



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

October 28, 2004

Eric A. Rubel, Esquire
Arnold & Porter
Attorneys for Respondent Sears
555 Twelfth St, NW
Washington, DC 20004-1206

CPSC 05-C0002
Sears, Roebuck and Co.
a corporation

Dear Mr. Rubel:

This is to inform you that the Consumer Product Safety Commission has accepted in final the Settlement Agreement and Order in the above entitled matter.

Payment of the civil penalty required by the ORDER shall be made according to the terms of the ORDER. A copy of the final ORDER is enclosed. Please pay by check made payable to the UNITED STATES TREASURY and mail your payments to Nick Marchica, Acting Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207.

Sincerely,

Todd A. Stevenson
Secretary
Consumer Product Safety Commission

Enclosure

cc: Dennis C. Kacoyanis, Trial Attorney



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

October 4, 2004

Eric A. Rubel, Esquire
Arnold & Porter
Attorneys for Respondent Sears
Roebuck and Co.
555 Twelfth St, NW
Washington, DC 20004-1206

CPSC 05-C0002
Sears, Roebuck and Co.
A corporation

Dear Mr. Rubel:

You are hereby notified that the Consumer Product Safety Commission has provisionally accepted the Settlement Agreement and Order in the matter of Sears, Roebuck and Co., a corporation CPSC 05-C0002.

The Commission has placed the Agreement on the public record and shall announce provisional acceptance of the Agreement in the Federal Register. The Commission will receive and consider any comments or views concerning the Agreement that may be filed by interested persons within 15 days following announcement in the Federal Register.

The Commission may withdraw its acceptance of the Agreement if comments or views submitted disclose facts or considerations which indicate that the Agreement is inappropriate, improper or inadequate. Unless the Commission orders otherwise, the Agreement will be considered finally accepted by the Commission on the 16th calendar day after the date of the announcement in the Federal Register.

Sincerely,

A handwritten signature in black ink that reads "Todd A. Stevenson". The signature is written in a cursive style with a large, sweeping initial "T".

Todd A. Stevenson
Secretary
Consumer Product Safety Commission

Enclosure

cc: Dennis C. Kacoyanis, Trial Attorney

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
Sears, Roebuck and Co.,)	CPSC DOCKET NO. 05-C0002
)	
a corporation.)	
)	
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)	

SETTLEMENT AGREEMENT AND ORDER

1. This Settlement Agreement is made by and between the staff ("the staff") of the U.S. Consumer Product Safety Commission ("the Commission") and Sears, Roebuck and Co. ("Sears" or "Respondent"), a corporation, in accordance with 16 C.F.R. § 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"). This Settlement Agreement settles the staff's allegations set forth below.

I. THE PARTIES

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

3. Sears is a corporation organized and existing under the laws of the State of New York with its principal corporate offices located at 3333 Beverly Road, Hoffman Estates, IL 60179.

II. ALLEGATIONS OF THE STAFF

4. Between January 1995 and January 2002, Murray, Inc., 219 Franklin Road, Brentwood, TN 37027, manufactured for Sears approximately 36,000 rear-engine riding lawnmowers, model numbers, 502.270210, 502.270211, 502.256210, 502.256220, 502.251250, 536.270211, and 536.270212 (“the subject rear-engine riding lawnmowers” or “the lawnmowers”). Sears sold the lawnmowers under the Craftsman label.

5. The subject rear-engine riding lawnmowers were sold to consumers for use in or around a permanent or temporary household or residence and are, therefore, “consumer products” as defined in section 3(a)(1)(i) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2052(a)(1)(i). Respondent is a “retailer” and a “private labeler” of the subject rear-engine riding lawnmowers, which were “distributed in commerce” as those terms are defined in sections 3(a)(6), (7), (11), and (12) of the CPSA, 15 U.S.C. §§ 2052(a)(6), (7), (11), and (12).

6. The subject rear-engine riding lawnmowers’ fuel tanks can crack and leak fuel and the leaking fuel can ignite, posing a burn or fire hazard to consumers.

7. From 1999 through 2001, Sears received approximately 1,600 reports of fuel leakage and fuel tank cracking associated with the subject rear-engine riding lawnmowers. Sears replaced the fuel tanks on the lawnmowers.

8. On four occasions between July 1999 and September 2001, Sears forwarded to Murray reports of consumers alleging fuel tank leaks on the subject rear-engine riding lawnmowers. During this period, Sears and Murray communicated about the fuel tanks leaking.

9. On or about July 15, 2000 and on or about August 31, 2000 the Commission's National Injury Information Clearinghouse ("Clearinghouse") forwarded to Sears two reports of consumers alleging fuel tank leaks on the subject rear-engine riding lawnmowers. In both instances, the Clearinghouse advised Sears that the forwarded reports, either alone or with other information Sears had or may later obtain on the lawnmowers, may reasonably support the conclusion that the product contained a defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death. If this were the case, the Clearinghouse instructed Sears to report under section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

10. Despite being aware of the information set forth in paragraphs 4 through 9 above, Sears never reported to the Commission.

11. Sears obtained information which reasonably supported the conclusion that the subject rear-engine riding lawnmower as described in paragraph 4 above contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report to the Commission as required by sections 15(b)(2) and(3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3).

12. By failing to immediately inform the Commission as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), Sears violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

13. Sears committed this failure to report "knowingly" as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), thus,

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

III. SEARS' RESPONSE

14. Sears contests and denies the staff's allegations set forth above in this Settlement Agreement. Sears enters into this Settlement Agreement and Order to resolve this claim without the expense and distraction of litigation. By agreeing to this settlement, Sears does not admit any of the allegations set forth above in this Settlement Agreement, or any fault, liability or statutory or regulatory violation.

15. Sears provided all of the reported incidents to Murray—the company that had designed and manufactured the subject rear-engine riding lawnmowers—and Sears reasonably expected Murray to assess whether, based upon all of the information available to Murray, CPSC should be notified and/or a corrective action should be undertaken.

16. Sears cooperated in the voluntary recall of the subject rear-engine riding lawnmowers.

IV. AGREEMENT OF THE PARTIES

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

18. This Agreement is entered into for settlement purposes only and does not constitute an admission by Sears that it has violated the law or a determination by the Commission of any disputed issue of law or fact.

19. In settlement of the staff's allegations, Sears agrees to pay a civil penalty in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) as set forth in the incorporated Order.

20. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the CPSA and the underlying regulations, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access of Justice Act.

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

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

23. Sears' full and timely payment to the United States treasury of a civil penalty in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) resolves the allegations in paragraphs 4-13 above with respect to (a) Sears; (b) any Sears parent, subsidiary, affiliate, division, or related entity;

(c) any shareholder, director, officer, employee, agent or attorney of any entity referenced in (a) or (b) above; and (d) any successor, heir, or assign of any entity referenced in (a), (b), or (c) above.

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

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

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

RESPONDENT, SEARS, ROEBUCK AND CO.

Dated: 9/8/04

By: Pamela R. Schneider
Pamela R. Schneider
Vice President, Deputy General Counsel
Sears, Roebuck and Co.
3333 Beverly Road
Hoffman Estates, IL 60179

Dated: 9/13/04

By: E. A. Rubel
Eric A. Rubel, Esquire
Arnold & Porter
Attorneys for Respondent Sears, Roebuck and Co.
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

COMMISSION STAFF

Nicholas Marchica
Acting Assistant Executive Director
Office of Compliance
Consumer Product Safety Commission
Washington, D.C. 20207-0001

Eric L. Stone, Director
Legal Division
Office of Compliance

Dated: 09/14/04

By: Dennis C. Kacoyanis
Dennis C. Kacoyanis, Trial Attorney
Legal Division
Office of Compliance

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
Sears, Roebuck, and Co.,) CPSC DOCKET NO. 05-C0002
a corporation.)
_____))

ORDER

Upon consideration of the Settlement Agreement entered into between Respondent Sears, Roebuck and Co., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Respondent Sears, Roebuck and Co.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

ORDERED that the Settlement Agreement be, and hereby is, accepted; and it is

FURTHER ORDERED that upon final acceptance of the Settlement Agreement and Order, Sears, Roebuck and Co. shall pay to the Commission a civil penalty in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting the attached Settlement Agreement. Upon the failure of Respondent Sears, Roebuck and Co. to pay or to make untimely pay the civil penalty, interest shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 4th date of October, 2004.

BY ORDER OF THE COMMISSION



TODD A. STEVENSON, SECRETARY
Consumer Product Safety Commission

Finally accepted and Final Order issued on the 28th day of October, 2004.

BY ORDER OF THE COMMISSION



TODD A. STEVENSON, SECRETARY
Consumer Product Safety Commission