Matthew F. Hall

Enclosures



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

EXHIBIT  
A

FREEDOM OF INFORMATION ACT (FOIA)  
Request for Information

Date: June 11, 2002 Received By: \_\_\_\_\_

REQUESTER: Matthew Hall  
FIRM: AWAWAY + CROSS  
ADDRESS: 700 K Street, NW  
SUITE 800  
WASHINGTON, DC 20006  
Telephone: (202) 862-9700

DOCUMENTS REQUESTED: For the past 30 months, I request  
(1) All Directives issued pursuant to the Directives Program (16 CFR 1000.13)  
Record of  
(2) Commission decisions ~~and orders~~ (possibly called "minutes") to refer  
matters to the U.S. Justice Department for civil penalty enforcement  
or subpoena / special order enforcement

Obtain the following information from the requester:  
Have you submitted a written request for the records? This is it.  
We want to avoid duplicate work and written requests are given priority (by our regulations) and are processed more efficiently.  
Will you pay any fees incurred by processing your request? Yes  
Can we sent the materials by MAIL? \_\_\_\_\_  
Or Call for pick-up at our office?   
Please indicate the purpose of your organization or your need for the requested information for the purposes of assessing any applicable fee waivers: \_\_\_\_\_

Fees charges are different for commercial use requesters, non-commercial educational or scientific institutions, the news media or "others," including consumers and plaintiff attorneys. The Commission's FOIA regulations at 16 C.F.R. § 1015.9 provide for the charging of fees resulting from the processing of FOIA requests. The FOIA regulations and fee schedule allow for the charges for file search time at \$12.00 an hour for clerical personnel and \$19.60 an hour for professional personnel, \$19.60 an hour for review time to determine whether records were permitted to be withheld, \$0.10 a page for duplication services and for computerized records: central processing unit (CPU) time, \$0.32 a second, \$10.00 for 1,000 lines printed. If you have questions, please contact the Commission's Office of the Secretary Freedom of Information Division by letter, facsimile (301) 504-0127, or call (301) 504-0785.  
CPSC Form 335



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207  
June 11, 2002

Matthew Hall  
Dunaway & Cross  
1700 K Street, Nw  
Suite 800  
Washington, DC 20006-

RE: FOIA Request No. S-2002060074 (Directives, Justice Referrals)

Dear Mr. Hall:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request seeking records from the Consumer Product Safety Commission.

Due to the heavy volume of FOIA requests we have received, and because of certain procedural steps we are required to take under our statute, there may be substantial delays in responding to many requests. Please be assured that every effort is being made to process each request as equitably as possible and that the records you requested which can be released will be made available to you at the earliest possible date.

If you have any questions concerning your request, feel free to contact this office at (301) 504-0785.

Sincerely,

A handwritten signature in cursive script that reads "Todd A. Stevenson".

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

# DUNAWAY & CROSS

A PROFESSIONAL CORPORATION

SUITE 800

1700 K STREET, N.W.

WASHINGTON, D.C. 20006

(202) 862-9700

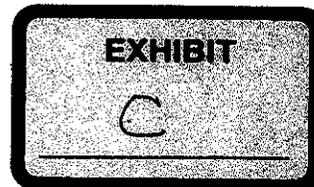
FAX (202) 862-9710

June 13, 2002

RAYMOND PHILIP SHAFER \*  
COUNSEL

MAC S. DUNAWAY  
GARY E. CROSS  
MATTHEW F. HALL

\* NOT ADMITTED IN D.C.



Via Email, Facsimile and Regular Mail

Ms. Melissa V. Hampshire, Esq.  
Enforcement and Information Division  
Office of General Counsel  
U.S. Consumer Product Safety Commission  
Washington, D.C. 20207

Re: Weed Wizard Acquisition Corporation, U.S. Home and Garden, Inc., Easy Gardener, Inc., Ampro Industries, Inc.

Dear Ms. Hampshire:

This letter is addressed to you as the representative of the Consumer Product Safety Commission ("CPSC" or "Commission") during our discussions with the Mr. Jeffrey Steger, Trial Attorney of the Office of Consumer Litigation, U.S. Department of Justice (DoJ), concerning the referral to DoJ for enforcement of the CPSC's Special Order and Subpoena (Subpoena) issued to Robert Kassel and the above-referenced companies.

As you should be aware, we have sought, but been denied, copies of any Commission decisions and actions regarding this matter and these companies, notwithstanding the fact that the Commission's own regulations, 16 CFR 1000.6, provide that "[C]opies of Minutes or of a Record of Commission Action ... may be examined in the reading room at Commission headquarters." The Commission's refusal to provide this information is a denial of due process.

Please provide, by return fax, copies of Minutes and the Record of Commission Action concerning Weed Wizard Acquisition Corporation, Robert Kassel, U.S. Home and Garden, Inc., Easy Gardener, Inc., and Ampro Industries, Inc.

Sincerely,

A handwritten signature in black ink, appearing to read "Mac S. Dunaway". The signature is fluid and cursive, with a large loop at the end.

Mac S. Dunaway

c: Jeffrey Steger

# DUNAWAY & CROSS

A PROFESSIONAL CORPORATION

SUITE 800

1700 K STREET, N.W.

WASHINGTON, D.C. 20006

(202) 862-9700

FAX (202) 862-9710

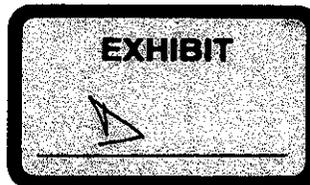
June 19, 2002

MAC S. DUNAWAY

GARY E. CROSS

MATTHEW F. HALL

\* NOT ADMITTED IN D.C.



MOND PHILIP SHAFER\*  
COUNSEL

**CONFIDENTIAL  
PROPRIETARY BUSINESS INFORMATION**

**Via Email, Fax and First-Class Mail**

Jeffrey I. Steger, Esq.  
Office of Consumer Litigation  
U.S. Department of Justice  
P.O. Box 386  
Washington, D.C. 20044

Re: Weed Wizard Acquisition Corporation, et al.

Dear Mr. Steger:

This confirms, and is further to, the telephone conversation held shortly before noon yesterday between you, on behalf of the U.S. Department of Justice ("DOJ") and the U.S. Consumer Product Safety Commission ("CPSC" or "the Commission"), and myself and Matthew Hall of this office, on behalf of Weed Wizard Acquisition Corporation, U.S. Home and Garden, Inc., Easy Gardener, Inc., Ampro Industries, Inc., and Robert Kassel ("the Companies").

The purpose of the call was to again request copies of the Commission's decisions to refer this matter to DOJ for civil penalty enforcement and enforcement of the Commission's Special Order and Subpoena. Neither you nor the Commission staff had responded to my letter of June 13, 2002 requesting these materials. You refused my request for copies of the Commission decisions and declined to inform me when those decisions were made, notwithstanding the fact that the Commission's own regulations provide that these materials are to be kept available for inspection in the public reading room. I stated that our clients deserved to know what actions the Commission had taken towards them. You stated that the Commission referral decisions were not public information, and that either the CPSC or DOJ would respond to my June 13 letter in due course.

You further stated that the Commission decision to refer the civil penalty matter to DOJ was taken properly and that CPSC staff referred the subpoena enforcement matter to DOJ pursuant to a Commission delegation of authority, though you added that your understanding of the latter referral might be incorrect. You also stated that the Commission decision materials would be available through discovery in a civil penalty action. You maintained this position in response to my questions concerning whether the target of the civil penalty and enforcement

Jeffrey I. Steger, Esq.

June 19, 2002

Page 2

actions had a right to know about the Commission referrals, and when the referrals targeting the Companies were made.

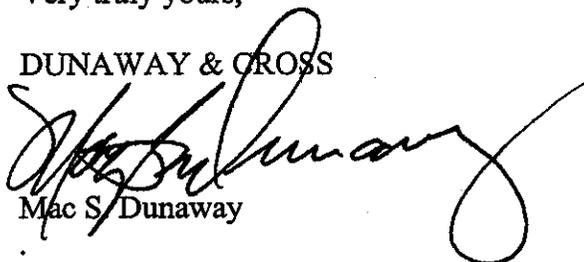
You acknowledged that at the time you initially contacted us to discuss a compromise of the CPSC subpoena and special order, the civil penalty matter had already been referred to DOJ and that you did not inform us of that fact. In our view, a CPSC decision to seek civil penalties is a very serious matter. It reflects the Commission's collective belief that the target companies have committed a "knowing" violation of the Consumer Product Safety Act. It presupposes that at the time the Commission made its decision to seek civil penalties, whenever that occurred, it had sufficient evidence to support that decision. We entered discussions with you in good faith to attempt to resolve the issues regarding the CPSC subpoena and special order without any inkling that a civil penalty referral had been received by DOJ from the Commission and that you were handling that matter. Had we known that the Commission had already made a decision to seek civil penalties, the nature of our discussions would have been quite different.

We can only speculate as to whether you withheld this information intentionally in an effort to get the companies to voluntarily provide information and documents that you and/or others at DOJ would then use to file a civil penalty action. As I stated during our conversation, we believe that you were "hiding the ball." The facts do not reflect good faith efforts on DOJ's part.

In closing the telephone call, you advised me that we would receive a response to my June 13, 2002 letter and that you would contact us before filing an action against the Companies.

Very truly yours,

DUNAWAY & CROSS

A handwritten signature in black ink, appearing to read "Mac S. Dunaway", written over the typed name below.

Mac S. Dunaway

cc: Melissa Hampshire, Esq.



## U.S. Department of Justice

Office of Consumer Litigation

EXHIBIT

E

Writer's Direct Telephone:  
(202) 307-0047Facsimile:  
(202) 514-8742Mailing address:  
P.O. Box 386  
Washington, DC 20044Overnight Delivery:  
1331 Pennsylvania Avenue, N.W.  
Suite 950N  
Washington, DC 20004Via Facsimile

June 25, 2002

Mac Dunaway  
Dunaway & Cross  
Suite 800  
1700 K Street, N.W.  
Washington, D.C. 20006Re: U.S. Home and Garden, Inc., et al.

Dear Mr. Dunaway:

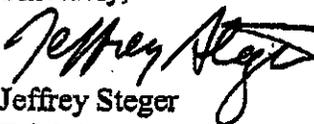
I write in response to several matters raised in your June 19 letter.

With respect to your request to the Consumer Product Safety Commission ("Commission") for Commission documents, it is my understanding that the Commission staff will be responding directly to you.

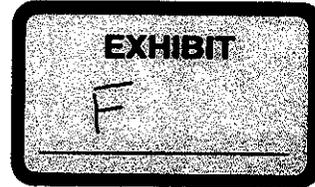
Your June 19 letter states that I said the Commission decision materials would be available through discovery in a civil penalty action. I do not believe that is accurate. What I believe I said is that if a civil penalty action was initiated, you could seek to discover such material. I should note, however, that such material might be withheld based on privilege.

The Department of Justice's Office of Consumer Litigation enforces and defends the consumer safety laws under the jurisdiction of the Commission. When the Commission refers matters to the Department, this Office decides whether and when action should be initiated or taken. As discussed, I do not share your view with respect to how this matter has been handled to date. Finally, as discussed with you on several occasions, I will contact you before filing an action involving your client.

Sincerely,

  
Jeffrey Steger  
Trial Attorney

cc: Melissa Hampshire (via facsimile)



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

Melissa Hampshire  
Attorney  
Enforcement and Information  
Office of the General Counsel

Tel: (301) 504-0980 ext. 2208  
Fax: (301) 504-0403  
Email: mhampshire@cpsc.gov

July 2, 2002

Via Facsimile and Regular Mail

Maq S. Dunaway, Esq.  
Dunaway & Cross  
Suite 800  
1700 K Street N.W.  
Washington, D.C. 20006

Dear Mr. Dunaway:

I write in response to your June 13, 2002 letter. As discussed earlier today, your letter is being treated as a Freedom of Information Act request and you will receive a response in accordance with Commission regulations.

Sincerely,

A handwritten signature in cursive script that reads "Melissa Hampshire".

Melissa Hampshire



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207  
July 02, 2002

Mac S. Dunaway  
Dunaway & Cross  
Suite 800  
1700 K Street, N.W.  
Washington, DC 20006-

RE: FOIA Request No. S-2002070031 (Weed Wizard Acquis. Easy Gardener / Commission Actions)

Dear Mr. Dunaway:

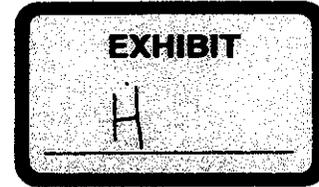
This is to acknowledge receipt of your Freedom of Information Act (FOIA) request seeking records from the Consumer Product Safety Commission.

Due to the heavy volume of FOIA requests we have received, and because of certain procedural steps we are required to take under our statute, there may be substantial delays in responding to many requests. Please be assured that every effort is being made to process each request as equitably as possible and that the records you requested which can be released will be made available to you at the earliest possible date.

If you have any questions concerning your request, feel free to contact this office at (301) 504-0785.

Sincerely,

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



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

Sandra K. Bradshaw  
Freedom of Information Officer  
Office of the Secretary

Tel: 301-504-0785, X1224  
Fax: 301-504-0127  
Email: sbradshaw@cpsc.gov

July 10, 2002

**CERTIFIED MAIL – RETURN RECEIPT**

Matthew Hall, Esq.  
Mac S. Dunaway, Esq.  
Dunaway & Cross  
1700 K Street, N.W. – Suite 800  
Washington, D.C. 20006

Re: FOIA Requests S2060074 and S2070031

Dear Mssrs. Hall and Dunaway :

This responds to your two above-captioned Freedom of Information Act (FOIA) requests seeking information from the Commission. (1) On June 11, 2002, you requested (a) all Commission directives and (b) records of Commission decisions to refer civil penalty and subpoena cases to the Department of Justice. Then, in a telephone conversation with me on June 18, 2002, Mr. Hall reduced this request to seek only information about the date when the Commission referred a civil penalty case on Weed Wizard Acquisition Corporation, *et al.* (2) On June 13, 2002, by letter to CPSC attorney Melissa Hampshire, Mr. Dunaway requested "copies of Minutes and the Record of Commission Action concerning Weed Wizard Acquisition Corporation, Robert Kassel, U.S. Home and Garden, Inc., Easy Gardener, Inc., and Ampro Industries, Inc."

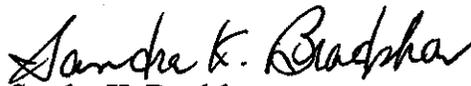
1. We have located information that is responsive to your first request (as modified). It consists of briefing materials sent from the staff to the Commission on referral of a civil penalty case and information related to the Commission's decision. However, we are withholding this information pursuant to FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure of information compiled for law enforcement purposes, to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings.

The information being withheld consists of internal staff memoranda and correspondence containing recommendations, opinions, suggestions or analyses of the Commission's technical and legal staffs. The information constitutes both pre-decisional and deliberative discussion that clearly falls within the attorney-client privilege and attorney work-product doctrine. Any factual information not covered by some other exemption is inextricably intertwined with exempt information or the disclosure of the factual information would itself expose the deliberative process. In addition, we have determined that the disclosure of certain law enforcement investigatory information responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose this information because disclosure would (1) impair the frank exchange of views necessary with respect to the law enforcement matters, and (2) prematurely reveal information used in the investigation, thereby interfering with these and other matters by disclosing the government's basis for pursuing them.

2. From the context of Mr. Dunaway's June 13 letter, we understand his second FOIA request to seek Commission Minutes or Records of Commission Actions concerning a referral to the Justice Department for enforcement of a subpoena issued to the four named companies and to Mr. Kassel. We have located no information that is responsive to this request.

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

Sincerely,

  
Sandra K. Bradshaw



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

Off (wh), Off (57a)  
chron, 2618  
cc: ogc/hampshire  
✓ DENIAL  
1464 weed wizard

Sandra K. Bradshaw  
Freedom of Information Officer  
Office of the Secretary

Tel: 301-504-0785, X1224  
Fax: 301-504-0127  
Email: sbradshaw@cpsc.gov

July 10, 2002

**CERTIFIED MAIL – RETURN RECEIPT**

Matthew Hall, Esq.  
Mac S. Dunaway, Esq.  
Dunaway & Cross  
1700 K Street, N.W. – Suite 800  
Washington, D.C. 20006

Re: FOIA Requests S2060074 and S2070031

Dear Mssrs. Hall and Dunaway :

This responds to your two above-captioned Freedom of Information Act (FOIA) requests seeking information from the Commission. (1) On June 11, 2002, you requested (a) all Commission directives and (b) records of Commission decisions to refer civil penalty and subpoena cases to the Department of Justice. Then, in a telephone conversation with me on June 18, 2002, Mr. Hall reduced this request to seek only information about the date when the Commission referred a civil penalty case on Weed Wizard Acquisition Corporation, *et al.* (2) On June 13, 2002, by letter to CPSC attorney Melissa Hampshire, Mr. Dunaway requested “copies of Minutes and the Record of Commission Action concerning Weed Wizard Acquisition Corporation, Robert Kassel, U.S. Home and Garden, Inc., Easy Gardener, Inc., and Ampro Industries, Inc.”

1. We have located information that is responsive to your first request (as modified). It consists of briefing materials sent from the staff to the Commission on referral of a civil penalty case and information related to the Commission’s decision. However, we are withholding this information pursuant to FOIA Exemptions 5 and 7(A), 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(A) provides for the withholding from disclosure of information compiled for law enforcement purposes, to the extent that the production of such information could reasonably be expected to interfere with enforcement proceedings.

Page 2

Matthew Hall, Esq.  
Mac S. Dunaway, Esq.

The information being withheld consists of internal staff memoranda and correspondence containing recommendations, opinions, suggestions or analyses of the Commission's technical and legal staffs. The information constitutes both pre-decisional and deliberative discussion that clearly falls within the attorney-client privilege and attorney work-product doctrine. Any factual information not covered by some other exemption is inextricably intertwined with exempt information or the disclosure of the factual information would itself expose the deliberative process. In addition, we have determined that the disclosure of certain law enforcement investigatory information responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose this information because disclosure would (1) impair the frank exchange of views necessary with respect to the law enforcement matters, and (2) prematurely reveal information used in the investigation, thereby interfering with these and other matters by disclosing the government's basis for pursuing them.

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

Sincerely,



Sandra K. Bradshaw

# DUNAWAY & CROSS

A PROFESSIONAL CORPORATION

SUITE 800

1700 K STREET, N.W.

WASHINGTON, D.C. 20006

(202) 862-9700

FAX (202) 862-9710

June 13, 2002

MAC S. DUNAWAY

GARY E. CROSS

MATTHEW F. HALL

\* NOT ADMITTED IN D.C.

RAYMOND PHILIP SHAFER

COUNSEL

Via Email, Facsimile and Regular Mail

Ms. Melissa V. Hampshire, Esq.  
Enforcement and Information Division  
Office of General Counsel  
U.S. Consumer Product Safety Commission  
Washington, D.C. 20207

Re: Weed Wizard Acquisition Corporation, U.S. Home and Garden, Inc., Easy Gardener, Inc., Ampro Industries, Inc.

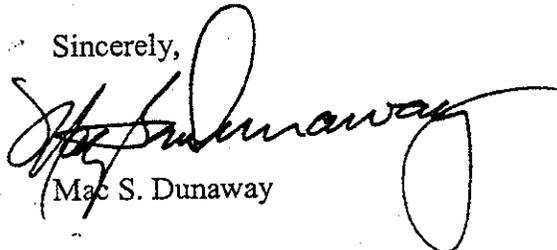
Dear Ms. Hampshire:

This letter is addressed to you as the representative of the Consumer Product Safety Commission ("CPSC" or "Commission") during our discussions with the Mr. Jeffrey Steger, Trial Attorney of the Office of Consumer Litigation, U.S. Department of Justice (DoJ), concerning the referral to DoJ for enforcement of the CPSC's Special Order and Subpoena (Subpoena) issued to Robert Kassel and the above-referenced companies.

As you should be aware, we have sought, but been denied, copies of any Commission decisions and actions regarding this matter and these companies, notwithstanding the fact that the Commission's own regulations, 16 CFR 1000.6, provide that "[C]opies of Minutes or of a Record of Commission Action ... may be examined in the reading room at Commission headquarters." The Commission's refusal to provide this information is a denial of due process.

Please provide, by return fax, copies of Minutes and the Record of Commission Action concerning Weed Wizard Acquisition Corporation, Robert Kassel, U.S. Home and Garden, Inc., Easy Gardener, Inc., and Ampro Industries, Inc.

Sincerely,

  
Mac S. Dunaway

c: Jeffrey Steger

52070031



JUN 20 2002



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

FREEDOM OF INFORMATION ACT (FOIA)  
Request for Information

Date: June 11, 2002 Received By: \_\_\_\_\_

REQUESTER: Matthew Hall  
FIRM: NEWARK AT+ CROSS  
ADDRESS: 1700 K Street, NW  
SUITE 800  
WASHINGTON, DC 20006  
Telephone: (202) 862-9700

DOCUMENTS REQUESTED: For the past 30 months, I request  
(1) All Directives issued pursuant to the Directives Program (16 CFR 1000.13)  
Record of  
(2) Commission decisions ~~and orders~~ (possibly called "minutes") to refer  
matters to the U.S. Justice Department for civil penalty enforcement  
or subpoena / special order enforcement

APIC  
O.S. Hall  
(Some will  
be restricted)

Obtain the following information from the requester:  
Have you submitted a written request for the records? This is it.  
We want to avoid duplicate work and written requests are given priority (by our regulations) and are processed more efficiently.  
Will you pay any fees incurred by processing your request? Yes  
Can we sent the materials by MAIL? \_\_\_\_\_  
Or Call for pick-up at our office?   
Please indicate the purpose of your organization or your need for the requested information for the purposes of assessing any applicable fee waivers: \_\_\_\_\_

Fees charges are different for commercial use requesters, non-commercial educational or scientific institutions, the news media or "others," including consumers and plaintiff attorneys. The Commission's FOIA regulations at 16 C.F.R. § 1015.9 provide for the charging of fees resulting from the processing of FOIA requests. The FOIA regulations and fee schedule allow for the charges for file search time at \$12.00 an hour for clerical personnel and \$19.60 an hour for professional personnel, \$19.60 an hour for review time to determine whether records were permitted to be withheld, \$0.10 a page for duplication services and for computerized records: central processing unit (CPU) time, \$0.32 a second, \$10.00 for 1,000 lines printed. If you have questions, please contact the Commission's Office of the Secretary Freedom of Information Division by letter, facsimile (301) 504-0127, or call (301) 504-0785.

52060074



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

Todd A. Stevenson  
Director  
Office of the Secretary

( 13 )  
Tel: 301-504-0785X1239  
Fax: 301-504-0127  
Email: tstevenson@cpsc.gov

October 28, 2002

Paul J. Komyatte  
Gilbert, Frank, Ollanik, & Komyatte  
5400 Ward Road • Building IV  
Arvada, CO 80002-1819

Re: FOIA Request S2030039: Pressure Washers / Commission Staff Correspondence,  
Complaints, Reported Incidents or Investigations of Incidents and Corrective Action or Recall  
Files / File Search 1982 to Present

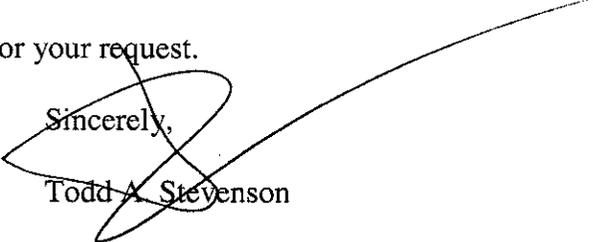
Dear Mr. Komyatte:

We have completed the processing of the materials that were previously withheld from you by our letter dated July 26, 2002 and the subject of your appeal of your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission).

The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are from the Commission's Office of Compliance files ID830062 and CA832840/ID830061, and include correspondence, notes and documents and briefing memoranda from Commission lawyers to the Commission. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

This completes the processing of your request.

Sincerely,

  
Todd A. Stevenson

Enclosures

GILBERT, FRANK, OLLANIK & KOMYATTE, P. C.  
ATTORNEYS AND COUNSELORS AT LAW

13

ENGINEERING

ANDREW J. KIM, M.E.

JAMES L. GILBERT \*  
STUART A. OLLANIK \*\*  
PAUL J. KOMYATTE \*\*\*  
CARRIE R. FRANK

Also admitted in Arizona\*  
Also admitted in Alaska and Missouri \*\*  
Also admitted in Illinois \*\*\*

August 20, 2002

0888  
PRE

**Via Certified Mail- Return Receipt Requested**

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

REC AUG 27 A 11:36

**RE: FOIA Request S2030039: Pressure Washers/Corrective Action or Recall Files ID830062 and CA832840/ID830061**

Dear FOIA Appeal/General Counsel/Office of the Secretary:

I hereby respectfully appeal the decision of the Consumer Product Safety Commission (CPSC) in response to my Freedom of Information Act Request. The CPSC decision that I am appealing is reflected in the July 26, 2002 letter from Todd A. Stevenson to me, a copy of which I am attaching hereto as Exhibit A.

First, it appears that the basis for withholding the records described in the second paragraph of Mr. Stevenson's letter is that the withheld materials allegedly contain proprietary and/or confidential information. I specifically take issue with that determination because many, if not most, of the products at issue in my FOIA request are older models that in all likelihood are no longer being manufactured. It is difficult to see how information relating to these products could constitute a trade secret or other confidential commercial information that would "give a substantial commercial advantage to a competitor" (as Mr. Stevenson suggests). Accident or safety information pertaining to models of products that are no longer being manufactured is not the type of information that would provide competitive advantages.

Second, I specifically appeal the denial of the production of records described in the third paragraph of Mr. Stevenson's letter to the extent any such records were previously supplied to any manufacturers, such as Sears Roebuck & Co. If those

FOIA Appeal, General Counsel

8/20/2002

Page 2

materials have previously been produced outside of the CPSC, then the basis for withholding them in response to my FOIA request would appear to lack merit.

Should you have any questions regarding this letter, please contact me at the above address or number.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul J. Komyatte", written in a cursive style.

Paul J. Komyatte

PJK/bse



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

Todd A. Stevenson  
Director  
Office of the Secretary

Tel: 301-504-0785X1239  
Fax: 301-504-0127  
Email: tstevenson@cpsc.gov

July 26, 2002

CERTIFIED MAIL

Paul J. Komyatte  
Gilbert, Frank, Ollanik, & Komyatte  
5400 Ward Road • Building IV  
Arvada, CO 80002-1819

Re: FOIA Request S2030039: Pressure Washers / Corrective Action or Recall Files ID830062  
and CA832840/ID830064

Dear Mr. Komyatte:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). The remaining records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed. The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are from the Commission's Office of Compliance law enforcement investigatory files designated ID830062 and CA832840/ID830064, and include correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determinations that the products presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

We must withhold the other records from each file pursuant to the Exemptions 3, 4, 5, and 7(E), 5 U.S.C. §§ 552(b)(3), (b)(4), (b)(5), and (b)(7)(E), and sections 6(a)(2) and 25(c) of the CPSA, 15 U.S.C. §§ 2055(a)(2) and 2074(c). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to these records, we are relying in part on section on CPSA section 6(a)(2) to withhold files that contain proprietary and confidential information. We must withhold pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under

Taylor v. Sears



TL107866

CPSC Hotline: 1-800-638-CPSC(2772) ★ CPSC's Web Site: <http://www.cpsc.gov>

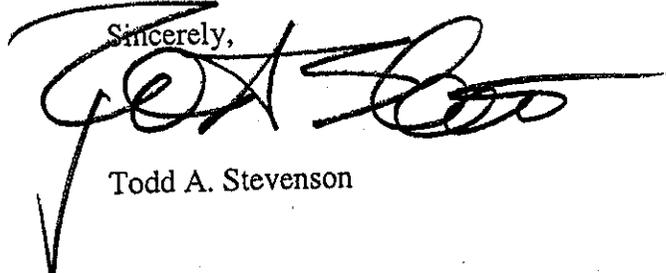
Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. The protected records are portions of file CA832840/ID830061 that would reveal confidential sales and financial records from pages 17 and 18.

Certain internal staff memoranda and analyses, including the staff's preliminary determination forms, are also being withheld from both files pursuant to FOIA Exemptions 5, and 7(E). Exemption 5 provides for the withholding from disclosure of inter-agency and intra-agency memoranda which would not be available by law to a party other than an agency in litigation with the agency. Exemption 7(E) provides for the withholding from disclosure records or information compiled for law enforcement purposes, to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement circumvention of the law. The staff memoranda and analyses being withheld are both predecisional and deliberative, consisting of recommendations, opinions, suggestions and analyses. Any factual materials in the memoranda not covered by some other exemption are inextricably intertwined with exempt materials or the disclosure of the factual materials would itself expose the deliberative process. We have determined that the disclosure of the law enforcement investigatory records responsive to your request would be contrary to the public interest. It would not be in the public interest to disclose these materials because disclosure would (1) impair the frank exchange of views necessary with respect to such matters, and (2) reveal the techniques, guidelines and strategies utilized by the investigative and legal staff in developing the information regarding this investigation and other on-going investigations, which if disclosed would significantly risk circumvention of the statutes and regulations that the Commission administers. .

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

Processing this request, performing the file searches and preparing the information, cost the Commission \$150.00. In this instance, we have decided to waive all of the charges.

Sincerely,



Todd A. Stevenson

Enclosures



0888  
PRE

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

Todd A. Stevenson  
Director  
Office of the Secretary

Tel: 301-504-0785X1239  
Fax: 301-504-0127  
Email: tstevenson@cpsc.gov

July 26, 2002

CERTIFIED MAIL

Paul J. Komyatte  
Gilbert, Frank, Ollanik, & Komyatte  
5400 Ward Road • Building IV  
Arvada, CO 80002-1819

Re: FOIA Request S2030039: Pressure Washers / Corrective Action or Recall Files ID830062  
and CA832840/ID830067

Dear Mr. Komyatte:

Thank you for your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission). The remaining records from the Commission files responsive to your request have been processed and copies of the releasable responsive records are enclosed. The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are from the Commission's Office of Compliance law enforcement investigatory files designated ID830062 and CA832840/ID830067, and include correspondence, notes and documents. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determinations that the products presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

We must withhold the other records from each file pursuant to the Exemptions 3, 4, 5, and 7(E), 5 U.S.C. §§ 552(b)(3), (b)(4), (b)(5), and (b)(7)(E), and sections 6(a)(2) and 25(c) of the CPSA, 15 U.S.C. §§ 2055(a)(2) and 2074(c). FOIA Exemption 3 provides for the withholding from disclosure of matters that are specifically exempted from disclosure by another statute. In applying FOIA Exemption 3 to these records, we are relying in part on section on CPSA section 6(a)(2) to withhold files that contain proprietary and confidential information. We must withhold pursuant to Exemptions 3 and 4 and section 6(a)(2) of the CPSA. Section 6(a)(2) prohibits the Commission from disclosing information that is exempt from disclosure under

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

Processing this request, performing the file searches and preparing the information, cost the Commission \$150.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Enclosures

GILBERT, FRANK, OLLANIK & KOMYATTE, P. C.  
ATTORNEYS AND COUNSELORS AT LAW

JAMES L. GILBERT \*  
STUART A. OLLANIK \*\*  
PAUL J. KOMYATTE \*\*\*  
CARRIE R. FRANK

Also admitted in Arizona \*  
Also admitted in Alaska and Missouri \*\*  
Also admitted in Illinois \*\*\*

ENGINEERING

ANDREW J. KIM, M.E.

February 22, 2002

FOIA Request  
Office of the Secretary  
U.S. Consumer Products Safety Commission  
Washington, D.C. 20207

RE: *Freedom of Information request for materials relating to electric pressure washers; CPSC document #5069; Task #990614HCC2508; GFCI devices in pressure washers; and related documents.*

Dear Office of the Secretary/FOIA request:

I am one of the attorneys representing Linda Taylor, the mother of the deceased Nicholas Taylor and the wife of the deceased Gregory Taylor, who were fatally electrocuted in an accident involving a Craftsman electric pressure washer on June 6, 1999. Pursuant to the United States Freedom of Information Act, I hereby request copies of the following materials and documents:

1. Documents reflecting incidents in which anyone has been electrocuted while using or coming into contact with an electric pressure washer of any make or model. 0888
2. All documents related to or discussing in any way the electrocution deaths of Gregory Taylor and Nicholas Taylor on June 6, 1999.
3. All documents relating to any investigation conducted by or on behalf of the Consumer Product Safety Commission ("CPSC") into the June 6, 1999 accident in which Gregory Taylor and Nicholas Taylor were electrocuted.
4. All documents related to Task #990614HCC2508 or IDI#990614HCC2508 or any investigation or work undertaken by the CPSC identified by the number 990614HCC2508. Copies of documents referencing this specific Task and IDI are submitted herewith for your reference.

5400 Ward Road, Building IV • Arvada, Colorado 80002-1819  
303-431-1111 • Fax: 303-431-1633

S-2030039

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D.S.

5. All documents reflecting the CPSC efforts to get a requirement included in the National Electrical Code requiring electric pressure washers to have a factory installed Ground Fault Circuit Interrupter ("GFCI"). ERHRC
6. All documents reflecting the CPSC's efforts to get a requirement included in any applicable Underwriters Laboratory ("UL") standard requiring electric pressure washers to have a factory installed GFCI device.
7. All documents relating to or serving as the basis for CPSC document #5069, the warning relating to pressure washers. A copy of this document is submitted herewith for your reference.
8. All documents sent by the CPSC to either Sears, Roebuck & Co., Generac Corporation, Generac Portable Products, Inc. or Generac Portable Products, L.L.C. relating to or discussing electric pressure washers or GFCIs.
9. All documents sent to you by any of the following companies with respect to the June 6, 1999 electrocution referred to above: Sears, Roebuck and Co., Generac Corporation, Generac Power Systems, Inc., Generac Portable Products, Inc. and/or Generac Portable Products, L.L.C. ERHRC  
A  
ERC/S
10. All documents relating to or discussing electric pressure washers manufactured by or sold by Sears, Roebuck & Co., Generac Corporation, Generac Portable Products, Inc. or Generac Portable Products, L.L.C. This includes all pressure washers sold under the Craftsman label.
11. All documents relating specifically to the 1300 psi Craftsman Electric Pressure Washer bearing a Sears model number of 760240 or 760241.

For your ease of reference, I am attaching copies of CPSC document #5069. I am also attaching copies of an accident investigation request form relating to the June 6, 1999 electrocution deaths as well as an internal memo from "Bill" to Kimberly Ault with respect to the same electrocution death incident. I am also enclosing documents that reference the Task and/or IDI #990614HCC2508.

I am seeking any types of records reflecting the particular Craftsman Electric Pressure Washer referred to above or any electric pressure washers manufactured by the companies mentioned above. In particular, I am seeking any and all documents relating to the June 6, 1999 electrocution deaths of Gregory Taylor and Nicholas Taylor. With respect to general documentation relating to pressure washers and to CPSC document #5069, I am requesting that files be searched from a period of 1982 to the present date.

I am willing to pay any reasonable fees that are incurred in the processing of this request. I am also available to speak with a representative or employee of the CPSC to assist in the processing of this request. If anyone has any questions regarding the particular types of documents requested, please have them call me at the number above. If it is anticipated that search fees will be greater than \$500, please call me in advance so that we can discuss ways of streamlining the search.

Sincerely,

A handwritten signature in black ink that reads "Paul J. Komyatte". The signature is written in a cursive, slightly slanted style.

Paul J. Komyatte

PJK:sp  
Encl.



0888  
PRE

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

Todd A. Stevenson  
Director  
Office of the Secretary

Tel: 301-504-0785X1239  
Fax: 301-504-0127  
Email: tstevenson@cpsc.gov

October 28, 2002

Paul J. Komyatte  
Gilbert, Frank, Ollanik, & Komyatte  
5400 Ward Road • Building IV  
Arvada, CO 80002-1819

Re: FOIA Request S2030039: Pressure Washers / Commission Staff Correspondence,  
Complaints, Reported Incidents or Investigations of Incidents and Corrective Action or Recall  
Files / File Search 1982 to Present

Dear Mr. Komyatte:

We have completed the processing of the materials that were previously withheld from you by our letter dated July 26, 2002 and the subject of your appeal of your Freedom of Information Act (FOIA) request seeking information from the U.S. Consumer Product Safety Commission (Commission).

The enclosed records include file information generated by the Commission itself or its contractors for regulatory or enforcement purposes. These records are from the Commission's Office of Compliance files ID830062 and CA832840/ID830061, and include correspondence, notes and documents and briefing memoranda from Commission lawyers to the Commission. The Commission has established management systems under which supervisors are responsible for reviewing the work of their employees or contractors. The file information materials are final and have been prepared and accepted by the Commission's staff under such review systems. The Commission believes that it has taken reasonable steps to assure the accuracy of the information. Please note that the Commission's staff, not the Commissioners themselves, made the preliminary determination that this product presented a substantial risk of injury to the public as defined by the Consumer Product Safety Act.

~~This completes the processing of your request.~~

Sincerely,

Todd A. Stevenson

Enclosures



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

Melissa Hampshire  
Acting General Counsel

Phone 301-504-0980  
Fax 301-504-0403

September 11, 2002

Paul J. Komyatte, Esq.  
Gilbert, Frank, Ollanik & Komyatte, P.C.  
5400 Ward Road, Building IV  
Arvada, Colorado 80002-1819

Re: FOIA Appeal 2030039 on Sears pressure washers

Dear Mr. Komyatte:

By letter dated August 20, 2002 (received on August 27), you appealed the decision of the Commission's Freedom of Information Officer to withhold information responsive to your Freedom of Information Act (FOIA) request on pressure washers sold by Sears, Roebuck & Company.

Under authority delegated to me by the Commission, 16 C.F.R. 1015.7, I have reviewed your appeal. I affirm the Freedom of Information Officer's decision to withhold one responsive document, based on FOIA Exemptions 5 and 7(E), 5 U.S.C. §§ 552(b)(5) and (7)(E). The FOI Officer has reconsidered her position to withhold other responsive information and has begun processing it for possible future disclosure. I discuss these decisions below.

FOIA Exemption 5 provides for the withholding of certain inter-agency and intra-agency documents and incorporates the deliberative process privilege. This privilege protects advice, recommendations, and opinions that are part of the deliberative, consultative, and decision-making processes of the agency. Although this privilege applies only to the opinions or recommendations in a document and not to factual information, facts are withheld here because they are inextricably intertwined with the exempt portions. Exemption 5 also incorporates the attorney work-product doctrine, which protects documents prepared by an attorney, or someone supervised by an attorney, in anticipation of litigation. The information being withheld pursuant to FOIA Exemption 5 is the staff's preliminary hazard determination.

FOIA Exemption 7(E) provides for the withholding of investigatory information compiled for law enforcement purposes to the extent that the production of such law enforcement information would disclose techniques and procedures for law enforcement investigations or prosecutions. This exemption also permits the withholding of such information if the disclosure of guidelines for law enforcement investigation or prosecutions could reasonably be expected to

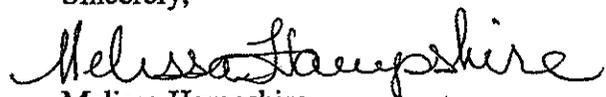
risk circumvention of the law. The staff's preliminary hazard determination is being withheld under FOIA Exemption 7(E) (as well as under Exemption 5).

The FOI Officer withheld the remaining responsive information under FOIA Exemptions 3, 4, 5, and 7, 5 U.S.C. §§ 552(b)(3)(4)(5) and (7). She is now processing it by providing the manufacturer with the opportunity to comment on its possible disclosure. If some or all of the remaining responsive information can be disclosed after the processing, you will receive it as soon as possible. If some or all of it cannot be disclosed after the processing, you will have the opportunity to appeal (in a new appeal) any information that is withheld. For now, I am withholding the remaining responsive information under FOIA Exemptions 3 and 4.

Exemption 3 of the FOIA provides for withholding information that is specifically exempted from disclosure by another statute. In applying Exemption 3 to the withheld information, I am relying on sections 6(a) and 6(b) of the Consumer Product Safety Act. 15 U.S.C. §§ 2055(a) and (b). Section 6(a)(2), which incorporates FOIA Exemption 4, expressly prohibits the disclosure of information reported to or otherwise obtained by the Commission which contains or relates to trade secrets or other confidential commercial information. As discussed above, the Commission has not yet completed the processing of the remaining responsive information in accordance with section 6(a). Section 6(b)(1) requires that, before disclosing information that would enable the public to identify the manufacturer or private labeler of a consumer product, the Commission "shall take reasonable steps to assure . . . that [the] information . . . is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the [CPSA]." The Commission has not yet taken the reasonable steps required by section 6(b) that might permit disclosure of the remaining responsive information.

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

Sincerely,



Melissa Hampshire  
Acting General Counsel

GILBERT, FRANK, OLLANIK & KOMYATTE, P. C.  
ATTORNEYS AND COUNSELORS AT LAW

JAMES L. GILBERT \*  
STUART A. OLLANIK \*\*  
PAUL J. KOMYATTE \*\*\*  
CARRIE R. FRANK

Also admitted in Arizona \*  
Also admitted in Alaska and Missouri \*\*  
Also admitted in Illinois \*\*\*

ENGINEERING

ANDREW J. KIM, M.E.

0888  
PRE

August 20, 2002

**Via Certified Mail- Return Receipt Requested**

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

REC'D AUG 21 A 11:30  
COMMUNICATIONS SECTION

**RE: FOIA Request S2030039: Pressure Washers/Corrective Action or Recall Files ID830062 and CA832840/ID830061**

Dear FOIA Appeal/General Counsel/Office of the Secretary:

I hereby respectfully appeal the decision of the Consumer Product Safety Commission (CPSC) in response to my Freedom of Information Act Request. The CPSC decision that I am appealing is reflected in the July 26, 2002 letter from Todd A. Stevenson to me, a copy of which I am attaching hereto as Exhibit A.

First, it appears that the basis for withholding the records described in the second paragraph of Mr. Stevenson's letter is that the withheld materials allegedly contain proprietary and/or confidential information. I specifically take issue with that determination because many, if not most, of the products at issue in my FOIA request are older models that in all likelihood are no longer being manufactured. It is difficult to see how information relating to these products could constitute a trade secret or other confidential commercial information that would "give a substantial commercial advantage to a competitor" (as Mr. Stevenson suggests). Accident or safety information pertaining to models of products that are no longer being manufactured is not the type of information that would provide competitive advantages.

Second, I specifically appeal the denial of the production of records described in the third paragraph of Mr. Stevenson's letter to the extent any such records were previously supplied to any manufacturers, such as Sears Roebuck & Co. If those

8/20/2002

Page 2

materials have previously been produced outside of the CPSC, then the basis for withholding them in response to my FOIA request would appear to lack merit.

Should you have any questions regarding this letter, please contact me at the above address or number.

Sincerely,

A handwritten signature in black ink that reads "Paul J. Komyatte". The signature is written in a cursive, somewhat stylized font with a large, looping flourish at the end.

Paul J. Komyatte

PJK/bse



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

Todd A. Stevenson  
Director  
Office of the Secretary

Tel: 301-504-0785X1239  
Fax: 301-504-0127  
Email: tstevenson@cpsc.gov

July 26, 2002

CERTIFIED MAIL

Paul J. Komyatte  
Gilbert, Frank, Ollanik, & Komyatte  
5400 Ward Road • Building IV  
Arvada, CO 80002-1819

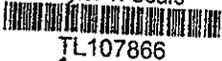
Re: FOIA Request S2030039: Pressure Washers / Corrective Action or Recall Files ID830062  
and CA832840/ID830061

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Taylor v. Sears



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CPSC Hotline: 1-800-638-CPSC(2772) ★ CPSC's Web Site: <http://www.cpsc.gov>





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

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Todd A. Stevenson  
Director  
Office of the Secretary

Tel: 301-504-0785X1239  
Fax: 301-504-0127  
Email: tstevenson@cpsc.gov

July 26, 2002

CERTIFIED MAIL

Paul J. Komyatte  
Gilbert, Frank, Ollanik, & Komyatte  
5400 Ward Road • Building IV  
Arvada, CO 80002-1819

Re: FOIA Request S2030039: Pressure Washers / Corrective Action or Recall Files ID830062  
and CA832840/ID830067

Dear Mr. Komyatte:

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Exemption 4 of the FOIA. That exemption protects trade secrets and confidential commercial information directly related to a firm's business that the firm has not made public and whose disclosure could give a substantial commercial advantage to a competitor. The protected records are portions of file CA832840/ID830061 that would reveal confidential sales and financial records from pages 17 and 18.

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

Processing this request, performing the file searches and preparing the information, cost the Commission \$150.00. In this instance, we have decided to waive all of the charges.

Sincerely,

Todd A. Stevenson

Enclosures