

UNITED STATES GOVERNMENT

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

MEMORANDUM

RECEIVED-OFFICE  
OF THE SECRETARY

February 9, 1988

TO : The Commission FEB 10 12:02

Through: Sadye E. Dunn, Secretary *SD*  
Leonard DeRubeis, Executive Director *LD*

FROM : James V. Lacy, General Counsel *JVL*  
Stephen Lemberg, Asst. General Counsel  
Harleigh Ewell, Attorney, GC *HE*

SUBJECT: Lawn Darts Options -- VOTE SHEET

This vote sheet concerns the attached staff briefing package that contains additional information about lawn darts that has become available since the publication of the advance notice of proposed rulemaking ("ANPR") on October 20, 1987, and discusses options available to the Commission to address children's deaths and injuries that occur as a result of children playing with lawn darts.

Please indicate your vote on the following options.

I. THE STAFF IS DIRECTED TO CONTINUE THE RULEMAKING PROCESS BY DEVELOPING A NOTICE OF PROPOSED RULEMAKING TO BAN ALL LAWN DARTS AND SIMILAR TOYS.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

II. THE STAFF IS DIRECTED TO CONTINUE THE RULEMAKING PROCESS BY DEVELOPING A DRAFT NOTICE OF PROPOSED RULEMAKING TO MANDATE THE FIVE ACTIONS THE CPSC PREVIOUSLY HAS RECOMMENDED TO INDUSTRY.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

III. THE STAFF IS DIRECTED TO CONTINUE TO ENFORCE THE CURRENT FHSA PROVISIONS ON LAWN DARTS (ban and exemption).

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

IV. THE STAFF IS DIRECTED TO CONTINUE TO WORK WITH INDUSTRY AND TO MONITOR INDUSTRY COMPLIANCE WITH THE VOLUNTARY ACTIONS RECOMMENDED TO INDUSTRY REPRESENTATIVES AT THE JULY 17, 1987, MEETING.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

V. THE STAFF IS DIRECTED TO REQUEST THAT THE INDUSTRY VOLUNTARILY STOP SALE IF THE COMMISSION ISSUES A PROPOSAL TO BAN ALL LAWN DARTS.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

VI. THE STAFF IS DIRECTED TO MONITOR THE VOLUNTARY STANDARD DEVELOPMENT PROCESS OF THE INDUSTRY.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

VII. OTHER (please specify).

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Attachment

Comments/Instructions:

10-17

## Memorandum

FEB 8 1988

TO: The Commission

THROUGH: Sadye E. Dunn, Director, Office of the Secretary *SDunn*THROUGH: James V. Lacy, General Counsel *JV Lacy*THROUGH: Leonard DeFiore, Executive Director *LD*THROUGH: Douglas L. Noble, Director *DLS*

Office of Program Management and Budget

THROUGH: Carl Blechschmidt, Program Manager, Office of  
Program Management and Budget *awb*FROM: Elaine A. Tyrrell, Project Manager, Children's and Recreational  
Products Program, Office of Program Management and Budget and  
*GPS* Carole P. Shelton, Project Management Specialist, Office of  
Program Management and Budget *EATyrrell*SUBJECT: Transmittal of Briefing Package on Lawn Darts: Follow-Up to  
Advance Notice of Proposed Rulemaking (ANPR)

Attached for Commission review and consideration is a briefing package on staff activities on Lawn Darts subsequent to publication of an ANPR in the Federal Register dated October 20, 1987.

Pursuant to Section 5 of the Commission General Policies of March 18, 1987, the Executive Director indicates that he is reasonably unaware of any relevant and significant minority or dissenting views on this issue except for those contained in this package, if any.

The Directorates for Compliance and Administrative Litigation, Economic Analysis, Engineering Sciences, Epidemiology, Field Operations, and Health Sciences; and the Offices of Information and Public Affairs, Planning and Evaluation, and Program Management and Budget have reviewed this package and approve its contents.

Please note that the January 20, 1988 memorandum from the Directorate for Economic Analysis, Division of Special Studies (ECSS) at Tab D is marked RESTRICTED.

Attachment

CPEA 6 (b)(1) Cleared

2/8/88

No Mtrs/Prvtlbl or

Products Identified

Excepted by *ANPR*

Firms Notified

NOTE: This document has not been  
viewed or accepted by the Commission.  
Initial *EL* Date *2/8/88*

## Memorandum

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SAFETY COMMISSION  
WASHINGTON, D.C. 20207

FEB 8 1988

TO: The Commission

THROUGH: Sadye E. Dunn, Director, Office of the Secretary *EDunn*  
THROUGH: James V. Lacy, General Counsel *JV Lacy*  
THROUGH: Leonard DeFiore, Executive Director *DeFiore*  
THROUGH: Douglas L. Noble, Director  
Office of Program Management and Budget  
THROUGH: Carl Blechschmidt, Program Manager, Office of  
Program Management and Budget *carb*

FROM: Elaine A. Tyrrell, Project Manager, Children's and Recreational  
Products Program, Office of Program Management and Budget and  
*CAS* Carole P. Shelton, Project Management Specialist, Office of  
Program Management and Budget *EATyrrell*

SUBJECT: Lawn Darts: Follow-Up to Advance Notice of Proposed Rulemaking  
(ANPR)BACKGROUND

On October 1, 1987, the Commission voted to initiate a rulemaking proceeding on lawn darts. The staff was directed to prepare for Commission approval an Advance Notice of Proposed Rulemaking (ANPR) (Tab A) indicating that the Commission may require the five actions requested of industry at the July 17, 1987 meeting, or ban the sale of all lawn darts.

The five actions requested of industry were to: (1) modify the front panel warning label to make it more conspicuous and readable; (2) place a warning label on one fin of each lawn dart in a color that contrasts with the fin; (3) change the design of lawn darts to prevent modification or include a warning against modification with the instructions; (4) include with each shipment of lawn darts to retailers information on how to display lawn darts; and (5) stop packaging lawn darts in combination sets with other games.

The staff was further directed to vigorously enforce the current Federal Hazardous Substances Act (FHSA) provisions which prohibit the sale of lawn darts as toys for children, but permits an exemption intended to allow them to be sold as games of skill for adults.

In addition to preparing an ANPR, staff was directed to issue an annual consumer alert, prepare an injury update, human factors analysis, economic analysis, and other relevant data to enable the Commission to determine whether the current exemption should be revoked or amended or a voluntary standard developed.



## STAFF ACTIVITIES

The ANPR, requesting comments and data, was published in the Federal Register on October 20, 1987. The comment period ended on December 21, 1987. Following are summaries of staff activities since publication of the ANPR.

### Injury Data (Tab B)

As directed by the Commission, the Directorate for Epidemiology, Division of Hazard Analysis, prepared an update of the injury information on lawn darts presented in its previous report of August 21, 1987.

A total of 10 cases have been reported to CPSC which were not included in EPHA's previous memo. Two of these were new cases which occurred in September and November of 1987. Three others were older 1987 cases which had not previously been reported. Five cases were from earlier years. The hazard patterns and injuries in these cases were essentially the same as for those which had been reported previously.

Data from the National Electronic Injury Surveillance System (NEISS) indicate that, on the average, about 670 lawn dart-related injuries were treated in U.S. hospital emergency rooms each year from 1978 through 1987. About 4 percent of the victims were hospitalized, a figure similar to that reported for all product-related injuries reported through NEISS in recent years, suggesting that these injuries generally are not severe. Over three-fourths of the victims were under age 15, and about one-half were under the age of 10. Over one-half of the injuries involved the head, eye, ear, or face.

A search of CPSC's files of in-depth investigations, death certificates, reported incidents (primarily consumer complaints and newspaper clippings), and other related data revealed reports of 51 lawn dart-related incidents, including three fatalities. The victims in the fatalities were 4, 7, and 13 years old. In the 51 incidents, the victims ranged in age from 2 to 14 years old. EPHA cautions, however, that these incidents are not a statistical sample and may not be representative of all lawn dart incidents that occur, in that they may be biased in favor of younger victims and more serious cases. However, they are helpful in characterizing the circumstances involved in the more serious incidents.

The types of injuries reported were primarily puncture wounds and lacerations to the head and eye area. In 24 cases, the dart was reported to have actually penetrated the skull.

In 27 of the 51 cases, the injury report was followed up by an in-depth investigation. In the 25 investigations where such information was reported, all of the victims were injured by other children (rather than adults) throwing the darts.

The three incidents cited in the public comments that were received in response to the ANPR on lawn darts had been reported previously to CPSC and are included in the cases cited above.

### Human Factors Information (Tab C)

The Directorate for Epidemiology, Human Factors Division (EPHF), provides the following evaluation of the effectiveness of the current standard by itself, or supplemented by the five actions CPSC requested of industry, in reducing puncture wound injuries to children.

While children in the lawn dart incidents were most often playing with lawn darts, EPHF cannot conclude that the mandatory standard provisions were ineffective in these instances. Most incident reports did not provide information on where the dart game was purchased or whether a warning statement was on the box. In addition, since past store surveys by CPSC staff demonstrated that there is a great deal of noncompliance with the regulation, EPHF could not assume that lawn darts purchased after the regulation's effective date were in compliance with the regulation. Therefore, from the information available in the lawn dart incidents, EPHF identified consumer attitudes and behaviors to determine whether marketing lawn darts for adult use only could completely preclude use by children. EPHF staff has concluded that efforts to market lawn darts for adult use only may not prevent use by children, for the following reasons:

1. Selling lawn darts in stores other than toy stores, such as sporting goods departments, does not convey the message that lawn darts are for adult use only.
2. Consumers may recognize that lawn darts require motor and strategic skills similar to those required for other sports equipment, designed and/or used by children and, therefore, conclude that they are appropriate for children who have these skills.
3. Labeling lawn darts for adult use only may not convince parents that lawn darts are inappropriate for children. Parents may not consider the game particularly hazardous, especially in comparison to other products used by children.
4. It may be difficult for parents to prevent children from using lawn darts as they are often used at large, casual gatherings with little or no supervision provided.
5. Parents sometimes have no knowledge that children are using lawn darts.

As a result of this analysis of consumer attitudes and behaviors, Human Factors concludes that efforts to market lawn darts for adult use only cannot be expected to completely preclude use by children. Specifically, the sale prohibition and labeling provisions in the current mandatory standard, either by itself or supplemented by the five actions requested of industry by CPSC, cannot be expected to accomplish the intended purpose. In conclusion, lawn darts do not require complex skills which preclude use by children. Therefore, EPHF believes some children will continue to play with lawn darts, despite marketing the product as an "adult game of skill."

### Economic Considerations (Tab D) - RESTRICTED

The Directorate for Economic Analysis (EC) has provided updated economic information on lawn darts as well as a preliminary assessment of the voluntary recommendations.

Based upon the latest available industry information, including the recent survey conducted by the Directorate for Compliance and Administrative Litigation (CA), EC estimates that 1-1.5 million lawn dart sets are sold annually.

Lawn darts are commonly sold in individual sets and as a part of combination lawn game sets. Industry data indicate that about 10% of all lawn darts are sold in combination sets, and the Compliance survey found that lawn darts in combination sets represented about 10% of total lawn darts in inventories. Based upon this information, ECSS estimates that some 100,000-150,000 lawn darts are sold annually in combination sets.

The number of products in use is a function of the expected useful life of the units as well as annual sales. Industry sources indicate that a 10-year expected useful life would be appropriate for these products. Based upon available information, it appears that some 10-15 million sets of lawn darts may be currently in consumers' hands. Of these, 1-1.5 million would be as parts of combination sets.

In assessing the cost of the five voluntary recommendations, ECSS provided the following determinations:

Most of the recommendations would entail costs to manufacturers and suppliers, and it is likely that some of the costs would be passed on directly to the consumer in the form of higher prices for lawn darts. Assuming appropriate lead times for implementation of the recommendations, the first-year, one-time costs would total about \$140,000-160,000, and annual costs (based on 1-1.5 million sets produced) would be about \$80,000-120,000.

Modifications of the packages to accommodate new warning statements would cost about \$2,000-3,000 per firm, or a total of \$40-60,000. The cost of retrofitting labels on existing stocks could be as high as 25 cents per box or an additional one-time cost of \$25,000, using the figure of 100,000 units of existing stocks reported in CA's inventory survey.

Affixing a pressure-sensitive label for one fin of each lawn dart in a set, would cost about 20-25 cents per set of 4 darts (assuming this procedure were part of the production process). However, the cost could well exceed \$1 per set if the application were required for already packaged units. If the warning label could take the form of a rough textured warning (i.e., raised letters molded into the fin) on one fin of each dart in a set, the cost would be \$5,000-10,000 per manufacturer, for the retooling of injection mold devices, or an industry one time cost of \$100,000 - 200,000. This modification reportedly would require a lead time of about 6 months. The rough texture warning (i.e., raised letters molded into the fin) would not allow for a differing color. If existing sets were retrofitted to meet this recommendation, the additional cost may be about \$100,000, assuming inventories of about 100,000 sets.

Manufacturers state that it is not possible to produce a product which cannot be modified. Industry sources indicate that they will address this recommendation through warning against modification. Provided that there is sufficient lead time to incorporate this warning in existing instructions, the additional cost of this recommendation would be negligible.

Notification to retailers on the proper display of lawn darts is expected to be accomplished through a separate, printed notice included with the packing list or in the packing case itself at an additional cost of 10-20 cents per case or 0.8-1.6 cents per set. The total annual cost of this recommendation would then be \$80,000-120,000, based on 1987 sales. If insufficient lead time for orderly insertion of this information is not provided, there would be an additional first-year cost, which could exceed \$100,000 if 100,000 units required retrofitting.

The final recommendation was that the firm discontinue sale of lawn darts in combination sets. If industry sources are correct in their assumption that consumers are purchasing combination sets without specific regard to contents, it is expected that sales of combination sets would remain steady.

Spokepersons for the majority of firms contacted have indicated that they have already implemented most or all of the five recommendations. While the Commission staff is not able to verify these assertions, it appears that a significant amount of the fixed costs associated with the recommendations has been incurred already. This does not lower the ultimate cost of adoption of the recommendations, but it does allow those firms to amortize the costs over earlier productions.

The costs of complying with the recommendations would be about 15-40 cents per unit for the first year, falling to 1-8 cents after fixed costs are amortized. At an effectiveness level of at least 2%, it appears that the benefits derived from the recommendations would roughly equal their expected costs after the first year.

#### CA Activities (Tab E)

The summary of the activities of the CA Division of Regulatory Management (CARM), requested by the Commission, is provided in three parts:

##### A. Summary of Retail Stores Survey

A total of 112 retail stores have been visited to determine compliance with FHSA restrictions on the retail sale of lawn darts. Stores in warm climates were surveyed where lawn darts were more likely to be sold during the colder months. Stores were surveyed in Hawaii, California, Oregon, Arizona, New Mexico, Texas, Georgia, Virginia and Florida.

Out of 112 retail stores surveyed, only 31 were selling lawn darts. Twenty-nine of the 31 were variety or department stores, one was a toy store and one was a sporting goods store. Of the 31 stores selling lawn darts, 14 were in violation of lawn dart requirements. Violations consisted of displaying lawn darts for sale in a toy store or toy department (8 stores) or offering for sale lawn darts which were in violation of labeling requirements (8 stores). Two stores were committing both types of violations.

Twelve of the stores were part of three major retail chains which previously had been notified of lawn dart violations and requested to correct these violations. All three chains have decided to stop selling lawn darts.

CA believes that because of the high level of noncompliance by retailers, continued surveillance of retail stores nationwide will be necessary if lawn darts are not banned. CA points out that this surveillance effort could be very resource intensive (Tab I).

#### B. Industry Conformance with the Five Voluntary Actions

CA staff has identified 18 importers or manufacturers of lawn darts. In the summer and early fall of 1987, the Commission staff determined that 17 of these 18 firms were distributing or had recently distributed lawn darts with labeling violations. The 18th firm had distributed noncomplying lawn darts several years earlier, but their 1987 inventory was in compliance.

When the Compliance staff sent copies of the ANPR to these and other firms in November 1987, they indicated that the Commission was interested in seeing conformance with these requests at an earlier date than the industry representatives had agreed to previously.

Of the 17 firms identified and inspected, 10 stated that they do not intend to import, manufacture or sell lawn darts in the future. The remaining seven firms intend to continue importing or manufacturing and distributing lawn darts. One firm will implement the five requests only IF the Commission makes them mandatory. A second firm stated its intention to implement all five requests during December 1987. A third firm stated its intention to implement the first four requests in January 1988 and to stop selling combination sets by January 1989. The remaining four firms state their general intention to implement the first four requests but most are uncertain when. Confusion exists over whether lawn dart fin labels should be in a contrasting color or texture. Regarding stopping distribution of combination sets, two firms do not sell combination sets now, one is undecided whether they will sell them, one will stop by August 1988 and two will stop by January 1989.

#### C. Customs Surveillance of Lawn Darts

U.S. Customs was requested to inspect shipments during the three Operation Toyland programs conducted in 1987. No lawn dart shipments were found. The Commission staff is continuing to include lawn darts in training programs for U.S. Customs and will encourage them to check shipments for labeling.

#### INDUSTRY VOLUNTARY STANDARDS MEETING (MEETING LOG AT TAB F)

A meeting was held on December 10, 1987, at the Sporting Goods Manufacturers Association (SGMA) headquarters to discuss CPSC's five voluntary actions and industry's response to them. In attendance were representatives from three manufacturing companies as well as from SGMA, American Society for Testing and Materials (ASTM), and CPSC.

The company representatives indicated that they support the recommendations but are waiting for CPSC guidance regarding wording and labeling.

ASTM explained their role in the development of a voluntary standard and offered to provide a neutral forum to develop a full voluntary consensus standard. The industry representatives reached no decision at the conclusion of the meeting on using ASTM to develop the standard. Subsequent to these activities, CPSC has been notified by ASTM that an organizational meeting is called for May 3, 1988.

#### CHARACTERIZATION OF PUBLIC COMMENTS TO ANPR - (TAB G)

The following is a characterization of the public comments received by the Office of the Secretary in response to the ANPR published in the October 20, 1987 Federal Register (Tab A). The comment period began October 20, 1987, and ended December 21, 1987.

A total of 11 comments were received: one from a trade association; two from state governments; one from a consumer group; three from manufacturers of lawn darts; and four from individual consumers.

The trade association (Sporting Goods Manufacturers Association) reported its intention to develop a voluntary standard to address the risk of injury identified in Subsection C of the ANPR. Two of the three manufacturers stated that the lead time given by CPSC was not sufficient to allow for an orderly changeover to implementation of the suggested recommendations. They stated that implementing compliance to these voluntary actions by January 20, 1988 would pose considerable problems and hardship.

The third manufacturer and two individual consumers believe that the current regulation is sufficient to address the hazard. They are against a ban and believe that accidents are a part of life and are, in many cases, attributable to consumer misuse and abuse.

One state government organization believes that the regulatory options should be coupled with on-going enforcement of the existing regulations. They believe that CPSC should proceed with rulemaking under both the Consumer Product Safety Act (CPSA) and FHSA.

The second state government organization, the consumer group and two individual consumers support a total ban of all lawn darts. They believe that any regulatory or non-regulatory option that falls short of an absolute ban will fail to protect consumers.

While the staff does not preliminarily see anything substantially new in the comments, if the Commission decides to continue the rulemaking process, an analysis of and responses to these comments will be incorporated into a briefing package and draft Federal Register notice on a Notice of Proposed Rulemaking which will be scheduled for Commission consideration. The incidents cited in the public comments had been previously reported to CPSC and are included in the cases cited in the EPHA memo at Tab B.

#### OPTIONS AND RECOMMENDATIONS

The Commission may take one or more of the following actions, as it deems appropriate, to address the hazards to children from children playing with lawn darts.

1. Direct the staff to continue the rulemaking process by developing a Notice of Proposed Rulemaking (NPR) to ban all lawn darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture wound injury.
2. Direct the staff to continue the rulemaking process with the development of a NPR to mandate the five actions CPSC has previously recommended to industry.
3. Direct the staff to continue to enforce the existing regulations (i.e., ban and its exemption).
4. Direct the staff to continue to work with industry and to monitor industry compliance with the voluntary actions recommended to industry representatives at the July 17, 1987, meeting.
5. Direct the staff to request the industry to voluntarily stop sale if the Commission proceeds with a NPR to ban all lawn darts.
6. Direct the staff to monitor voluntary standard development process of the industry. Such a standard could include the five voluntary actions recommended to industry representatives at the July 17, 1987, meeting and any other provisions deemed appropriate to address the risks of injury.

After initial review of the public comments and the information developed since the ANPR was published, the staff recommendations as discussed in the September 10, 1987, package remain unchanged. The following discussion identifies the options supported by the staff and the rationale for the choices.

#### Option 1 and Option 3

The Directorates for Engineering Sciences (ES) and Compliance and Administration Litigation (CA) and the Office of Program Management and Budget (OPMB) recommend that the Commission direct the staff to continue the rulemaking process by developing a NPR to ban lawn darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture wound injury (Option 1). Further, ES, CA, and OPMB recommend that during the rulemaking process the Commission direct the staff to continue a vigorous enforcement of the ban and its exemption (Option 3).

In a memorandum dated September 16, 1987, the then acting Associate Executive Director for Compliance and Administrative Litigation expressed his intention to request manufacturers and distributors of lawn darts to stop sale of the product if the Commission decided to propose a revocation of the exemption of the ban. The Executive Director has directed the staff to present this as an option for Commission approval along with any decision to propose revocation of the ban (Option 5).

#### Option 3 and Option 4

The Directorates for Epidemiology (EP), Economic Analysis (EC), Health Sciences (HS), Field Operations (FO), and the Office of Information and Public Affairs (OIPA) recommend that the Commission direct the staff to pursue Options 3 and 4 on the grounds that the available injury data do not support additional rulemaking activities and that the lawn dart hazard is not greater than the hazards associated with similar products.

The supporting rationale for these recommendations remains virtually unchanged from that presented in the September 10 package.

As directed by the Commission at the October 1 briefing, the staff intends to update the lawn darts consumer alert on a yearly basis and release it to newspapers, community groups and individual consumers (Tab H).



E

## ATTACHMENTS

- TAB A      Lawn Darts; Advance Notice of Proposed Rulemaking; Request for Comments and Data, Federal Register, Vol. 52, No. 202, October 20, 1987.
- TAB B      Memorandum from Tinsworth, D., EPHA, to Tyrrell, EXPM, "Lawn Dart Injuries," January 20, 1988.
- TAB C      Memorandum from Deppa, S.W. and White, S., EPHF, to Tyrrell, E.A., EX-PB, "Evaluation of Lawn Dart Provision Effectiveness," January 29, 1988.
- TAB D      Memorandum from Karels, T.R., ECSS, to Tyrrell, E., EX-P, "Lawn Darts," January 20, 1988.
- TAB E      Attachment A - Memorandum from Nelson, C., CARM, to Tyrrell, E., OPMB, "Lawn Dart Compliance Survey," January 20, 1988.
- Attachment B - Memorandum from Nelson, C., CARM to Tyrrell, E., OPMB, "U.S. Customs Follow-Up Action on Lawn Darts," February 4, 1988.
- TAB F      Log of Meeting held by Sporting Goods Manufacturers Association (SGMA) with industry representatives on Lawn Darts, December 10, 1987.
- TAB G      Public Comments in Response to ANPR
- Attachment A - Letter from Bush., M., Esq., Sporting Goods Manufacturers Association to Office of Secretary, CPSC, December 17, 1987.
- Attachment B - Comments of Consumer Federation of America Submitted by Fise, M.E.R., December 21, 1987.
- Attachment C - Letter to the Editor from Meseck, C., September 29, 1987.
- Attachment D - Letter from Heslin, M.M., CT Dept. of Consumer Protection, to Office of the Secretary, CPSC, December 8, 1987.
- Attachment E - Letter from Vultaggio, S.R., Recent Sports Corp. to Schmeltzer, D., CPSC, November 10, 1987.
- Attachment F - Letter from Hostetler, G., to Office of Secretary, November 16, 1987.
- Attachment G - Letter from Coberly, S., to Office of Secretary, CPSC, November 3, 1987.
- Attachment H - Letter from Lamontagne, R., to Schmeltzer, D., CPSC, November 16, 1987.

Attachment I - Letter from Spaeth, P., N.Y. State Dept. of Law,  
to Noble, D., CPSC, October 8, 1987.

Attachment J - Letter from Bouris, C., New Bern, NC, to CPSC,  
December 1, 1987.

Attachment K - Letter from Archer, R., Kent Sporting Goods Co.,  
Inc., to Schmeltzer, D., CPSC, November 9, 1987.

TAB H Memorandum from Shiflett, D., OIPA, to Noble, D., OPMB, "Lawn  
Dart Consumer Alert," February 2, 1988.

TAB I Memorandum from Schmeltzer, D., AEDCA, to Tyrrell, E., "Lawn  
Darts," February 5, 1988.

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**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** Based on available data, the Commission has preliminarily determined that there may be an unreasonable risk of injury associated with lawn darts which may be sufficiently severe to warrant regulatory action by the Commission. Lawn darts are devices intended to be used outdoors by being thrown upward and striking the ground point first. A regulation, issued in 1970 by the Food and Drug Administration under the Federal Hazardous Substances Act ("FHSA") and now administered by the Commission, currently bans lawn darts, except for those intended for adult use that (1) are labeled to warn against use by children, (2) include instructions for safe use, and (3) are not sold by toy stores or by store departments dealing predominantly in toys or other children's articles. Despite these restrictions, which are intended to ensure that lawn darts are sold only for use as a game of skill by adults, serious injuries and deaths to children continue to occur as children continue to play with lawn darts. In addition, the extent to which lawn darts are being sold in ways that violate the current regulations appears to have increased in the past few years.

This advance notice of proposed rulemaking ("ANPR") commences a rulemaking proceeding that could result in additional restrictions on the sale of lawn darts or could result in a ban on the manufacture, sale, and distribution of lawn darts. This notice asks for comments on whether such actions would be best accomplished by revoking or amending the present exemption to the FHSA ban, which allows the sale of lawn darts under the conditions described above, or whether action should be taken under the Consumer Product Safety Act, either in addition to revoking or amending the FHSA exemption or in place of such action. In addition, this notice specifically invites any person to submit (1) an existing standard that addresses the risk of injury associated with lawn darts that could be used as a proposed regulation or (2) a statement of intention to develop or modify a voluntary standard to address the risk of injury associated with lawn darts, along with a plan for doing so.

**DATE:** Comments in response to this ANPR are due no later than December 21, 1987.

**ADDRESSES:** Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission.

Washington, DC 20207, telephone (301) 492-6800, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 528, 5401 Westbard Avenue, Bethesda, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Elaine Tyrrell, Project Manager, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492-6554.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Consumer Product Safety Commission was created in May of 1973. Prior to that time, the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261-1278, was administered by the Food and Drug Administration ("FDA"). The FHSA provides that the term "banned hazardous substance" includes "any toy, or other article intended for use by children, which is a hazardous substance." The Child Protection and Toy Safety Act of 1969 (83 Stat. 187-190) amended the FHSA to provide that any toy or other article intended for use by children may be classified as a hazardous substance if it is determined that the article presents an electrical, mechanical, or thermal hazard. Pursuant to this authority, the FDA, on November 17, 1970, proposed, among other things, to declare that lawn darts are banned toys because they present a mechanical hazard and an unreasonable risk of injury. 35 FR 17664.

The FDA received only one comment concerning the proposal to determine that lawn darts present a mechanical hazard. That comment stated that the large outdoor-type darts are intended for use by adults as an outdoor sport or game. The comment contended that suitable labeling can be devised to inform parents or other adults of the necessity of carefully supervising children if they are to be permitted to play the game and to give other information relating to the safety of all nonplayers in the immediate area.

After considering this comment, the FDA determined in its final rule, published December 19, 1970, that "lawn darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture wound injury, or other injury" presented a mechanical hazard within the meaning of the FHSA. 35 FR 19286. However, the final rule also provided that the following types of lawn darts would not be included within the term "banned hazardous substance":

Lawn darts and similar sharp-pointed articles not intended for toy use and

**CONSUMER PRODUCT SAFETY COMMISSION**

16 CFR Ch. II

**Lawn Darts; Advance Notice of Proposed Rulemaking; Request for Comments and Data**

**AGENCY:** Consumer Product Safety Commission.

marketed solely as a game of skill for adults, provided such articles:

(i) Bear the following statement on the front of the panel of the carton and on any accompanying literature:

Warning: Not a toy for use by children. May cause serious or fatal injury. Read instructions carefully. Keep out of the reach of children.

Such statement shall be printed in a sharply contrasting color within a borderline and in letters at (least) one-quarter inch high on the main panel of the container and at least one-eighth inch high on all accompanying literature.

(ii) Include in the instructions and rules clear and adequate directions and warnings for safe use including a warning against use when any person or animal is in the vicinity of the intended play or target area.

(iii) Are not sold by toy stores or store departments dealing predominantly in toys and other children's articles.

35 FR 19266, 19267.

A petition for judicial review of this regulation was filed by a lawn dart manufacturer, and the regulation was upheld. *R. B. Jarts, Inc. v. Richardson*, 438 F.2d 846 (2d Cir. 1971).

Since May of 1973, when the responsibility for administering the FHSA was transferred to the Commission, the Commission has periodically inspected samples of lawn dart labeling and instructions and surveyed marketing practices for lawn darts to determine whether the manufacturers, importers, and sellers of lawn darts are complying with the Commission's regulations under the FHSA.

The ban of lawn darts is codified in § 1500.18(a)(4) of Title 16 of the Code of Federal Regulations (CFR). The exemption quoted above for those lawn darts that have the specified labeling and instructions and that are not marketed in toy stores or in store departments dealing predominantly in children's articles is codified at 16 CFR 1500.86(a)(3).

In 1984, the Commission received reports that—lawn darts were being sold in certain toy stores. As a result, the Commission's staff inspected at least 77 retail stores and found seven stores that were selling lawn darts in violation of the ban and exemption. Of the seven violative retail stores, six were toy stores, and three of these were part of the same nationwide chain. Products of four lawn dart importers had labeling violations. The retail sales and labeling violations discovered by these violations were corrected, and the Commission issued a consumer safety alert in July 1985 warning of the hazards of letting children play with lawn darts.

In June 1987, the Commission's staff examined the labeling on lawn darts marketed by 14 firms, and products from

all 14 firms were found to have labeling violations. Products of eight of the firms were considered to have serious labeling violations, i.e., no required warning statement on the front panel of the package. Other labeling violations included one or more of the following: The type size of the required warning statement was smaller than that specified in the exemption, the warning statement was absent from the instructions or was not printed within the borderline as required, and the instructions lacked clear and adequate directions and warnings for safe use.

In addition, Commission field investigators visited 122 retail stores around the country. Included in the 122 stores were 36 toy stores, 60 variety or department stores, and 26 sporting goods stores. Fifty-three of the stores were selling lawn darts, and 18 of these were displaying the product with or in close proximity to toys or sporting goods intended primarily for children.

As a result, the Commission's compliance staff met on July 17, 1987, with importers and manufacturers of lawn darts, with a representative from the Sporting Goods Manufacturers Association in attendance. At that meeting, the staff discussed five voluntary actions that could be taken by the firms to help assure compliance with the exemption from the ban and to increase consumer awareness of the hazards associated with lawn darts in the hands of children. As a result of this meeting and subsequent requests from industry members for samples of acceptable actions, the Commission believes that lawn dart manufacturers and importers should take the following voluntary actions while the question of regulatory options is being considered by the Commission:

1. The front panel warning label should be modified to make it more conspicuous and readable. The requested modifications include placing the signal word "warning" in upper case letters in type size at least 3/8 inch high, in black on an orange "window" that includes the international alert symbol (an exclamation point on a black triangular background). The message words should be in upper and lower case black letters, in type size at least 1/4 inch high, on white. Each sentence should be started at the left side, and the sentence "Keep out of reach of children" should be before "Read instructions carefully," with a space between these two instructions and the preceding description of the hazard. The recommended front panel warning label reads as follows:

#### Warning

Not a toy for use by children.  
May cause serious or fatal head injury.  
Keep out of reach of children.  
Read instructions carefully.

2. Place a warning label on one fin of each lawn dart in a color that contrasts with the fin. (The industry attendees at the July 17, 1987, meeting indicated that they would achieve contrast by means other than color, such as by contrasting texture.) The recommended label would state:

#### Warning:

Not a toy for use by children.  
Can cause serious or fatal head injury.  
Keep children away from throwing area.

The signal word should be in upper case letters in type size at least 1/4 inch high. The message words should be in upper and lower case letters in type size at least 3/16 inch high.

3. Change the design of lawn darts to prevent modification, or include a warning against modification with the instructions. The Commission recommends the following language for warning consumers against modifying lawn darts:

#### Warning:

Do not modify or change the lawn dart in any way.  
Modification or changes can make the dart more hazardous.

This labeling should be printed in type size at least 1/8 inch high. The signal word should be in all upper case letters, while the remainder of the statement may appear in both upper and lower case.

4. Include with each shipment of lawn darts to retailers information on how to display lawn darts. The Commission recommends the following statement:

#### Important Safety Information

It is ILLEGAL to sell lawn darts in toy stores or in store departments which sell toys or other articles for children.

DO NOT display lawn darts in sporting goods departments near sports equipment intended primarily for children.

Promote lawn darts for ADULT USE ONLY.  
Children have been injured and killed by lawn darts.

The heading should appear in upper case letters in at least 1/2 inch type size, and the remainder of the notice should appear in upper and lower case letters in at least 1/2 inch type size.

5. Stop packaging lawn darts in combination sets with other games.

After the meeting on July 17, 1987, the staff wrote to all known lawn dart importers and to the known domestic manufacturer and the company that

distributes his products. These letters went both to those that attended the meeting and to those that did not attend. The letters described the five voluntary actions and asked the firms to state in writing whether they were willing to take the actions requested. A total of 20 firms received letters, including additional importers of lawn darts that were identified between July and September.

Nineteen of the firms have responded in writing or by telephone. Seven firms stated that they would carry out the five requests (except for the contrasting color on lawn dart fins); several of these firms requested additional slight modifications of the terms.

Two major firms stated in writing that they would carry out only the first four requests. Of these two, one importer stated that the firm would not stop distributing lawn darts in combination sets. The second firm, another importer, stated that the firm would stop distributing combination sets only if the CPSC banned the sale of lawn darts in combination sets. This firm also stated that it was in favor of the Commission making mandatory all of the voluntary actions which were requested.

Two firms stated general support for the voluntary actions the compliance staff had requested, but did not address the specific requests. Eight firms stated that they intended to stop importing lawn darts.

On July 30, 1987, the Commission issued a news release about lawn dart injuries and deaths. In the release, the Commission provides details on the ban, the exemption, and the hazard and resulting injuries. The release urges consumers to keep lawn darts away from children and asks consumers to report violations of the ban or exemption to the Commission.

On October 1, 1987, the Commission met to consider what actions are appropriate to address the continuing injuries and deaths to children that occur when children play with lawn darts. The major options under consideration included:

1. To direct the staff to enforce the ban and its exemption vigorously.
2. To direct the staff to continue to work with industry and to monitor industry compliance with the voluntary actions recommended to industry representatives at the July 17, 1987, meeting.
3. To direct the staff to develop an advance notice of proposed rulemaking ("ANPR") to propose an amendment to the exemption to require the voluntary actions that were requested of the industry at the July 17, 1987, meeting.

4. To direct the staff to develop an ANPR to ban all lawn darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture wound injury.

By a unanimous vote, the Commission, decided at its October 1, 1987, meeting to issue an ANPR indicating that the Commission may, among other actions, either require the five actions requested of industry at the July 17, 1987, meeting with the staff or ban all lawn darts and similar pointed objects usually intended for outdoor use and having the capacity for causing puncture wound injuries. The latter action would include the possibility of revoking the current exemption from the 1970 ban. Whatever action ultimately would be taken would take into account the results of a surveillance program to be conducted by the Commission's staff three months after publication of the ANPR; the object of the surveillance would be to determine if the industry is in substantial compliance with the existing regulations and with the actions requested at the July 17, 1987, meeting described above. The Commission's final action would further depend upon an evaluation of whether such voluntary or mandatory standards, if enforced, could be expected to protect consumers from unreasonable risk of injuries. In addition, the ANPR would include inquiries to the public which will enable the Commission to obtain information relevant to whether the current exemption should be revoked or amended. The staff was further directed to vigorously enforce the current FHSA provisions on lawn darts and to issue a consumer alert annually.

In addition, the Commission will request the U.S. Customs Service to consider including lawn darts in the Operation Toyland program. This will enable CPSC and the Customs Service to jointly examine incoming shipments of lawn darts. Those which fail to comply with the labeling provisions of the exemption will be seized by the Customs Service.

The staff also was directed to begin immediately preparing an injury update, human factors, analysis, economic cost/benefit report, possible medical evaluation of data, and other relevant data and analysis that will be needed to determine whether further regulatory action for lawn darts is appropriate.

#### B. The Product

Lawn darts are devices that are intended to be used outdoors and that are designed so that when they are thrown into the air they will contact the ground point first. Often, lawn darts are

used in a game where the darts are thrown at a target or other feature on the ground. A lawn dart typically might be about a foot in length and weight perhaps half a pound.

The tip of the lawn dart often consists of a rod about 1/4 inch in diameter, with a rounded end. Although the tip is not necessarily sharp enough to present an obvious danger of puncture, the momentum of the dart in flight, when impact occurs with the tip of the dart, can be sufficient to cause puncture or fracture wounds that can cause serious injury or death.

The Commission staff estimates that at least 500,000 lawn dart sets are sold annually. One domestic manufacturer, a distributor of that manufacturer's products, and 18 importers of lawn darts have been identified. Several firms also have been identified as major distributors or private labelers. Because of the ease of importing the product, it is possible that there are additional private label imports being marketed in this country.

Lawn darts are available in sets by themselves and in combination sets with other lawn games; e.g., badminton and volleyball. In sets by themselves, the retail prices for lawn darts range from about \$4.00 to \$10.00. The average price is about \$5.00 per set. Consumers may consider lawn darts that are packaged in combination with other sporting goods equipment to be as safe as the other games in the package, and it appears that consumers would be likely to consider lawn darts as appropriate for children if the other games are appropriate for children.

#### C. Risk of Injury

The risk that the Commission intends to address in this proceeding is that of punctures, fractures, and lacerations to children caused by lawn darts being used by children. As mentioned above, the potential for these devices to cause these types of injuries is not necessarily obvious to parents or other adults who might buy these items or allow their children to play with them, much less to the children themselves.

The Commission's staff estimates that about 6,100 injuries from lawn darts were treated in U.S. hospital emergency rooms between January 1978 and December 1986. This represents an average of 675 injuries per year treated in emergency rooms. Approximately 57% of the injuries involved the head, face, eye, or ear; nearly 8% of the injuries were fractures or puncture wounds. Approximately 3.4% of the injured victims were hospitalized (on the average, less than approximately 25 per

year), including all of the injuries reported as fractures. Approximately 81% of the victims were under age 15; over 50% of the victims were under age 10. In addition, Commission records dating back to at least 1970 show that at least three children have been killed by injuries associated with lawn darts.

In the 18 lawn dart injury reports for which information about the user of the lawn darts was available, the majority of the reports indicated that children were playing with the lawn darts, despite the ban and exemption which were developed to keep the product out of the hands of children.

#### D. Regulatory Alternatives Under Consideration

The potential hazards associated with lawn darts and the compliance of this product with the existing regulations have received much attention and publicity during the past few months. The recent death of a seven-year-old girl and the related information presented at Congressional hearings have raised questions about the adequacy of this existing ban with its broad exemption.

The main question to be decided by the Commission is whether additional restrictions on the sale of lawn darts, such as those discussed in the July 17, 1987, meeting between the industry and the Commission's compliance staff, will be adequate to keep the product out of the hands of children or whether this goal can be achieved only by stopping the sale of the product. Whichever of these approaches is deemed ultimately to be the most appropriate, there is the additional question of whether it can be achieved by voluntary actions on the part of the industry or whether a regulation will be required to ensure that children do not use this product. The various alternatives are discussed below.

*Prohibition of sale versus additional restrictions on sale.* The object of this proceeding is to ensure that lawn darts are kept out of the hands of children. From the injuries and deaths that have occurred since the FDA issued the ban and exemption that allowed the sale of lawn darts with certain labels and instructions, and that were not marketed in toy stores or store departments that predominantly sold children's articles, it appears that the existing limitations on the sale of lawn darts may be insufficient. The additional limitations discussed at the July 17, 1987, meeting between the industry and the Commission's compliance staff, if uniformly adopted, should be more effective in avoiding purchase of the product by children or by adults at the immediate instigation of children. Also,

the labels should help inform adults before purchase that the product is not suitable for children. In addition, the labels and instructions should better communicate to adults the need to keep the product away from children.

It is not clear, however, that even these additional restrictions on the sale of lawn darts would be adequate to keep the product out of the hands of children. It can be argued that the product has such a strong inherent appeal to children, who cannot be supervised at every moment, that they will use the product regardless of warnings on the packages or on the darts themselves or in the instructions. On the other hand, it may be that increased restrictions, coupled with increased efforts by the Commission's staff to ensure that the exemption is not violated, would reduce the risk adequately, so that the more drastic regulatory alternative of a ban would not be necessary. The Commission solicits comment on the likely efficacy of additional restriction on the sale of lawn darts to adequately reduce the risk to children from this product. Comments on the specific terms of the five actions requested of the lawn dart industry are also sought.

*Statutory remedies.* At present, the Commission has not decided which, if any, regulatory option it may elect to address the risks of injury associated with lawn darts. The following is a discussion of the statutory alternatives available to the Commission.

If lawn darts as a class are deemed to be articles intended for use by children, the darts, would be regulated under the provisions of the FHSA for mechanical hazards of children's products. Sec. 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D); sec. 30(d) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2079(d). If at least some lawn darts were deemed to be children's products, while other lawn darts might not be children's products, a regulatory proceeding to address all lawn darts could be conducted either under both the CPSA and the FHSA or under the CPSA alone, after a finding that it is in the public interest to do so as provided in section 30(d) of the CPSA.

An article intended for use by children which has been declared by rule to be a hazardous substance is banned under section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A), unless exempted. Since a general ban of lawn darts already exists under 16 CFR 1500.18(a)(4), to effect a ban of lawn darts under the FHSA the Commission would revoke the exemption at 16 CFR 1500.86(a)(3).

The Commission is authorized, under section 7 of the CPSA, to promulgate a mandatory consumer product safety standard which sets forth certain performance requirements for a consumer product or which sets forth certain requirements that a product be marked or accompanied by clear and adequate warnings or instructions. 15 U.S.C. 2056. A performance, warning, or instruction standard must be reasonably necessary to prevent or reduce an unreasonable risk of injury. In addition, if the Commission finds that no feasible consumer product standard under section 7 would adequately protect consumers from an unreasonable risk of injury associated with lawn darts, the Commission may promulgate a rule under section 8 of the CPSA declaring some or all lawn darts to be banned products. 15 U.S.C. 2057.

The procedures and requisite findings to accomplish any of the mandatory regulatory alternatives under consideration under either or both acts are essentially the same; both acts use a three-stage rulemaking procedure. At each stage of the rulemaking, the Commission is required to consider certain topics and make specified findings, particularly about the status of voluntary standards and about the costs and benefits of the contemplated rule.

The requirements for promulgating a mandatory rule are set out in section 9 of the CPSA, 15 U.S.C. 2058, and section 3(f) of the FHSA, 15 U.S.C. 1262(f). An advance notice of proposed rulemaking ("ANPR") is the first step of a regulatory proceeding that could lead to a safety rule. The second step is the issuance of a proposed rule followed by public comment. The third step is the issuance of a final rule. If the Commission decides after this ANPR to proceed with a mandatory standard, its staff could develop a proposed rule. In the alternative, any interested person may, in response to this ANPR, submit an existing standard as a proposed mandatory safety standard. In either case, the Commission would proceed with a proposed and a final rule, under the second and third rulemaking steps.

However, it may not be necessary to proceed to the second and third rulemaking steps. If the Commission determines that a voluntary standard developed in response to the ANPR is likely to eliminate or adequately reduce the risk of injury, and that it is likely that there will be substantial compliance with such voluntary standard, both the CPSA and the FHSA require that the Commission terminate the rulemaking proceeding.

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**Voluntary standards.** The Commission is unaware of any existing voluntary standard that would eliminate or adequately reduce the risk of injury identified in subsection C above. Any person is invited to submit to the Commission a statement of intention to modify or develop a voluntary safety standard to address the risk of injury identified in subsection C above, together with a plan to modify or develop the standard.

Any plan submitted with a statement of intention to develop a voluntary standard should include, to the extent possible, a description of how interested groups and persons will be notified that a proceeding to modify or develop a voluntary standard is underway; a description of how the views of interested groups and people will be incorporated into the standard; a detailed discussion of how the development of the standard will proceed; a realistic estimate of the length of time that will be required to develop the standard; a detailed schedule for the various stages of the development process; a list of the people expected to participate in the standard's development, along with a description of their backgrounds and experience; and a description of any facilities or equipment that will be used during the project.

**Other actions.** The Commission could also require actions other than the ones described above. These other actions include: Actions to address imminent hazards under section 12 of the CPSA, 15 U.S.C. 2061, or under section 3(e)(2) of the FHSA, 15 U.S.C. 1282(e)(2); corrective actions to address defective products under section 15 of the CPSA, 15 U.S.C. 2064, or section 15(c) of the FHSA, 15 U.S.C. 1274(c); a rule issued under section 27(e) of the CPSA, 15 U.S.C. 2078(e), to require manufacturers to provide performance and technical data related to the performance and safety of lawn darts to the Commission or to prospective purchasers of lawn darts; and dissemination of safety information by the Commission.

#### E. Solicitation of Public Input

This ANPR is the first stage in the Commission's consideration of what regulatory action, if any, to take with respect to lawn darts. As discussed above, the Commission may decide to pursue alternatives other than rulemaking to address the risks associated with lawn darts. Members of the public are encouraged to submit their comments to the Commission on any aspect of the various alternatives discussed above.

All comments and submissions should be provided to the Office of the Secretary, at the address given at the beginning of this notice, no later than December 21, 1987.

Dated: October 15, 1987.

Sadye E. Dunn,  
Secretary, Consumer Product Safety  
Commission.

#### List of Relevant Documents

Memorandum from Schmeltzer, D., AED/CA, to Noble, D., Director, OPMB, "Lawn Darts," dated July 15, 1987.

Attachment A—Proposed Ban of Lawn Darts, *Federal Register*, Vol. 35, No. 223, November 17, 1970.

Final rule on Lawn Dart Ban and Exemption, *Federal Register*, Vol. 35, No. 248, December 19, 1970.

Attachment B—Memorandum from Karels, T.R. ECSS, to Nelson, C., CARM, "Lawn Darts—PSA #2804", dated June 22, 1987. (Restricted).

Attachment C—Memorandum from Kennedy, J., EPHF, to Nelson, C., CARM, "PSA 2828; Lawn darts in Combination Game Sets," July 13, 1987, (Restricted).

Memorandum from Tinsworth, D., EPHA, to Tyrrell, E., EX-PB, "Lawn Dart Injury Data", August 21, 1987.

Memorandum from Ray, D., and Bennett, L., ECPA, to Tyrrell, E., OPMB, "Lawn Dart Accident Costs," August 4, 1987.

News Release: "Lawn Darts Can Cause Serious or Fatal Head Injuries and Death", Released July 30, 1987.

Memorandum from Poth, B., CARM, to Tyrrell, E., OPMB, "Lawn Darts Options Package", August, 1987.

Memorandum from Walton, W.W. ES, to Tyrrell, E., EXPM, "Lawn Darts—Option Package", August 28, 1987.

Memorandum from Ulsamer, A.G., to Tyrrell, E.A., EX-PB, "HS Recommendations on Lawn Darts", August 20, 1987.

Memorandum from Koeser, R., to Tyrrell, E.A., OPMB, "Lawn Dart Options Package", August 19, 1987.

Memorandum from Ray, D.R., ECPA, to Tyrrell, E., OPMB "Lawn Darts", August 27, 1987.

Petition from David A. Snow asking that the CPSC ban lawn darts (Petition HP 87-3), received in the Office of the Secretary, September 23, 1987.

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UNITED STATES GOVERNMENT

MEMORANDUM

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

JAN 20 1988

TO : Elaine Tyrrell, EXPM  
Through: Dr. Robert D. Verhalen, AED, Epidemiology *ask for RIV*  
FROM : Deborah Tinsworth, EPHA DK  
SUBJECT: Lawn Dart Injuries

This updates the August 21, 1987 EPHA memorandum on lawn darts.

Data from the National Electronic Injury Surveillance System (NEISS) indicates that, on average, about 670 lawn dart-related injuries were treated in U.S. hospital emergency rooms each year from 1978 through 1987.<sup>1/</sup> About 4 percent of the victims were hospitalized, a figure similar to that reported for all product-related injuries reported through NEISS in recent years, suggesting that these injuries are generally not severe. Over three-fourths of the victims were under age 15, and about one-half were under the age of 10. Over one-half of the injuries involved the head, eye, ear, and face.

A search of CPSC's in-depth investigation, death certificate, reported incident (primarily consumer complaints and newspaper clippings), and other files revealed reports of 51 lawn dart-related incidents.<sup>2/</sup> These incidents are not a statistical sample and may not be representative of all lawn dart incidents that occur in that they are likely biased in favor of younger victims and more serious cases. However, they are helpful in characterizing the circumstances involved in the more serious incidents.

In these incidents, the victims ranged in age from 2 to 14 years of age. The three cases involving fatalities involved children 4, 7, and 13 years old.

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<sup>1/</sup> While NEISS data for 1987 are incomplete at this time, we believe that the final estimates will not differ substantially from those presented above.

<sup>2/</sup> These 51 incidents, when added to the 113 cases in the NEISS sample (excluding 7 duplicate reports) total to 157 actual incidents reported to CPSC during the period from 1970 through 1987.

The types of injuries reported were primarily puncture wounds and lacerations to the head and eye area. In 24 cases, the dart was reported to have actually penetrated the skull, resulting in surgery and hospitalization.

In 27 of the 51 cases, the injury report was followed up by an in-depth investigation. In the 25 investigations where such information was reported, all of the victims were injured by other children (rather than adults) throwing the darts. In 13 cases, the incident occurred at a friend's or neighbor's house, rather than at the victim's own home (6 cases), or at another (6 cases) or unknown (2 cases) location.

Incidents cited in the public comments received in response to the ANPR on lawn darts had been reported previously to CPSC and are included in the cases cited above.

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## Memorandum

TO : Elaine A. Tyrrell, EX-PB Date: January 29, 1988

Through : Dr. Robert D. Verhalen, AED,  
Epidemiology  
James E. Bradley, Director, EPHF

From : Shelley Waters Deppa, EPHF SWD  
Sharon White, EPHF JW

Subject : Evaluation of Lawn Dart Provision Effectiveness

This is in response to your request for an evaluation of whether the current lawn dart mandatory standard by itself or supplemented by the five actions CPSC requested of industry, if enforced, would be effective in reducing puncture wound injuries to children.

Background

The Lawn Darts Game is an outdoor lawn game consisting of four darts and two target rings. The darts have colorful plastic fins and metal shafts and are about a foot in length, weighing approximately half a pound. They are designed to be thrown into the air and to descend tip first, penetrating the ground. The game rules state that the target rings are placed on the ground 25-35 feet apart, and two players, standing together at the same target ring, alternately toss the darts underhand towards the opposite ring.

The mandatory standard of December 1970 states that lawn darts are banned unless marketed solely as a game of skill for adults and:

- 1) Have a warning statement on the box stating "Warning: Not a toy for use by children. May cause serious or fatal injury. Read instructions carefully. Keep out of reach of children.";
- 2) Include directions and warnings for safe use in the instructions and rules; and
- 3) Are not sold in toy stores or children's departments of stores.

In July 1987, CPSC requested the industry to implement five voluntary actions:

- 1) Modify the warning label on the box to make it more conspicuous and readable.
- 2) Place a warning statement on one fin of each dart which contrasts with the color of the fin.
- 3) Either redesign the darts to prevent modifications by consumers or warn against modification in the instructions.
- 4) Include with each shipment to retailers information that lawn darts are not to be displayed with children's articles.
- 5) Cease packaging lawn darts in combination sets with other games.

The purpose of both the mandatory standard provisions and the voluntary actions is to inform consumers that lawn darts are an adult game of skill and are not for use by children because they can cause serious or fatal injury. To determine whether the mandatory standard provisions were effective in preventing lawn dart use by children, we analyzed incidents associated with lawn darts.

### Incidents

The CPSC Division of Hazard Analysis estimated that 6,700 lawn dart related injuries were treated in U.S. hospital emergency rooms between January 1978 and December 1987, representing an average of about 670 emergency room treated injuries per year. Approximately three-fourths of the victims were below age 15 and half were below age 10. Over one-half of the injuries occurred to the head. In addition, 3 deaths from injuries associated with lawn darts have been identified. These victims were children 4, 7, and 13 years old.<sup>1</sup>

We analyzed information from CPSC In-depth Investigation and Reported Incident files and from a court case. While incidents from these sources do not constitute a statistical sample or include all incidents that occurred, they do provide insight into what is occurring. We identified a total of 51 lawn dart incidents, which included 3 deaths, occurring from August 1970 through November 1987.

In the incidents from these sources, the victims were children 2 to 14 years of age who were most frequently struck in the head by a descending lawn dart. The incidents indicated that the 2 and 3 year old victims were not playing with the lawn darts, but were bystanders. Some of the 4 year old victims were also bystanders, while others were playing with lawn darts. Most of the victims 5 years old and older were participants in the game. Data from

these sources also reported many more males than females injured by lawn darts.

In the incidents, not only were most victims children, but most players were also children. When sex and age are specified, most players were males ranging from 4 to 15 years old. However, we are aware of one adult who threw a dart which struck a young child.

### Discussion

While children in these incidents were most often playing with lawn darts, we cannot conclude that the mandatory standard provisions were ineffective in these cases. Most incidents did not provide information on where the dart game was purchased or whether a warning statement was on the box. In addition, since past Compliance/Field Retail Store Surveys demonstrated a great deal of noncompliance with the regulation, we could not assume that lawn darts purchased after the regulation's effective date were in compliance with the regulation.

Instead, from the lawn dart incidents we identified consumer attitudes and behaviors to determine whether marketing lawn darts for adult use only could prevent use by children. We have concluded that efforts to market lawn darts for adult use only may not prevent use by children, for the following reasons:

First, while selling lawn darts in a toy store implies that they are intended for children, the reverse is not necessarily true. That is, sales in other stores do not imply that a product is not for children. Lawn darts are usually sold in sporting goods departments, according to past Compliance/Field Retail Store Surveys. The Guidelines for Relating Children's Ages to Toy Characteristics<sup>2</sup>, ("Age Guidelines") lists the following sports equipment appropriate for children:

\*Under 3 years old - balls;

\*3-6 years - baseballs and bats, kickballs, soccer balls, ice and roller skates, swimming equipment, skis, and jump ropes;

\*6-9 years - footballs, hockey equipment, horseshoe games, badminton sets and pingpong sets; and

\*9-12 years - target shooting equipment such as corkguns and bb guns.

The perception that consumers consider some sporting goods appropriate for children is reinforced by the fact that school physical education classes teach sports to children, including lawn games such as volleyball and badminton.



Second, consumers may recognize that lawn darts require motor and strategic skills similar to those required for other sports equipment, and therefore conclude that lawn darts are appropriate for children who have these skills. In a study rating children's throwing ability, reported in Fundamental Motor Patterns<sup>3</sup>, "No child at age 2 or 3 years was rated as being proficient, but there were indications of a progressive increase in the percentage of children 4, 5, and 6 years who were given the high rating." The Age Guidelines<sup>4</sup> further state that children:

- \*3 years of age can throw underhand;
- \*6-9 years of age understand and enjoy games with rules;
- \*8 years of age can play horseshoes; and
- \*9 years of age like to practice and improve skills.

The foregoing information implies that children 6 - 9 years of age are capable of using lawn darts.

The perception that lawn darts are appropriate for children is reinforced by the fact that some lawn dart games are packaged in combination sets with other lawn games which are appropriate for children, such as badminton and volleyball. In addition, some boxes of lawn darts state "The tossing motion is very similar to that of the Horseshoe Game." For example, in one incident, the respondent "...purchased darts thinking they were like horseshoes because they were sold in the sports department with badminton sets, etc." In this incident, both the box and the dart contained a warning which the respondent did not notice until after an accident had occurred.<sup>5</sup>

Since parents may recognize that children have the capability of using lawn darts, they may purchase the game for these children. While descriptions of most incidents did not specify for whom the game was purchased, 3 cases stated that the game was purchased for a child. The ages specified were 6, 7, and 9 years of age. The 9 year old purchased the game for his own use, despite the label on the box. In a fourth case, a grandmother gave her 12 year old grandson her lawn dart set.

Third, parents may not consider lawn darts particularly hazardous. In some incidents, parents were either not aware of the hazard presented by lawn darts, or thought the hazard could be addressed by supervising and/or warning the child. Both the appearance of lawn darts and the messages accompanying the product may have led parents to conclude that it was not hazardous. For example, in one case, parents were concerned about the product, but after noting the dart's dull blunt tip, they felt it would be safe.<sup>6</sup> Some instruction sheets stated "an

exciting outdoor game fun for beginners or expert, old or young." Other instruction sheets included both the statement "...in the event any adult permits a child or minor to participate in this sport...", and the warning "Not a toy for use by children...Keep out of reach of children." (emphasis added)

Strengthening warning statements and eliminating contradictory messages may not alter parents perception that lawn darts are not as hazardous as other products children use. Often, potentially hazardous products used by children either do not have any caution statement, or recommend adult supervision, since the assumption is that older children have the knowledge to use products safely. For example, CPSC's regulations do not have prohibitions against sharp points, sharp edges, and electrically operated toys with heating elements, for children 8 years of age and older. The ASTM voluntary standard for non-powder guns requires that lower power general purpose guns, such as bb guns, have a minimum labeled age of 8 years and this caution statement: "Caution. Not a toy. Adult supervision required. Misuse or careless use may cause serious injury..."<sup>7</sup> CPSC's regulation on chemistry sets for juveniles requires instruction manuals to have a statement "...Not to be used by children except under adult supervision."<sup>8</sup>

Fourth, lawn darts, like other lawn games, are often used at a picnic or other large gathering, making it difficult to limit lawn dart use to adults. This was true in many of the incidents. In a social setting, the atmosphere is more casual and less controlling, making it difficult for two people to participate in a serious game of skill. While the lawn dart game is intended for two players, in the incidents, it was often played by three or more people. In addition, at a large gathering, it is common for several activities to occur at once, resulting in parents providing little or no supervision for their children. Parents may not even realize the danger presented by lawn darts since in some cases they may not own the game. Lack of supervision gives an unstated message that anyone can participate in what ever activity is available. For example, in one incident, at a picnic, the parents were playing cards on the patio, when a child began playing with lawn darts.<sup>9</sup> Further, social pressure plays a major role on both parental and child behavior. For instance, in one incident, parents who previously prohibited their children from playing the game, were pressured into allowing their children to play with it while at a picnic.<sup>10</sup> Some incidents also indicated that children were influenced to play with lawn darts when they saw other children playing with them or when they wanted to entertain their friends.

Fifth, parents sometimes have no knowledge that children use lawn darts. In several cases, children retrieved darts from where they were stored and proceeded to play with them. In cases

occurring away from home, such as at a neighbor's yard or at a picnic, parents were not aware their children were playing with the game. In some cases, children were playing with lawn darts, despite repeated warnings by parents.

### Conclusion

Lawn dart incidents indicate that children are most often the ones playing with the game when injuries occur. We analyzed these incidents to determine whether the mandatory standard provisions, promulgated 17 years ago, were ineffective in preventing lawn dart use by children. However, since reports on most incidents did not specify where lawn darts were sold or whether the box contained a warning label, we could not conclude that the standard was ineffective in these cases.

Instead, we identified consumer attitudes and behaviors from the lawn dart incidents and concluded that efforts to market lawn darts for adult use only cannot be expected to completely preclude use by children. Specifically, the sale prohibition and labeling provisions in the current mandatory standard, by itself, or supplemented by the five actions CPSC requested of industry, cannot be expected to accomplish the intended purpose.

Selling lawn darts in stores other than toy stores does not convey the message that lawn darts are for adult use only. Lawn darts are most often sold in sporting goods departments and consumers consider some sports equipment appropriate for children.

In addition, labeling lawn darts for adult use only may not convince parents that lawn darts are inappropriate for children. Lawn darts require motor and strategic skills similar to other sports equipment appropriate for children. The technical literature indicates that children 6-9 years of age are capable of playing with lawn darts. Parents may not consider lawn darts as being particularly hazardous, especially in comparison to other products used by children. For example, parents may question why they should prohibit 8 year old children from playing with lawn darts when they can allow them to use bb guns under supervision.

Further, it may be difficult for parents to prevent children from using lawn darts. Lawn darts are often used at large gatherings where the atmosphere is casual. In addition, parents sometimes have no knowledge that their children are using lawn darts.

Based on the foregoing, many people believe lawn darts are appropriate for use by children, as well as adults. Perhaps this is one reason why there is so much noncompliance with the regulation at the retail level. CPSC itself has instructed its

investigators to use the Toy Investigative Guidelines for lawn darts and has included lawn darts surveillance under Operation Toyland.

In conclusion, lawn darts do not require complex skills which preclude use by children. Therefore, we believe children will continue to play with lawn darts, despite marketing the product as an "adult game of skill."

1. Tinsworth, Deborah, Lawn Dart Injuries, January 1988.
2. Goodson, Barbara Dillon, and Bronson, Martha B., Guidelines for Relating Children's Ages to Toy Characteristics, prepared for U.S. CPSC October 17, 1985, pp. 67-73.
3. Wickstrom, Ralph L., Fundamental Motor Patterns, Lea and Febiger, 1983, p. 101.
4. Goodson, pp. 67-73.
5. CPSC In-depth Investigation Number 871222CAA0082.
6. CPSC In-depth Investigation Number 840716CBC3338.
7. ASTM F589-85 Standard Consumer Safety Specification for Non-Powder Guns, pp. 362 - 363.
8. 16 CFR 1500.83(23).
9. CPSC In-depth Investigation Number 790709BEP0033.
10. CPSC In-depth Investigation Number 790801BEP0007.

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UNITED STATES GOVERNMENT  
MEMORANDUM

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

JAN 20 1988

TO : Elaine Tyrrell, OPMB  
Through: David Schmeltzer, Associate Executive Director, CA *Handwritten signature*  
FROM : Christine Nelson, <sup>CR</sup> Division of Regulatory Management

SUBJECT: Lawn Dart Compliance Survey

On October 21, 1987, an advance notice of proposed rulemaking (ANPR) outlining two possible courses of regulatory action for lawn darts was published in the Federal Register. In response to the interest the Commission expressed in the status of compliance with mandatory requirements for lawn darts and conformance with the five voluntary actions requested by the Commission staff, the Directorate for Compliance and Administrative Litigation requested that the field staff survey retail stores and inspect lawn dart importers and manufacturers. The results of this survey are presented in this memorandum.

Retail Stores

A total of 112 retail stores were visited to determine compliance with retail restrictions on the sale of lawn darts. Stores in warm climates where lawn darts were more likely to be sold during the winter were surveyed. Stores were surveyed in Hawaii, California, Oregon, Arizona, New Mexico, Texas, Georgia, Virginia and Florida. Types of violations field investigators looked for are:

1. Lawn darts offered for sale in toy stores.
2. Lawn darts in sporting goods, variety and department stores displayed for sale with toys and other articles intended primarily for children.
3. Lawn dart packages with labeling violations.

Three types of stores were surveyed. The number surveyed of each type is as follows:

Toy stores -- 24  
Sporting goods stores -- 19  
Variety and department stores -- 69

165  
50



Observations for each store type are described below.

Toy Stores -- One of the 24 toy stores surveyed was selling lawn darts in violation of retail restrictions. The store was notified of the violation, immediately removed the lawn darts from sale and agreed to not sell lawn darts in the future. The lawn darts had complying labeling.

Sporting Goods Stores -- One of 19 sporting goods stores surveyed was selling lawn darts. No violations were noted. The lawn darts had complying labeling and were not displayed near articles intended for children.

Variety and Department Stores -- Twenty-nine of the 69 variety and department stores surveyed were selling lawn darts. Of the 29 stores selling lawn darts, 13 were displaying lawn darts with toys and other children's products in violation of retail sales restrictions and/or offering for sale lawn darts with labeling violations. Two of the 13 stores were in violation of both the retail sales restrictions and labeling requirements. Five were in violation of the retail sales restrictions only. Six were in violation of the labeling requirements only. Twelve of the 13 stores were part of major retail chains which previously had been advised they were in violation of the lawn dart requirements.

#### Summary of Retail Survey

Out of 112 retail stores surveyed, only 31 were selling lawn darts. Twenty-nine of the 31 were variety or department stores, one was a toy store and one was a sporting goods store. Of the 31 stores selling lawn darts, 14 were in violation of lawn dart requirements. Violations consisted of displaying lawn darts for sale in a toy store or toy department (8 stores) or offering for sale lawn darts which were in violation of labeling requirements (8 stores). Two stores were committing both types of violations.

Twelve of the stores were part of three major retail chains which previously had been notified of lawn dart violations and requested to correct these violations. All three previously violative chains have decided to stop selling lawn darts.

#### Inspections of Importers and Manufacturers

The Compliance staff identified 18 importers or manufacturers of lawn darts. This number is lower than some earlier counts because firms and their subsidiaries are no longer being counted as separate entities. In the summer and early fall of 1987 the Commission staff determined that 17 of these 18 firms were distributing or had recently distributed lawn darts with

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labeling violations. The 18th firm had distributed noncomplying lawn darts several years earlier, but their 1987 inventory was in compliance.

Seventeen of the 18 firms were inspected during our November-December survey. On the advice of OGC one firm was not inspected because legal action against this firm was being considered. The purpose of this survey of importers and manufacturers was to determine their compliance with current labeling requirements and conformance with the five voluntary requests described in the ANPR published on October 21, 1987.

The 17 inspected firms can be divided into three categories. The categories and the number of firms in each are:

Importer/distributor - 8  
Importer/retailer - 7  
Manufacturer - 2

#### Compliance with Present Lawn Dart Labeling Requirements

Of the 17 firms inspected, 11 had lawn darts in stock. Eight of the 11 firms had no current labeling violations. Three firms had lawn darts in stock with labeling violations. Two of these firms, both importer/retailers, had attempted to correct their labeling violations but were not completely successful. One firm had designed stick-on labels for the front panel but omitted the signal word "WARNING" and did not make the type size of the remaining wording large enough. The Central Regional Center is notifying the firm that the new label is still violative and requesting correction.

The other firm had attempted to correct labeling violations by sending stick-on labels with the front panel warning statement to retail stores to apply to lawn darts in stock. However, CPSC investigators found unlabeled lawn darts at two of the firm's stores. In December 1987, the firm directed their stores to destroy all lawn dart sets in stock.

The third firm with noncomplying stock, also an importer/retailer, does not intend to sell lawn darts in the future and will either destroy their stock or ship it to their import broker. We will monitor disposition of these noncomplying lawn darts to ensure that they do not re-enter the retail market.

The 11 firms with lawn darts in stock which they intended to distribute had at least 173,324 lawn dart sets and 12,027 combination sets.

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### Compliance with Voluntary Requests

Of the 17 firms inspected, 10 firms stated that they have stopped importing or manufacturing lawn darts and they have stopped or will stop selling lawn darts when present inventory is used up. Therefore, conformance with the voluntary requests is not an issue for these firms. However, we should verify at some future date that these firms have not resumed distribution of lawn darts.

Seven firms plan to continue distributing lawn darts. Four of the seven firms which plan to continue distributing lawn darts sent representatives to a meeting with Commission staff in July 1987 to discuss requested voluntary actions to increase lawn dart safety. At this meeting the industry representatives said they could conform with our requests regarding the front panel warning label, lawn dart fin labels, labeling warning the consumer against modifying lawn darts, and labeling providing notice to retailers about lawn dart displays by the end of June, 1988 and with our request regarding stopping sale of combination sets by January, 1989.

When we sent copies of the ANPR to these and other firms in November 1987 we indicated that the Commission was interested in seeing conformance with these requests at an earlier date than the industry representatives had previously agreed to.

When asked during our recent survey about plans to conform to the five requests, one firm said it will conform with our five requested actions IF they are made mandatory.

Plans for conformance by the other six firms are discussed below in regard to each individual request.

Front Panel Warning Label -- Firms were requested to modify the front panel warning label to make it more conspicuous and readable. Two firms are in conformance now according to their reports. Two firms will be in conformance by June or July of 1988. Two firms intend to implement the change but are not sure when.

Warning Label on Lawn Dart Fins -- Firms were requested to apply a warning label to one fin of each lawn dart in a contrasting color. At the meeting between lawn dart industry representatives and Commission staff in July 1987, industry representatives agreed to put a warning label on lawn dart fins but declined to use a contrasting color because they said it was not practical. They proposed achieving contrast by using different surface textures. The ANPR published in October 1987 specified that labels on lawn dart fins be in a contrasting

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color. All six firms said they intend to label lawn dart fins but indicate uncertainty about using texture or contrasting color. Two are presently labeling lawn dart fins, one with raised letters without contrasting color and one with a stick-on label in a contrasting color. Because of the uncertainty about texture versus color most are also uncertain when they will implement this change.

Include Warning to Consumers to Not Modify Lawn Darts or Redesign Lawn Darts to Prevent Modifications -- Firms were requested to include in their instructions a warning to consumers not to modify lawn darts because modification could make them more hazardous or to redesign lawn darts so they cannot be modified. Two firms have already implemented this request. One firm was unaware of this request although the request, with recommended wording, was included in a letter sent to the firm in July 1987 and the copy of the ANPR sent to the firm in November 1987. One firm will implement this action by 6/88 or earlier. Two other firms intend to implement the action but are uncertain when.

Notice to Retailers -- Firms were requested to include in each shipment of lawn darts a notice to retailers explaining the proper display of lawn darts. Three firms have implemented this request. Two intend to implement the request but were uncertain when. One firm was not aware of this request although the request with recommended wording was included in a letter sent to the firm in July 1987 and in the copy of the ANPR sent to the firm in November 1987.

Stop Sale of Combination Sets -- Firms were asked to stop sale of lawn darts in combination with other sports equipment. Two firms are not selling combination sets now. One firm will stop selling combination sets as of 8/88 and two as of 1/89. One firm has not decided whether it will distribute combination sets.

#### Summary of Importer and Manufacturer Inspections

Seventeen of 18 firms known to import or manufacture lawn darts were inspected between November 1987 and January 1988. The purpose of the inspections was to determine compliance with existing lawn dart labeling requirements and conformance with five voluntary requests. Eleven firms had lawn darts in stock at the time of the inspection. Eight of the 11 had no labeling violations. Of the three firms with labeling violations, one firm planned to dispose of the noncomplying inventory rather than sell it. Two firms had attempted to correct violations but were not fully successful. One of these firms recently destroyed their inventory. The other firm is being asked again to correct

the violation. The total inventory of lawn darts intended for distribution was at least 173,324 lawn dart sets and 12,027 combination sets.

In regard to conformance with the five voluntary requests, 10 firms stated that they do not intend to import, manufacture or sell lawn darts in the future. Seven firms do intend to continue importing or manufacturing and distributing lawn darts. One firm will implement the five requests IF the Commission makes them mandatory. A second firm stated its intention to implement all five requests during December 1987. A third firm stated its intention to implement the first four requests in January 1988 and to stop selling combination sets by January 1989. The remaining four firms state their general intention to implement the first four requests but most are uncertain when. Confusion exists over whether lawn dart fin labels should be in a contrasting color or texture. Regarding stopping distribution of combination sets, two firms do not sell combination sets now, one is undecided whether they will sell them, one will stop by August 1988 and two will stop by January 1989.

UNITED STATES GOVERNMENT  
MEMORANDUM

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

TO : Elaine Tyrrell, OPMB  
THROUGH: David Schmeltzer, AEDCA  
FROM : Christine Nelson, CARM *cn*  
SUBJECT: U.S. Customs Follow-Up Action on Lawn Darts

FEB 04 1988

This memo is in response to your request for information on the results of U.S. Customs follow-up action on lawn darts. At the same time the Commissioners voted to issue an advance notice of proposed rulemaking on lawn darts, they asked the staff to request that U.S. Customs check imported lawn darts for required labeling.

During the Operation Toyland program conducted in Newark, New Jersey in October 1987, U.S. Customs agents and CPSC investigators were requested to check lawn dart shipments for required labeling. Through the U.S. Customs computer we identified one shipment of darts. This shipment was checked and found to contain no lawn darts. No other lawn dart shipments were identified during the Newark operation.

Lawn darts also were included in the San Francisco Operation Toyland in July, 1987 and the Los Angeles Operation Toyland in September, 1987. No shipments of lawn darts were identified in either of these operations.

Since lawn darts are promoted primarily during the summer we expect that lawn darts are likely to be imported during the late winter and early spring rather than in the fall. We will continue to include lawn darts in training programs conducted for U.S. Customs and encourage U.S. Customs to check lawn dart shipments for labeling.



CC: Elaine

LOG OF MEETING

Subject: Lawn Darts

Date: December 10, 1987

Place: SGMA, Suite 900  
1625 K Street, N.W.  
Washington, D.C. 20006

Log Entry Source: Linda L. Glatz, OPMB

Commission Representatives:

Linda L. Glatz, OPMB

Non-Commission Representatives:

Milton M. Bush, Esq., Director of Operations, Sporting Goods Manufacturers Association (SGMA)

Drew Azarra, Manager, American Society of Testing and Materials (ASTM)

Powell White Berger, SGMA

George Small, VP, Franklin Sports Industries, Inc.

Larry Weckstein, General Sportcraft Co., Ltd.

George Trippher, Regant Sports

Milton Bush, SGMA, who chaired the meeting, began by discussing the CPSC's five proposals and the industry response to them. The representatives of all three companies indicated they comply with the initial findings but they are waiting for guidance from CPSC regarding wording and labeling. The industry reported that no guidance has been forthcoming from CPSC since the July 17, 1987 meeting. Mr. Small explained that he is unable to address the Commission's five proposals because of this lack of guidance.

Mr. Drew Azarra, Manager of Developmental Operations, ASTM, was introduced. He explained ASTM's role in the development of voluntary standards and offered to provide a neutral forum to develop a full voluntary consensus standard.

Mr. Bush stated that J C Products and Crown were two new members of SGMA and that SGMA represented 80-90% of the industry at present.

Mr. Azarra discussed ASTM procedures as they related to seven points raised in the CPSC Advance Notice of Proposed Rulemaking (Federal Register, 10/20/87, 38935-38939).

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First, ASTM would undertake to inform all in the industry through notices, advertisements, and direct mail. ASTM would maintain constant communication with the industry throughout the development process.

Second, anyone interested in the standard development can participate in the ASTM process (i.e., consumer groups, government representatives). All have a vote in what should be included in the standard. It was pointed out that producers of the product cannot control more than 50% of the vote.

Third, ASTM follows the rules and regulations published in their ASTM Regulations Governing Technical Committees.

Fourth, in light of congressional and CPSC activity on lawn darts, this could be considered an "emergency" standard process which could take an estimated six months. A specific schedule would be developed at the organizational meeting.

Finally, the participants in the voluntary standard development group would be as balanced as in any ASTM process. ASTM would provide meeting rooms and guidance but the standard would be developed by the industry group.

Mr. Bush pointed out to the industry representatives that once a voluntary standard had been developed, CPSC could be requested to mandate it. Mr. Trippher stated he was in favor of this course of action.

The industry representatives reached no decision at the conclusion of this meeting on using ASTM to develop the voluntary standard.



## SPORTING GOODS MANUFACTURERS ASSN.

'87 DEC 21 P5:01

CONSULET  
SAFETY COMMISSION

December 17, 1987

## Respond to:

MILTON M. BUSH, ESQ.  
Washington Office  
1625 K Street, N.W.  
Suite 900  
Washington, D.C. 20006  
(202) 775-1762

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Florida 33408  
(305) 842-4100

Office of The Secretary  
Consumer Product Safety Commission  
Washington, D.C. 20207

This is in response to the Advance Notice of Proposed Rulemaking in the Federal Register, dated October 20, 1987, seeking comments and data on lawn darts.

The Sporting Goods Manufacturers Association (SGMA), in cooperation with the American Society of Testing and Materials (ASTM) intends to develop a voluntary safety standard on lawn darts to address the risk of injury identified in subsection C of the ANPR. (This decision was reached at a meeting of lawn dart manufacturers, distributors and importers on December 10, 1987, with ASTM and the CPSC in attendance.) The development of the standard, however, in and of itself, is not an admission of the risks of injury associated with lawn darts identified in subsection C of the ANPR.

The following discussion, to the extent possible, outlines the plan for the development of the voluntary standard. Should there be any questions about the details of the plan, reference should be made to ASTM and their procedures for voluntary standards development.

ASTM, through their recognized balloting procedures, would notify all interested groups and persons of all proceedings prior to and during the development of the standard. ASTM has committed to holding an organizational meeting of all interested groups and persons in January, 1988.

The views of interested groups and persons will be incorporated into the standard by recognized ASTM due process safeguards. We understand that the guiding principle is "one interest, one vote," one of the caveats being that the number of voting producers cannot be more than the non-producers.

The development of the standard by ASTM will be guided by Regulations Governing ASTM Technical Committees under the time constraints of an emergency standard. ASTM has stated that a realistic estimate for the promulgation of a final lawn dart standard could be as quick as six to seven months.

Page 2

ASTM has stated that a detailed schedule of the various stages of the development process would be planned at the organizational meeting as well as the list of people expected to participate, a description of their background and experience.

While ASTM will provide the necessary meeting facilities for the development of the standard, any test facilities or equipment will be those made available by the participants with oversight by ASTM.

Should the Commission require additional information or clarification, we stand willing to cooperate fully.

Sincerely,



Milton M. Bush, Esq.  
Director of Washington Operations

MMB:pwb

cc: Drew Azarra, ASTM

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# Consumer Federation of America

*Rec'd by OS  
Dec. 22, 1987*

COMMENTS OF  
CONSUMER FEDERATION OF AMERICA  
ON  
CONSUMER PRODUCT SAFETY COMMISSION  
ADVANCE NOTICE OF PROPOSED RULEMAKING  
ON LAWN DARTS  
[52 FED. REG. 38935]

Submitted by:

Mary Ellen R. Fise  
CFA Product Safety Director

December 21, 1987

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The Consumer Federation of America (CFA) 1/ is pleased to submit these comments on the Advance Notice of Proposed Rulemaking (ANPR) on Lawn Darts published by the Consumer Product Safety Commission (CPSC) [52 Fed. Reg. 38935]. CFA strongly supports a ban of all lawn darts.

The case this Fall (1987), in which a four-year-old girl in Pride, Louisiana was struck by a lawn dart, underscores the need for CPSC to act quickly to ban this lethal product. This little girl was admitted to the hospital to have a lawn dart that was imbedded in her brain removed. She has been having seizures, and it is still unclear whether she will have any permanent brain damage.

CFA believes that the distinction in the existing regulations, between lawn darts intended for adults and those intended for children, is meaningless. The simple fact is that, regardless of intended use, children play with lawn darts and are injured and killed by them. Data collected by CPSC indicates that 81% of the lawn dart injuries reported in 1986 involved children age 14 and younger; over 50% of the victims were below age 10. Yet all of these injuries were caused by lawn darts intended for adults.

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1 Consumer Federation of America's (CFA) members include 240 state, local and national organizations, representing 50 million consumers. A non-profit consumer advocacy organization, CFA represents consumers before Congress and the regulatory agencies. Children's safety is a high priority for CFA.

### Regulatory Alternatives Under Consideration

CFA believes that any regulatory or non-regulatory option that falls short of an absolute ban on all lawn darts will fail to protect consumers from the unreasonable risk of injury posed by these products.

The non-regulatory options, or voluntary compliance with some or all of the limitations discussed at the July 17, 1987 meeting between the industry and CPSC (See 52 Fed. Reg. 38936, numbers 1-5), are not adequate to keep the product out of the hands of children. Despite all of these limitations, lawn darts will still be offered for sale to consumers, who will take them home where they will be accessible to children. The existing warning obviously has not deterred families with children from buying these products. CFA believes the agency's suggestion that an increase in warning size will have a significant impact on the 500,000 lawn darts sets sold each year is implausible. Likewise, placing a warning on the fin in contrasting texture will have little, and possibly no, impact on children who want to experiment with this attractive game of skill. CFA believes the remaining three limitations (discussed in the ANPR) regarding modifications, retail display information and combination sets, will be equally ineffective measures to address the real concern -- preventing children from playing with lawn darts.

For the same reasons as just discussed, the non-banning regulatory options available to the Commission, such as setting a

mandatory standard setting forth warning requirements, would also be inadequate. Unless the Commission were to promulgate a mandatory standard that, by setting forth stringent performance requirements, had the effect of banning lawn darts as we know them today, we believe a mandatory standard for lawn darts would be an improper alternative for the Commission to consider. Such performance requirements would have to ensure that the product be designed in such a way as to prevent, regardless of velocity, penetration of human skin, blinding and other risks.

#### Non-compliance by Industry with Existing Regulation

The agency's review of industry compliance with the lawn dart regulation evidenced widespread non-compliance. CFA also reported violations of the lawn dart regulation to CPSC in June of this year (see Attachment 1). But despite increased compliance efforts by CPSC, lawn dart manufacturers and distributors continue to violate the law.

On December 16, 1987, CFA again visited the Zayre store in Beverly, Massachusetts to determine whether lawn darts were being sold in violation of existing law. Sports Action's "Three in One Game Set" of yard (lawn) darts, badminton, and volleyball was still in violation. (The product is described in #1, p.1 of CFA's June 8, 1987 letter; see Attachment 1.) No warning whatsoever was on the box. There were 14 boxes on the shelf, retailing for \$24.99 each. The store also was still carrying Sports Action "yard darts" for \$4.99. Again, this product was



found violative of the CPSC regulation because the warning was found on the back of the package rather than in the principal display panel. This was the exact violation we reported in June 1987 (paragraph 2 of #1, p.1, June 8, 1987 letter; see Attachment 1). CFA believes that, if the evidence is supportive of repeated violations, CPSC should seek civil penalties from the manufacturers in question. This is certainly one positive step that should be initiated while this rulemaking is proceeding. Because of extremely limited compliance resources, CPSC is often forced (as it has been in the case of lawn darts) to take a reactive position in enforcing existing CPSC laws. This reality, coupled with the lawn dart industry's blatant disregard for the law, adds further weight to the need for a ban.

### Conclusion

As we have in the past (see September 22, 1987 letter, Attachment 2), CFA again urges the commission to ban all lawn darts. The inadequacy of labeling and the deaths and severe injuries associated with lawn darts support this action. America's children and their families need you to exercise your regulatory responsibility in order that they be protected from this deadly product.

September 29, 1987

LETTER TO THE EDITOR:

I read the article of the tragic death of Michelle Snow caused by a lawn dart. I greatly sympathize with the family and realize the tremendous grief they must bear.

However, I think we need to be careful when we talk about banning something like a lawn dart because of one reported death in 17 years. This is an adult piece of equipment and any adult familiar with the equipment will quickly realize it isn't a toy that should be left in sight or reach of a child anymore than a loaded gun.


A baseball bat can be a lethal weapon if used in an unfamiliar or unsupervised manner. We have all heard the stories of a young child being hit accidentally in the head by another child and causing severe injuries or death. Does this mean that we should ban baseball bats because they caused a death or injuries because the bat was improperly used?

I guess we could look at the many injuries and deaths caused by the sport of football. We could rationalize that because someone manufactured footballs they have caused this game to be played which causes all these deaths and injuries and therefore we should stop the manufacture of footballs.

Accidents are a part of life. However, nowadays, anytime someone has an accident they automatically figure it has to be someone else's fault. If we can pass the blame onto someone else we feel it relieves us of the responsibility.

The manufacture of lawn darts didn't cause Michelle's death. It was the improper use of a recreational piece of equipment.

Sincerely,

  
Carl Meseck

CM/jw

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STATE OF CONNECTICUT  
DEPARTMENT OF CONSUMER PROTECTION

December 8, 1987

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

Re: ANPR - Lawn Darts

Dear Ms. Dunn:

The Connecticut Department of Consumer Protection supports efforts by the U.S. Consumer Product Safety Commission to reduce the risk of injury or death related to the use of lawn darts.

I believe the front panel warning label should be more conspicuous and that a conspicuous warning should also appear on a fin of each lawn dart. Retailers have legal obligations concerning the display and sale of lawn darts and should receive instructions concerning these obligations with each shipment of lawn darts. Lawn darts should not be sold in combination sets to avoid equating the safety of lawn darts to that of the companion set, e.g. badminton.

It is essential that these regulatory options be coupled with on-going enforcement. Enforcement is the most critical component in achieving the long-term objective of reducing injuries and deaths arising from the use of lawn darts.

In closing, I would encourage the commission to proceed with the rulemaking steps under both the CPSA and the FHSA rather than under CPSA alone. Many states adopt by reference standards under FHSA. Rules promulgated under FHSA can be enforced by these state governments thereby extending the limited resources of the Consumer Product Safety Commission.

Sincerely,

A handwritten signature in cursive script that reads "Mary M. Heslin".

Mary M. Heslin  
Commissioner

MMH:cdh

149  
69



**Regent®**  
WHERE PERFORMANCE COUNTS

November 10, 1987

Mr. David Schmeltzer  
Associate Executive Director  
Directorate for Compliance and  
Administrative Litigation  
U.S. Consumer Product Safety Commission  
5401 Westbard Avenue  
Bethesda, MD 20816

Dear Mr. Schmeltzer:

We are in receipt of your letter of November 3, 1987 regarding Lawn Darts.

It is our understanding you are now asking the industry to be in compliance with the five (5) "voluntary" actions by January 20, 1988, rather than June 30, 1988. In the case of the elimination of combination sets including lawn darts the target date was January 1, 1989.

You indicate you have been directed by the Commission to conduct a survey by January 20, 1988. If the term "survey" includes looking for evidence of compliance in the retail marketplace you should be aware you are unlikely to find any significant evidence of the changeover in January. As we discussed in July, this product and certain components are already produced to some degree for Spring 1988 shipments. The June 30, 1988 and January 1, 1989 dates were selected to allow an orderly phase-in from the old standards to the new. Current inventory levels and lengthy lead times will not allow an orderly changeover by the January 20th date. Major shipments do not begin until February, March and April and even items in compliance with the new standards in our inventory as of January 20th will only begin appearing in stores over a period of several months following January.

If your survey is to be a check with suppliers on what actions have been taken as of January 20th towards accomplishing the requested revisions, we believe we will be able to demonstrate actions both taken and planned which will bring us into compliance by the original dates requested.

If your survey is to be a review of compliance with the existing regulation you will once again find our products in compliance as in the past.



**Regent**  
WHERE PERFORMANCE COUNTS

It is also not clear to us what action you are requesting with regard to the warning on the fin of each lawn dart. We would appreciate clarification at your earliest convenience as changes are already in progress to conform with the July agreement.

We continue to be anxious to work with the Commission and our industry to reduce safety problems caused by improper use of this product.

Sincerely,

REGENT SPORTS CORPORATION

Stephen R. Vultaggio  
Vice President - Marketing

SV/jmf

cc: Office of the Secretary  
U.S. Consumer Product Safety Commission  
Mr. I. Lawner

Gordon [REDACTED]  
[REDACTED]

November 16, 1987

Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207

**LAWN DARTS:**

I note in the October 20 Federal Register, the notice of proposed rule making on LAWN DARTS.

**CURRENT REGULATION SUFFICIENT:**

Current labeling on lawn darts are sufficient to warn consumers about the possible hazards of their use. Further regulation is in the direction of trying to make every activity safe for every one. This is inherently impossible without affecting basic freedoms that we all enjoy. These freedoms include the right to engage in dangerous pastimes.

**REGULATED QUALITY OF LIFE WORSE:**

Further regulation of lawn darts does not enhance the quality of life in the US. Rather this further regulation only adds to the skein of regulation which makes it difficult to pass through life in this country without the ever present aid of an attorney.

Sincerely,

[REDACTED]  
Gordon [REDACTED]

Susan [REDACTED]

November 3, 1987

Office of the Secretary  
Consumer Product Safety Commission  
Washington, D.C. 20207

Re: Proposed Rule, Lawn Darts

Dear Sir or Madam:

Your request for comments regarding the proposed rule for lawn darts was of interest to me as a parent who once owned the product. My children are no longer small, but they were when we purchased lawn darts. I seem to recall a warning on them. As a concerned parent, I intended that my children never play with them. However, children have a tendency to do things even the most well-intentioned and watchful parent never expects.

Luckily, my children did not sustain an injury from this product. However, given the above paragraph's tone, I hope you realize they did injure themselves and each other using other products. I myself beamed my best friend when we were both three with a child's play garden rake. He required stitches. The argument was over something in my sandbox. He crowned me with something, I just had the sharper tool or, perhaps, the most wrath..He hit me first! Certainly both he and I knew better. Needless to say, I no longer had a play rake after the incident. His mother had to insist he be allowed to play with me again; his watchful housekeeper-babysitter thought I was an awful child. Neither of us was awful, we were just children!

The point is, here we are considering a product which requires warning labels for parents to keep the product away from their children, and to watch carefully when an adult is using the product lest a child inadvertently be injured. I'm sure most parents will heed the message: when they buy the product. But once the product is in the home? Out of the box? Down in the basement? Children get their parent's loaded guns and "play" with them. These toys are not at first glance as lethal. What kinds of precautions really will be taken with them?

I believe that, given the history of lawn darts which you detailed in your request for comments, the Commission should carefully consider the ramifications of continuing to allow the sale of this product at all. The history of manufacturer and retail abuse of current regulations is informative. I realize that it is difficult to ban a product, especially since this product is so "popular" as to generate 500,000 sales annually. However, given the average of 675 injuries per year it seems the prudent course.

137  
23

I realize that even a ban on the sale of this product would not stop all injuries. Given the 500,000 sales per year, we must have an awful lot of lawn dart sets in this country. However, it would forestall additional injuries that would occur if sales were allowed to continue.

I assure you, I am not one who would wrap children up in cotton batting to protect them from harm. But if there is a history of abuse of regulations it seems sensible to crack down, not create more and bigger labels.

Now that my recommendation that you institute a ban on the product is clear, let me respond to your suggested "voluntary actions" requested of manufacturers while "regulatory options are being considered."

1) The suggested label seems as if it would attract more attention. The label on the box we purchased was, I think, in black letters on a dark green background. The use of orange with black letters would attract more attention. I have no quarrel with the size of letters suggested. I agree the warning should be reorganized so as to put "Keep out of reach of children" ahead of "Read instructions carefully."

2) The warning on a fin of each dart would address the problem of what happens when the box gets thrown away. A contrasting color would be better than a different texture. It obviously presents a problem of design. If an different color is used, it would have to be indelible.

3) Possible modification of this product gives me chills. I can't help thinking that people would sharpen the points. If that has happened, you have a duty to say so in your request for comments. Yuck! What an awful picture! I have no idea of what modifications you are alluding to. I also cannot imagine what changes are in mind to prevent such modification. Suction cups? No, they don't stick to lawns. Make yourself clear.

4) Given the abuse of current regulations one obviously needs to include a warning message within each case of the product. I wonder, however, whether the stockperson who unpacks the box will read the warning?

5) I wholeheartedly agree that this product not be sold in conjunction with badminton and volleyball games, the so-called "combination sets." These other games are comparatively harmless. Well, I suppose a child could strangle itself with a net, but... Hey, I'm a parent! These small humans need to be watched all the time. My older son still remembers being told not to touch the mousetrap. We told him not to touch it. We told him, again, sitting at the table in the kitchen, while he was leaning over to see if the mouse got caught in the night. We repeated the telling. He did it anyway. Boy, was he suprised. Lawn darts aren't in the same league as the aforementioned games.

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I've taken a lot of time with this letter. I hope you will give what I've said serious consideration. Remember, my opinion is that you should ban these dangerous objects. My advice as to the "voluntary rules" is that they be made mandatory if it is decided not to keep them off the market. I wonder about enforcement, however? Penalties? Fines? Raids on picnics?

Sincerely,

/ Susan [REDACTED]

190  
78



Crown Recreation, Inc.  
Collette Manufacturing Company  
Bldg. #9, DeGraff Street  
Amsterdam, New York 12010

ATTACHMENT H

Telex: 5101009917  
ANSBACK: (COLLETTEMFGCO)

CARM

November 16, 1987

Mr. David Schmeltzer,  
Associate Executive Director  
Directorate for Compliance and Administrative Litigation  
U. S. Consumer Product Safety Commission  
5401 Westbard Avenue  
Bethesda, Maryland

Dear Mr. Schmeltzer:

I am in receipt of your letter of November 3, 1987 regarding the advance notice of proposed rulemaking regarding lawn darts. In earlier correspondence (see attached letter of August 11, 1987) I indicated my agreement with the recommendations suggested at that time. In reviewing your letter of November 3, I note that it appears to be the desire of the Commissioners to accelerate the implementation of the five actions as outlined.

Acceleration of implementation would pose considerable problems and financial hardship in that our packaging would need to be altered and it is virtually impossible to do this in the short period of time indicated. The design, components and packaging of these items cannot readily be changed in a three month time frame. We have been aware of the June 30, 1988 and January 1, 1989 dates and have planned our packaging requirements in accordance with these dates.

We do not want to be penalized or to have it appear that we are not cooperating, but our advance planning will not allow us to accelerate our schedule of implementation. Please be assured that we are attempting to be cooperative and are willing to do what is necessary if we have sufficient lead time.

Very truly yours,

Richard R. Lamontagne,  
President

RRL:pb

NOV 23 2:42

COMPLIANCE & ENFORCEMENT  
RECEIVED

101  
76



STATE OF NEW YORK  
DEPARTMENT OF LAW  
120 BROADWAY  
NEW YORK, NY 10271  
(212) 341-2305

ROBERT ABRAMS  
Attorney General

JOHN W. CORWIN  
Assistant Attorney General in Charge  
Consumer Frauds and Protection Bureau

October 8, 1987

Douglas Noble  
Acting Associate Executive Director  
Directorate for Compliance and  
Administrative Litigation  
Consumer Product Safety Commission  
5401 Westbard Avenue  
Bethesda, MD 20207

Dear Doug:

As discussed in our phone conversation of October 5, 1987, I am enclosing the instruction sheet for a game of jarts by Regent of Hauppauge, New York. Although the warnings required by 16 CFR 1500.86 are included, their import is vitiated by language in the first paragraph of the instruction which implies that children can and will play with lawn darts. (See third sentence of first paragraph.)

In our continuing survey of compliance with CPSC's lawn dart regulations, in New York we have also found the sale of lawn darts in combination with games commonly played by children.

The above-noted types of violations demonstrate that lawn darts are sold as games suitable for children (and will probably continue to be perceived as such). Our office hopes that a ban is imposed on the sale of lawn darts before any more injuries occur.

Very truly yours,

*Phyllis B. Spaeth*

PHYLLIS B. SPAETH  
Assistant Attorney General

PBS:js

cc: Richard Schwackhammer

192  
77

12-1-87

This letter is in response to the Commission's proposal on lawn darts.

September 7, of this year my eight year old son's life tragically changed. A lawn dart penetrated his right eye. He has had two operations and two more are planned. He lost his lens and iris, and sight in his eye. His doctors are optimistic he will see again. For the rest of his life he will have a reminder of this unnecessary accident, for his eye will never look the same again.

The manner in which lawn darts are sold would not change the accident he had. This game ~~is~~ (set) is about 15 years old.

The only way to save other children is to ban the sale of this game. If they are around "ever" children are

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going to be hurt.

I recently had a conversation with a woman I did not know.

I told her of my sons accident and she told me she had a set of lawn darts, but they weren't dangerous 'because' the end wasn't 'real sharp'. She is a grandmother and said she bought them for her twelve year old grandson and she was in the yard when he plays. People are buying them for their kids. This woman proved that to me.

Last night my son asked me "why don't they quit selling lawn darts"? I

could not give him an answer.

Please help prevent other tragedies from occurring from this game, I strongly urge your office to ban the sale of lawn darts.

Sincerely, Cathy

1994  
1979

Castro



ZIP

Consumer Product Safety Commission  
Attn: Christine Nelson  
Washington DC 20207

# Kent Sporting Goods Company, Inc.

STATE ROUTE 60  
NEW LONDON, OHIO 44851  
(419) 929-7021

ATTACHMENT K

November 9, 1987

Mr. David Schmeltzer  
U.S. CONSUMER PRODUCT SAFETY COMMISSION  
5401 West Bard Avenue  
Bethesda, MD 20816

NOV 16 1987  
RECEIVED  
COMPLIANCE & INSPECTION  
DIVISION

Dear Mr. Schmeltzer:

Thank you for your letter of November 3, 1987. For the record, KENT SPORTING GOODS COMPANY, INC. opposes any further regulation of lawn darts.

The KENT lawn dart is a safer design than the metal tipped, sliding fin design used by most other distributors. I pointed this out to you in my letter of July 24, 1987, and I sent you samples for comparison. KENT has not had ONE insurance claim, notice of injury or product liability suit since the present ownership purchased the company in 1981. Can any or all of the other distributors make this statement?

KENT has reacted with a "sense of urgency" since the July 17, 1987 CPSC meeting in Bethesda:

1. We have modified the front panel warning label to make it more conspicuous and readable as per your specifications. Carton artwork is being finalized for approval and our next order of cartons will be in total compliance.
2. We have modified our tooling so that one fin on each lawn dart will have a readable and permanent warning as per the specifications agreed upon in the July 17, 1987 meeting.

The contrasting texture is readable, permanent and economical! A contrasting color label will certainly be readable, but it will not be permanent due to weather and use.

3. The KENT lawn dart design should be the model as it cannot be modified as easily to be as dangerous as the metal tipped, slider lawn dart design.

We have, however, added the modification warning to the back of the display carton below the game instructions.

4. We have added IMPORTANT SAFETY INFORMATION per your specifications to our shipping cartons.
5. We will not package lawn darts in combination sets with other games. We expect our existing inventory to be sold by January 1, 1988.

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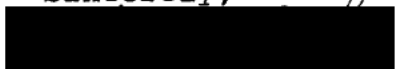
Mr. David Schmeltzer  
November 9, 1987  
Page 2

Mr. Schmeltzer, KENT is a small, privately owned company and we will sell more lawn darts than any other competitor in 1988 because our lawn dart is recognized as being safer. We have taken fast and positive action and we are prepared to be just as assertive if we are treated unfairly.

One death or one disabling injury from a lawn dart is tragic and serious. I understand the politics and media exposure of the Snow tragedy. But let's put this all in perspective:

- (a) Paul H. Rubin says that 800 children a year are killed on bicycles. Are you going to ban bicycles?
- (b) I'm told that there are more baseball bat injuries in one year than we've had in ten years with lawn darts!
- (c) Many safety experts throughout the country opposed raising the speed limit to 65 MPH because they said faster speeds would yield more accidents and more deaths. However, CONGRESS in its infinite political wisdom passed the law!!
- (d) Disposable cigarette lighters result in the deaths of 140 children a year!
- (e) How many children are killed a year because they didn't wear seat belts when in a car?

All of us at KENT want to produce and market safe products. KENT has a safer lawn dart but no product can be guaranteed to be perfectly safe!

Sincerely, 

Robert M. Archer

RMA:mao

cc: J. R. Tipton  
D. E. Walter  
J. L. Carlson  
B. S. White  
J. Chmela, J.C. Products  
Office of the Secretary, CPSC (5)

197  
82



## Debate rages over failures at consumer commission

By JUDY GRANDE

WASHINGTON

**T**he accidental death last April of 7-year-old Michelle Snow, whose skull was punctured by a lawn dart, has provided new ammunition to the critics of the Consumer Product Safety Commission (CPSC) who say the agency is mismanaged and unable to protect the public from dangerous products.

At congressional hearings and press conferences across Capitol Hill, the death of Michelle has been used to illustrate the commission's plodding reaction to safety hazards. But the tragedy — one of three known lawn dart deaths in about a dozen years — serves as more than just one example in a long list of alleged failures. The discussion of the Snow case goes to the heart of the continuing, heated debate over the future of the commission and its legislative mandate.

Should the commission, with a budget of \$34 million and a staff of more than 500 employees, spend its limited resources in an attempt to remove from the marketplace any product that poses some degree of risk, as does a metal-tipped lawn dart? Or should the commission weigh product risks against economic costs to the industries affected and against other hazards it may consider more pressing?

Critics of the agency, and there are many inside and outside of Congress, line up behind the former.

Several congressmen, including Rep. Dennis E. Eckart of Mentor, feel so strongly that products found to be inherently life-threatening should be recalled or banned that they have called for the resignation of Chairman Terrence Scanlon, a conservative Democrat who was appointed to the post four years ago by Ronald Reagan. They have introduced legislation revamping the commission, addressing even individual safety issues, such as lawn darts, disposable cigarette lighters and all-terrain vehicles.

"I have made a close examination of his performance and he has been found wanting," Eckart said of Scanlon. Eckart said even the other two members of the commission, who share Scanlon's conservative philosophy, "find his leadership falls short of that necessary to meet consumer protection."

But supporters of Scanlon and his conservative view of regulation, which is to give industry a chance to solve the problem first, see things differently.

They ask: Should the commission act based on emotion or politics, rather than fact, when it comes to hazards?

As economic consultant Paul H. Rubin, a Scanlon supporter and until several weeks ago chief economist of the commission, said: Michelle's death from the lawn dart is tragic, but 800 children a year are killed on bicycles and nobody in Congress is asking the commission to ban bicycles. (The darts were part of a game set purchased with badminton and volleyball games in a toy store, according to Michelle's father, David Snow, of Riverside, Calif., in testimony before Congress. CPSC regulations require lawn darts to be sold only as sporting goods, not in toy sections of stores, and they must carry safety warnings.)

When asked whether the commission protects the public, philosophy

SEE SCANLON/2-D

Grande is a reporter in The Plain Dealer's Washington bureau.

## Scanlon

FROM/1-D

aside, Rubin said: "Yes, to the extent possible... but there is a lot of pressure on it to spend time on things not worth spending time on. It's not the chairman's fault."

It comes down to the question of how far you can go to protect people, says Rubin, adding that excessive and inappropriate regulation is not the answer.

The embattled Scanlon, in an interview last week with The Plain Dealer, defended himself against what he believes to be politically motivated and unfair attacks against him and the agency, and said the commission is steadily working to protect consumers. As an example, he cited the success of Operation Toyland, in which Customs Service inspectors working with the commission have seized thousands of imported unsafe toys.

Scanlon also discussed several of the most controversial issues facing the commission, including disposable cigarette lighters, which result in the deaths of about 200 consumers a year, 140 of whom are children. Most of the fires from the lighters stem from child play, while only 1% are caused by malfunctioning lighters, Scanlon said.

He said the commission is investigating each child fatality and a report is expected in December on what caused the fires. For the commission to act before the report is complete is senseless, he said. Scanlon also said research still is being conducted on how to child-proof a lighter.

Scanlon also said he cannot understand the criticism. "Our staff has been working on this issue diligently, as a regular course of commission business."

Eckart, however, says the problem of disposable lighters is not new. He said the issue was first raised by CPSC staff in 1973 and that the commission has yet to respond to a 1985 petition filed by a nurse to require that the lighters be child resistant. Since that petition was filed, about 400 children under the age of 5 have died.

Eckart's bill, co-sponsored by Rep. James Florio, D-N.J., chairman of the consumer subcommittee of the House Energy and Commerce Committee, requires the CPSC to act on a citizens petition within 120 days.




UNITED STATES GOVERNMENT

MEMORANDUM

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

February 2, 1988

TO : D. Noble, Director, OPM-B  
FROM : David Shiflett, Director, OIPA   
SUBJECT: Lawn Dart Consumer Alert

The Office of Information and Public Affairs will update this Consumer Alert and release it at least on a yearly basis to newspapers, community groups, and individual consumers.

9.00  
85

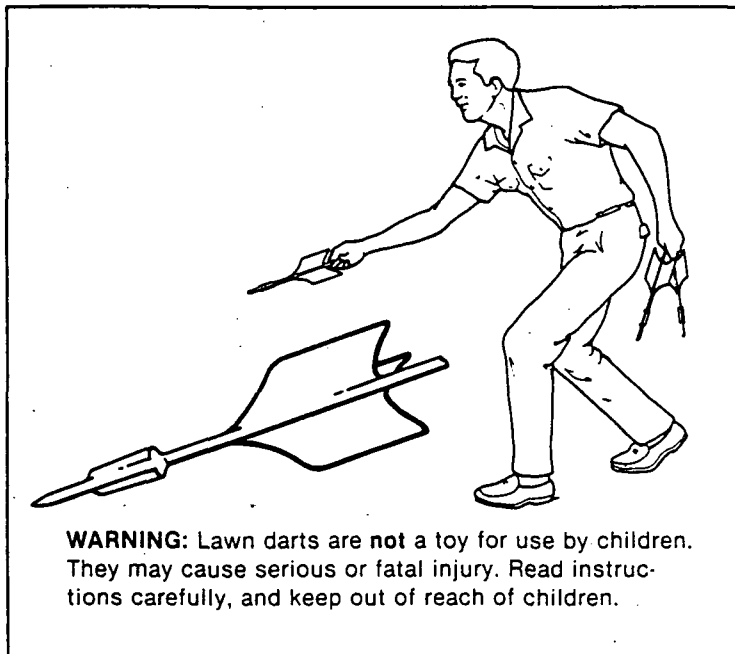
# Consumer Product SAFETY ALERT

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

May 1985

*Under laws administered by CPSC, an estimated 325 million potentially hazardous products have been called back from the marketplace and consumers since 1973 (when CPSC was created). Most of these were voluntarily recalled by manufacturers who established programs to repair or replace the products, or to refund the purchase price.*

## Lawn Darts Are Dangerous To Children



As warm weather approaches, children and adults look forward to outdoor sports and games. One such outdoor game, lawn darts, is dangerous to children. Lawn dart sets usually include two targets and four large darts. The targets are plastic tubes which are shaped to form circles and placed on the lawn. The darts, which are about 12 inches long with a heavy metal point on one end and three plastic fins and a plastic rod on the other end, are grasped by the plastic rod and thrown underhand toward a target.

The Consumer Product Safety Commission knows of at least 22 children between the ages of two and 13 who have been injured by lawn darts since 1973. Most of the victims were struck

in the head or neck. Two victims suffered permanent brain damage, and one victim is permanently blind in one eye. Victims often were bystanders, and according to witnesses, one victim was hit by a lawn dart which was blown off course by the wind.

Since 1970, lawn darts have been banned from sale in toy stores and toy departments, but it is legal to sell them in sporting goods stores and departments. Lawn darts must be labeled, "WARNING: Not a toy for use by children. May cause serious or fatal injury. Read instructions carefully. Keep out of reach of children."

The Consumer Product Safety Commission recommends that parents make sure children do

## Lawn Darts Are Dangerous To Children

(continued)

not play with lawn darts or play near where adults are using lawn darts.

Consumers who find lawn darts being sold in toy stores or toy departments or being sold without the required warning label, should contact the Con-

sumer Product Safety Commission on the toll free hot line: 800-638-CPSC.

A teletypewriter for the hearing impaired is available on 800-638-8270. (Maryland residents call the TTY 800-492-8104.)



UNITED STATES GOVERNMENT  
MEMORANDUM

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

TO : Elaine Tyrrell, OPMB  
FROM : David Schmeltzer, AEDCA  
SUBJECT: Lawn Darts

FEB 05 1988

*David Schmeltzer*

I recommend that the Commission ban the sale of lawn darts for the following reasons.

First, the exemption allowing the sale of lawn darts for adult use has not accomplished its intended purpose - to prevent children from being injured by lawn darts. The NEISS data shows that the great majority of lawn dart victims treated in emergency rooms are children. Investigations and other reports of lawn darts injuries indicate that in the majority of injuries, children were the ones playing with the lawn darts. While we know of only three deaths involving lawn darts, lawn darts have been involved in serious eye injuries and head injuries requiring surgery.

Second, the Human Factors staff has concluded that warning labels are not likely to be effective in preventing children from playing with lawn darts.

Third, during our recent survey of retailers we have continued to see a high rate of noncompliance (45%) with the lawn dart requirements by retail stores. Based on our recent experience with retail violations we believe enforcing compliance with the lawn dart requirements by retailers will require a continued high level of surveillance nationwide. Considerable resources will be required to maintain such a surveillance program.

Even if the five voluntary requests were made mandatory, we believe that injuries to children would continue, and there would continue to be a high rate of noncompliance by retailers even with constant surveillance.

RECEIVED

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**RESTRICTED**

15# 5747

UNITED STATES GOVERNMENT

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

MEMORANDUM

RESTRICTION REMOVED - Available  
for public release.

Initial pc Date 9/14/90

JAN 28 1988

TO : The Commission  
Through: Sadye E. Dunn, Secretary *SD Dunn*  
Through: James V. Lacy, General Counsel *JVL*  
Through: Leonard DeFiore, Executive Director *LD*  
Through: David Schmeltzer, Associate Executive Director, CA *DS*  
FROM : Christine Nelson, <sup>cm</sup> Division of Regulatory Management

SUBJECT: Lawn Dart Compliance Survey

On October 21, 1987, an advance notice of proposed rulemaking (ANPR) outlining two possible courses of regulatory action for lawn darts was published in the Federal Register. In response to the interest you expressed in the status of compliance with mandatory requirements for lawn darts and conformance with the five voluntary actions requested by the Commission staff, the Directorate for Compliance and Administrative Litigation requested that the field staff survey retail stores and inspect lawn dart importers and manufacturers. The results of this survey are presented in this memorandum. We will brief you on the survey results and answer any questions you may have.

RECEIVED-OFFICE  
OF THE SECRETARY  
FEB 1 1988  
F12-23

### Retail Stores

A total of 112 retail stores were visited to determine compliance with retail restrictions on the sale of lawn darts. Stores in warm climates where lawn darts were more likely to be sold during the winter were surveyed. Stores were surveyed in Hawaii, California, Oregon, Arizona, New Mexico, Texas, Georgia, Virginia and Florida. Types of violations field investigators looked for are:

1. Lawn darts offered for sale in toy stores.
2. Lawn darts in sporting goods, variety and department stores displayed for sale with toys and other articles intended primarily for children.
3. Lawn dart packages with labeling violations.

Three types of stores were surveyed. The number surveyed of each type is as follows:

Toy stores -- 24  
Sporting goods stores -- 19  
Variety and department stores -- 69

NOTE: This document has not been re-viewed or accepted by the Commission  
Initial pc Date 1/28/88



Observations for each store type are described below.

Toy Stores -- One of the 24 toy stores surveyed was selling lawn darts in violation of retail restrictions. The store was notified of the violation, immediately removed the lawn darts from sale and agreed to not sell lawn darts in the future. The lawn darts had complying labeling.

Sporting Goods Stores -- One of 19 sporting goods stores surveyed was selling lawn darts. No violations were noted. The lawn darts had complying labeling and were not displayed near articles intended for children.

Variety and Department Stores -- Twenty-nine of the 69 variety and department stores surveyed were selling lawn darts. Of the 29 stores selling lawn darts, 13 were displaying lawn darts with toys and other children's products in violation of retail sales restrictions and/or offering for sale lawn darts with labeling violations. Two of the 13 stores were in violation of both the retail sales restrictions and labeling requirements. Five were in violation of the retail sales restrictions only. Six were in violation of the labeling requirements only. Twelve of the 13 stores were part of major retail chains which previously had been advised they were in violation of the lawn dart requirements.

Detailed information about the violative retail stores is provided below.

Zayre's -- In June 1987 CPSC investigators found that Zayre's was importing and offering for sale lawn dart sets and combination sporting goods sets containing lawn darts which lacked the required front panel warning label. Zayre's was notified of the labeling violations and requested to conduct a recall or relabeling program. Zayre's agreed to correct the labeling violations by sending stick-on labels to their retail stores to be applied to existing stock. Zayre's also stated their intention to discontinue future importation and sales of lawn darts.

During our November-December survey, four Zayre's stores were found displaying lawn darts with toys and children's products, a type of violation not previously noted at Zayre's stores. Two of these stores also were selling lawn dart packages which lacked the required front panel warning label. Zayre's has been notified of the violations. As of December 21, 1987 Zayre's headquarters staff had directed all stores to destroy any remaining stock of lawn darts.\*

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\* Case file referred to OGC for review and consideration for legal action.

38  
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Woolworth's -- In June 1987 CPSC investigators found that Woolworth's was importing and offering for sale lawn dart sets which lacked the required front panel warning label, and some stores were displaying lawn darts in the toy department. Woolworth's was notified of the labeling and retail sales violations and requested to move the lawn darts out of the toy department and conduct a recall or relabeling program. Woolworth's agreed to move the lawn darts out of the toy department and correct the labeling violations by sending stick-on labels to their stores to be applied to existing stock. Woolworth's also stated their intention to discontinue the importation and sale of lawn darts.

During our November-December survey three Woolworth's stores were found displaying lawn dart sets with toys and children's products. Woolworth's has been notified of the retail sales violations and requested to correct them.\*

Sears -- In June 1987, CPSC investigators found that Sears stores were offering for sale lawn darts which lacked the required front panel warning label, and some stores were displaying lawn darts with some sporting goods items, such as skateboards, intended primarily for children. Both Sears and the importer of the lawn darts were notified of the labeling violations. The importer was requested to conduct a recall or relabeling program. The importer agreed to send stick-on labels to retail stores to be applied to existing stock. Sears also was notified of the retail display problems and provided with guidance on how to display lawn darts with sporting goods to avoid promoting them inadvertently for children.

During our November-December survey four Sears stores were found offering for sale lawn dart sets without the required front panel warning label, and one Sears store had unlabeled lawn dart sets in their stock room with no indication that they should not be placed on the sales floor. Sears and the importer will be notified of the labeling violations and requested to correct them. Sears had received labels from the importer for relabeling lawn darts in stock, and labeled lawn darts were found in some Sears stores. In two stores labeled and unlabeled lawn darts were displayed together. In one store stick-on labels were inserted inside the box instead of being affixed to the front panel.\*

Neither Sears nor the importer intend to sell lawn darts in the future.

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\* Case file referred to OGC for review and consideration for legal action.

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3

Montgomery Wards -- No lawn dart violations were noted at Montgomery Wards stores prior to our November-December survey.

During our survey one Montgomery Ward store was discovered carrying lawn darts with a stick-on front panel warning label which wrapped around the sides of the box so that part of the warning statement did not appear on the front panel. This violation apparently resulted because the wrong sized label was applied to the box. The importer and Montgomery Ward will be notified of the labeling violation.\*

#### Summary of Retail Survey

Out of 112 retail stores surveyed, only 31 were selling lawn darts. Twenty-nine of the 31 were variety or department stores, one was a toy store and one was a sporting goods store. Of the 31 stores selling lawn darts, 14 were in violation of lawn dart requirements. Violations consisted of displaying lawn darts for sale in a toy store or toy department (8 stores) or offering for sale lawn darts which were in violation of labeling requirements (8 stores). Two stores were committing both types of violations.

Twelve of the stores were part of three major retail chains (Zayre's, Woolworth's and Sears) which previously had been notified of lawn dart violations and requested to correct these violations. All three previously violative chains have decided to stop selling lawn darts.

CARM has referred files on all retail sales violations identified during this survey to the Office of General Counsel for their review for consideration for legal action.

#### Inspections of Importers and Manufacturers

The Compliance staff identified 18 importers or manufacturers of lawn darts. This number is lower than some earlier counts because firms and their subsidiaries are no longer being counted as separate entities. In the summer and early fall of 1987 the Commission staff determined that 17 of these 18 firms were distributing or had recently distributed lawn darts with labeling violations. The 18th firm had distributed noncomplying lawn darts several years earlier, but their 1987 inventory was in compliance.

Seventeen of the 18 firms were inspected during our November-December survey. On the advice of OGC one firm was not

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\* Case file referred to OGC for review and consideration for legal action.

inspected because legal action against this firm was being considered. The purpose of this survey of importers and manufacturers was to determine their compliance with current labeling requirements and conformance with the five voluntary requests described in the ANPR published on October 21, 1987.

The 17 inspected firms can be divided into three categories. The categories and the number of firms in each are:

Importer/distributor - 8  
Importer/retailer - 7  
Manufacturer - 2

#### Compliance with Present Lawn Dart Labeling Requirements

Of the 17 firms inspected, 11 had lawn darts in stock. Eight of the 11 firms had no current labeling violations. Three firms had lawn darts in stock with labeling violations. Two of these firms, both importer/retailers, had attempted to correct their labeling violations but were not completely successful. One firm (Oscar's Sales, Inc.) had designed stick-on labels for the front panel but omitted the signal word "WARNING" and did not make the type size of the remaining wording large enough. The Central Regional Center is notifying the firm that the new label is still violative and requesting correction.

The other firm (Zayre's) had attempted to correct labeling violations by sending stick-on labels with the front panel warning statement to retail stores to apply to lawn darts in stock. However, CPSC investigators found unlabeled lawn darts at two Zayre's stores. In December 1987, the firm directed their stores to destroy all lawn dart sets in stock.

The third firm with noncomplying stock, also an importer/retailer (Dart Drug Stores), does not intend to sell lawn darts in the future and will either destroy their stock or ship it to their import broker. We will monitor disposition of these noncomplying lawn darts to ensure that they do not re-enter the retail market.

The 11 firms with lawn darts in stock which they intended to distribute had at least 173,324 lawn dart sets and 12,027 combination sets.

CARM has forwarded files on violations to OGC for review and consideration for possible legal action.

See attachment 1 for a table showing firms, their stock, compliance with present labeling requirements and conformance with voluntary requests.

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Compliance with Voluntary Requests

Of the 17 firms inspected, 10 firms stated that they have stopped importing or manufacturing lawn darts and they have stopped or will stop selling lawn darts when present inventory is used up. Therefore, conformance with the voluntary requests is not an issue for these firms. However, we should verify at some future date that these firms have not resumed distribution of lawn darts. The 10 firms which say they are stopping importation, manufacturing and sales of lawn darts are:

Importer/Distributors

Indian Industries, Inc.  
Associated Business Enterprises, Inc.  
Pamida, Inc.  
Fuqua Industries, Inc.

Importer/Retailers

F.W. Woolworth Co., Inc.  
World Wide, Inc.  
Oscar's Sales, Inc.  
Zayre Corp.  
Dart Drug Corp.

Manufacturer

Trans Global Sports Co.

Seven firms plan to continue distributing lawn darts. These firms are:

Importer/Distributors

Crown Recreation  
Regent Sports Corp.  
Franklin Sports Industries, Inc.  
General Sportcraft Co., Ltd.

Importer/Retailers

Meijer, Inc.  
Payless Drug Stores, Inc.

Manufacturer

J.C. Products, Inc.

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6

Four of the seven firms which plan to continue distributing lawn darts sent representatives to a meeting with Commission staff in July 1987 to discuss requested voluntary actions to increase lawn dart safety. The four firms represented at the meeting were Regent, Franklin, General Sportcraft and J.C. Products. At this meeting the industry representatives said they could conform with our requests regarding the front panel warning label, lawn dart fin labels, labeling warning the consumer against modifying lawn darts, and labeling providing notice to retailers about lawn dart displays by the end of June, 1988 and with our request regarding stopping sale of combination sets by January, 1989.

When we sent copies of the ANPR to these and other firms in November 1987 we indicated that the Commission was interested in seeing conformance with these requests at an earlier date than the industry representatives had previously agreed to.

When asked during our recent survey about plans to conform to the five requests, one firm, Franklin Sports Industries, Inc., said it will conform with our five requested actions IF they are made mandatory.

Plans for conformance by the other six firms are discussed below in regard to each individual request.

Front Panel Warning Label -- Firms were requested to modify the front panel warning label to make it more conspicuous and readable. Two firms are in conformance now according to their reports. Two firms will be in conformance by June or July of 1988. Two firms intend to implement the change but are not sure when.

<u>Firm</u>	<u>Date</u>
Crown Recreation	1/88
Regent Sports Corp.	6/88
General Sportcraft Co., Ltd.	?
Meijer, Inc.	7/01/88
Payless Drug Stores, Inc.	?
J.C. Products, Inc.	12/07/87

Warning Label on Lawn Dart Fins -- Firms were requested to apply a warning label to one fin of each lawn dart in a contrasting color. At the meeting between lawn dart industry representatives and Commission staff in July 1987, industry representatives agreed to put a warning label on lawn dart fins but declined to use a contrasting color because they said it was not practical. They proposed achieving contrast by using different surface textures. The ANPR published in October 1987 specified that labels on lawn dart fins be in a contrasting

color. All six firms said they intend to label lawn dart fins but indicate uncertainty about using texture or contrasting color. Two are presently labeling lawn dart fins, one with raised letters without contrasting color and one with a stick-on label in a contrasting color. Because of the uncertainty about texture versus color most are also uncertain when they will implement this change.

<u>Firm</u>	<u>Date</u>	<u>Color or Texture</u>
Crown Recreation	1/88	Color
Regent Sports Corp.	?	?
General Sportcraft Co., Ltd.	?	?
Meijer, Inc.	7/01/88	Texture
Payless Drug Stores, Inc.	?	?
J.C. Products, Inc.	12/15/87	Raised Lettering

Include Warning to Consumers to Not Modify Lawn Darts or Redesign Lawn Darts to Prevent Modifications -- Firms were requested to include in their instructions a warning to consumers not to modify lawn darts because modification could make them more hazardous or to redesign lawn darts so they cannot be modified. Two firms have already implemented this request. One firm was unaware of this request although the request, with recommended wording, was included in a letter sent to the firm in July 1987 and the copy of the ANPR sent to the firm in November 1987. One firm will implement this action by 6/88 or earlier. Two other firms intend to implement the action but are uncertain when.

<u>Firm</u>	<u>Date</u>	<u>Warning Statement or Redesign</u>
Crown Recreation	1/88	Redesign
Regent Sports Corp.	6/88 or earlier	Warning Statement
General Sportcraft Co., Ltd.	?	Undecided
Meijer, Inc.	Not aware of request	?
Payless Drug Stores, Inc.	?	?
J.C. Products, Inc.	12/07/87	Warning Statement

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Notice to Retailers -- Firms were requested to include in each shipment of lawn darts a notice to retailers explaining the proper display of lawn darts. Three firms have implemented this request. Two intend to implement the request but were uncertain when. One firm was not aware of this request although the request with recommended wording was included in a letter sent to the firm in July 1987 and in the copy of the ANPR sent to the firm in November 1987.

<u>Firm</u>	<u>Date</u>
Crown Recreation	1/88
Regent Sports Corp.	1/88
General Sportcraft Co., Ltd.	?
Meijer, Inc.	Not aware of request
Payless Drug Stores, Inc.	?
J.C. Products, Inc.	12/07/87

Stop Sale of Combination Sets -- Firms were asked to stop sale of lawn darts in combination with other sports equipment. Two firms are not selling combination sets now. One firm will stop selling combination sets as of 8/88 and two as of 1/89. One firm has not decided whether it will distribute combination sets.

<u>Firm</u>	<u>Date to Stop Sale</u>
Crown	1/89
Regent	1/89
General Sportcraft Co., Ltd.	8/88
Meijer, Inc.	Undecided
Payless Drug Stores, Inc.	Don't sell combination sets
J.C. Products, Inc.	7/87

Summary of Importer and Manufacturer Inspections

Seventeen of 18 firms known to import or manufacture lawn darts were inspected between November 1987 and January 1988. The purpose of the inspections was to determine compliance with

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existing lawn dart labeling requirements and conformance with five voluntary requests. Eleven firms had lawn darts in stock at the time of the inspection. Eight of the 11 had no labeling violations. Of the three firms with labeling violations, one firm planned to dispose of the noncomplying inventory rather than sell it. Two firms had attempted to correct violations but were not fully successful. One of these firms recently destroyed their inventory. The other firm is being asked again to correct the violation. The total inventory of lawn darts intended for distribution was at least 173,324 lawn dart sets and 12,027 combination sets.

In regard to conformance with the five voluntary requests, 10 firms stated that they do not intend to import, manufacture or sell lawn darts in the future. Seven firms do intend to continue importing or manufacturing and distributing lawn darts. One firm will implement the five requests IF the Commission makes them mandatory. A second firm stated its intention to implement all five requests during December 1987. A third firm stated its intention to implement the first four requests in January 1988 and to stop selling combination sets by January 1989. The remaining four firms state their general intention to implement the first four requests but most are uncertain when. Confusion exists over whether lawn dart fin labels should be in a contrasting color or texture. Regarding stopping distribution of combination sets, two firms do not sell combination sets now, one is undecided whether they will sell them, one will stop by August 1988 and two will stop by January 1989.

Attachment

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/0

Firm	Lawn		Labeling in Compliance	Conformance with Voluntary Requests
	Lawn Dart Sets	Darts in Stock Combination Sets		
<u>Importer/Distributor</u>				
Crown Recreation	2,600	500	Yes	Will stop distributing combination sets by 1/89. To conform with other requests as of 1/88.
Regent Sports Corp.	90,000	10,000	Yes	Will stop distributing combination sets by 1/01/89. To provide notice to retailers as of 1/88. Will have new front panel and warning against modification by 6/88. Unsure about lawn dart fin label.
Franklin Sports Industries	8,000	404	Yes	If voluntary requests are made mandatory, firm will comply.
General Sportcraft Co. Ltd.	56,376	1,123	Yes	Will stop distributing combination sets and lawn dart sets with old labeling by 8/88. Uncertain about when they will conform to remaining requests.
Fuqua Industries, Inc.	0	0	N/A	Will not import or sell lawn darts in future.
Indian Industries, Inc.	0	0	N/A	Will not import or sell lawn darts in future.
Associated Business Enterprises, Inc.	0	0	N/A	Will not import or sell lawn darts in future.
Pamida, Inc.	0	0	N/A	Will not import or sell lawn darts in future unless there is a big demand for them.
<u>Importer/Retailer</u>				
F.W. Woolworth Co.	Unknown no. in retail stores.	0	Yes	Will not import or sell lawn darts in future.
World Wide, Inc.	0	0	N/A	Will not import or sell lawn darts in future.

<u>Firm</u>	<u>Lawn</u>			<u>Labeling in Compliance</u>	<u>Conformance with Voluntary Requests</u>
	<u>Lawn Dart Sets</u>	<u>Darts in Stock Combination Sets</u>			
Oscar's Sales, Inc.	480	0	No*		Will not import or sell lawn darts in future.
Zayre Corp.	Unknown no. in retail stores.	0	No**		Will not import or sell lawn darts in future.
Dart Drug Stores, Inc.	551	0	No***		Will not import or sell lawn darts in future.
Meijer, Inc.	0	0	N/A		Will conform with requests regarding front panel label and fin label (texture) by 7/01/88. Unaware of requests regarding warning against modification and notice to retailers. Undecided about distribution of combination sets.
Payless Drug Stores, Inc.	4,600	0	Yes		Does not distribute combination sets. Will conform with other requests, but not sure when.
<u>Manufacturer</u>					
J.C. Products, Inc.	11,000	0	Yes		Stopped shipping lawn darts for combination sets in 7/87. To conform with other requests as of 12/87.
Trans Global Sports Co.	268	0	Yes		Will not manufacture lawn darts in future.

\* Oscar's attempted to correct labeling violation, but new label is still in violation. FOER is requesting correction of violation.

\*\* Zayre's attempted to correct labeling violation by applying labels to stock at retail level, but some products were not labeled. Zayre's ordered retail stock destroyed in December 1987.

\*\*\* Dart Drug will destroy stock or ship it to import broker. FOER will monitor disposition.

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## UNITED STATES GOVERNMENT

## MEMORANDUM

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

TO : OPM/OGC

January 4, 1988

FROM : Patricia Chisley, OS

SUBJECT: REFERRAL OF OFFICIAL COMMENTS ON THE

Lawn Darts;  
Advance Notice of  
Proposed  
Rulemaking;  
Request for  
Comments and DataATTACHED ARE COMMENTS ON THE CA1-88  
PLEASE LOG AND HANDLE AS APPROPRIATE.

<u>COMMENT</u>	<u>DATE</u>	<u>SIGNED BY</u>	<u>AFFILIATION</u>
CA1-88-1	11/3/87	Susan Coberly	Consumer P.O. Box 40153 Berkeley, CA 94704
CA1-88-2	11/9/87	Robert M. Archer	Kent Sporting Good Co., Inc. State Route 60 New London, Ohio 44851
CA1-88-3	11/10/87	Stephen R. Vultaggio	Regents Sports Corp. 45 Ranick Rd. Hauppauge, NY 11787
CA1-88-4	11/16/87	Richard R. Lamontagne President	Crown Recreation, Inc. Collette Mfg. Co. Bldg. #9, DeGraff St. Amsterdam, NY 12010
CA1-88-5	undated	Cynthia Hayes	Consumer 236 Cranes Lake Dr Ponte Vedra Beach, FL 32082
CA1-88-6	12/1/87	Cathy Bunis	Consumer 1101 Highland Ave New Bern, NC 28560
CA1-88-7	11/16/87	Gordon Hostetler	Consumer 58319 CR 7 Elkhart, IN 46517
CA1-88-8	12/8/87	Mary M. Heslin Commissioner	State of Connecticut, Dept. of Consumer Protection 165 Capitol Ave. Hartford, CT 06106

<u>COMMENT</u>	<u>DATE</u>	<u>SIGNED BY</u>	<u>AFFILIATION</u>
CA1-88-9	12/17/87	Milton M. Bush	Sporting Goods Mfrs. Assoc. 1625 K St., N.W. Suite 900 Wash., D.C. 20006
CA1-88-10	12/21/87	Mary Ellen Fise	Consumer Federa- tion of America 1424 16th St., NW Wash., D.C. 20036
CA1-88-11		Carl [REDACTED] Consumer	[REDACTED]
CA1-88-12		N. [REDACTED] Consumer	[REDACTED]
CA1-88-13		Helen [REDACTED] Consumer	[REDACTED]
CA1-88-14		Rochester City Council	City Hall 30 Church Street Rochester, NY 14614

Susan [REDACTED]  
[REDACTED]

November 3, 1987

Office of the Secretary  
Consumer Product Safety Commission  
Washington, D.C. 20207

Re: Proposed Rule, Lawn Darts

Dear Sir or Madam:

Your request for comments regarding the proposed rule for lawn darts was of interest to me as a parent who once owned the product. My children are no longer small, but they were when we purchased lawn darts. I seem to recall a warning on them. As a concerned parent, I intended that my children never play with them. However, children have a tendency to do things even the most well-intentioned and watchful parent never expects.

Luckily, my children did not sustain an injury from this product. However, given the above paragraph's tone, I hope you realize they did injure themselves and each other using other products. I myself beamed my best friend when we were both three with a child's play garden rake. He required stitches. The argument was over something in my sandbox. He crowned me with something, I just had the sharper tool or, perhaps, the most wrath..He hit me first! Certainly both he and I knew better. Needless to say, I no longer had a play rake after the incident. His mother had to insist he be allowed to play with me again; his watchful housekeeper-babysitter thought I was an awful child. Neither of us was awful, we were just children!

The point is, here we are considering a product which requires warning labels for parents to keep the product away from their children, and to watch carefully when an adult is using the product lest a child inadvertently be injured. I'm sure most parents will heed the message: when they buy the product. But once the product is in the home? Out of the box? Down in the basement? Children get their parent's loaded guns and "play" with them. These toys are not at first glance as lethal. What kinds of precautions really will be taken with them?

I believe that, given the history of lawn darts which you detailed in your request for comments, the Commission should carefully consider the ramifications of continuing to allow the sale of this product at all. The history of manufacturer and retail abuse of current regulations is informative. I realize that it is difficult to ban a product, especially since this product is so "popular" as to generate 500,000 sales annually. However, given the average of 675 injuries per year it seems the prudent course.

I realize that even a ban on the sale of this product would not stop all injuries. Given the 500,000 sales per year, we must have an awful lot of lawn dart sets in this country. However, it would forestall additional injuries that would occur if sales were allowed to continue.

I assure you, I am not one who would wrap children up in cotton batting to protect them from harm. But if there is a history of abuse of regulations it seems sensible to crack down, not create more and bigger labels.

Now that my recommendation that you institute a ban on the product is clear, let me respond to your suggested "voluntary actions" requested of manufacturers while "regulatory options are being considered."

1) The suggested label seems as if it would attract more attention. The label on the box we purchased was, I think, in black letters on a dark green background. The use of orange with black letters would attract more attention. I have no quarrel with the size of letters suggested. I agree the warning should be reorganized so as to put "Keep out of reach of children" ahead of "Read instructions carefully."

2) The warning on a fin of each dart would address the problem of what happens when the box gets thrown away. A contrasting color would be better than a different texture. It obviously presents a problem of design. If an different color is used, it would have to be indelible.

3) Possible modification of this product gives me chills. I can't help thinking that people would sharpen the points. If that has happened, you have a duty to say so in your request for comments. Yuck! What an awful picture! I have no idea of what modifications you are alluding to. I also cannot imagine what changes are in mind to prevent such modification. Suction cups? No, they don't stick to lawns. Make yourself clear.

4) Given the abuse of current regulations one obviously needs to include a warning message within each case of the product. I wonder, however, whether the stockperson who unpacks the box will read the warning?

5) I wholeheartedly agree that this product not be sold in conjunction with badminton and volleyball games, the so-called "combination sets." These other games are comparatively harmless. Well, I suppose a child could strangle itself with a net, but... Hey, I'm a parent! These small humans need to be watched all the time. My older son still remembers being told not to touch the mousetrap. We told him not to touch it. We told him, again, sitting at the table in the kitchen, while he was leaning over to see if the mouse got caught in the night. We repeated the telling. He did it anyway. Boy, was he suprised. Lawn darts aren't in the same league as the aforementioned games.

I've taken a lot of time with this letter. I hope you will give what I've said serious consideration. Remember, my opinion is that you should ban these dangerous objects. My advice as to the "voluntary rules" is that they be made mandatory if it is decided not to keep them off the market. I wonder about enforcement, however? Penalties? Fines? Raids on picnics?

Sincerely,

A solid black rectangular box used to redact the signature of Susan Coberly.

/ Susan Coberly /



CA1-88-2

# Kent Sporting Goods Company, Inc.

STATE ROUTE 60  
NEW LONDON, OHIO 44851  
(419) 929-7021

November 9, 1987

Mr. David Schmeltzer  
U.S. CONSUMER PRODUCT SAFETY COMMISSION  
5401 West Bard Avenue  
Bethesda, MD 20816

RECEIVED  
CPSC  
COMPLIANCE & ENFORCEMENT  
NOV 16 P 3 3

Dear Mr. Schmeltzer:

Thank you for your letter of November 3, 1987. For the record, KENT SPORTING GOODS COMPANY, INC. opposes any further regulation of lawn darts.

The KENT lawn dart is a safer design than the metal tipped, sliding fin design used by most other distributors. I pointed this out to you in my letter of July 24, 1987, and I sent you samples for comparison. KENT has not had ONE insurance claim, notice of injury or product liability suit since the present ownership purchased the company in 1981. Can any or all of the other distributors make this statement?

KENT has reacted with a "sense of urgency" since the July 17, 1987 CPSC meeting in Bethesda:

1. We have modified the front panel warning label to make it more conspicuous and readable as per your specifications. Carton artwork is being finalized for approval and our next order of cartons will be in total compliance.
2. We have modified our tooling so that one fin on each lawn dart will have a readable and permanent warning as per the specifications agreed upon in the July 17, 1987 meeting.

The contrasting texture is readable, permanent and economical! A contrasting color label will certainly be readable, but it will not be permanent due to weather and use.

3. The KENT lawn dart design should be the model as it cannot be modified as easily to be as dangerous as the metal tipped, slider lawn dart design.

We have, however, added the modification warning to the back of the display carton below the game instructions.

4. We have added IMPORTANT SAFETY INFORMATION per your specifications to our shipping cartons.
5. We will not package lawn darts in combination sets with other games. We expect our existing inventory to be sold by January 1, 1988.


Mr. David Schmeltzer  
November 9, 1987  
Page 2

Mr. Schmeltzer, KENT is a small, privately owned company and we will sell more lawn darts than any other competitor in 1988 because our lawn dart is recognized as being safer. We have taken fast and positive action and we are prepared to be just as assertive if we are treated unfairly.

One death or one disabling injury from a lawn dart is tragic and serious. I understand the politics and media exposure of the Snow tragedy. But let's put this all in perspective:

- (a) Paul H. Rubin says that 800 children a year are killed on bicycles. Are you going to ban bicycles?
- (b) I'm told that there are more baseball bat injuries in one year than we've had in ten years with lawn darts!
- (c) Many safety experts throughout the country opposed raising the speed limit to 65 MPH because they said faster speeds would yield more accidents and more deaths. However, CONGRESS in its infinite political wisdom passed the law!!
- (d) Disposable cigarette lighters result in the deaths of 140 children a year!
- (e) How many children are killed a year because they didn't wear seat belts when in a car?

All of us at KENT want to produce and market safe products. KENT has a safer lawn dart but no product can be guaranteed to be perfectly safe!

Sincerely, 

  
Robert M. Archer

RMA:mao

cc: J. R. Tipton  
D. E. Walter  
J. L. Carlson  
B. S. White  
J. Chmela, J.C. Products  
Office of the Secretary, CPSC (5)

# Debate rages over failures at consumer commission

By JUDY GRANDE

WASHINGTON

The accidental death last April of 7-year-old Michelle Snow, whose skull was punctured by a lawn dart, has provided new ammunition to the critics of the Consumer Product Safety Commission (CPSC) who say the agency is mismanaged and unable to protect the public from dangerous products.

At congressional hearings and press conferences across Capitol Hill, the death of Michelle has been used to illustrate the commission's plodding reaction to safety hazards. But the tragedy — one of three known lawn dart deaths in about a dozen years — serves as more than just one example in a long list of alleged failures. The discussion of the Snow case goes to the heart of the continuing, heated debate over the future of the commission and its legislative mandate.

Should the commission, with a budget of \$34 million and a staff of more than 500 employees, spend its limited resources in an attempt to remove from the marketplace any product that poses some degree of risk, as does a metal-tipped lawn dart? Or should the commission weigh product risks against economic costs to the industries affected and against other hazards it may consider more pressing?

Critics of the agency, and there are many inside and outside of Congress, line up behind the former.

Several congressmen, including Rep. Dennis E. Eckart of Mentor, feel so strongly that products found to be inherently life-threatening should be recalled or banned that they have called for the resignation of Chairman Terrence Scanlon, a conservative Democrat who was appointed to the post four years ago by Ronald Reagan. They have introduced legislation revamping the commission, addressing even individual safety issues, such as lawn darts, disposable cigarette lighters and all-terrain vehicles.

"I have made a close examination of his performance and he has been found wanting," Eckart said of Scanlon. Eckart said even the other two members of the commission, who share Scanlon's conservative philosophy, "find his leadership falls short of that necessary to meet consumer protection."

But supporters of Scanlon and his conservative view of regulation, which is to give industry a chance to solve the problem first, see things differently.

They ask: Should the commission act based on emotion or politics, rather than fact, when it comes to hazards?

As economic consultant Paul H. Rubin, a Scanlon supporter and until several weeks ago chief economist of the commission, said: Michelle's death from the lawn dart is tragic, but 800 children a year are killed on bicycles and nobody in Congress is asking the commission to ban bicycles. (The darts were part of a game set purchased with badminton and volleyball games in a toy store, according to Michelle's father, David Snow, of Riverside, Calif., in testimony before Congress. CPSC regulations require lawn darts to be sold only as sporting goods, not in toy sections of stores, and they must carry safety warnings.)

When asked whether the commission protects the public, philosophy

SEE SCANLON/2-D

Grande is a reporter in The Plain Dealer's Washington bureau.

## Scanlon

FROM/1-D

aside, Rubin said: "Yes, to the extent possible ... but there is a lot of pressure on it to spend time on things not worth spending time on. It's not the chairman's fault."

It comes down to the question of how far you can go to protect people, says Rubin, adding that excessive and inappropriate regulation is not the answer.

The embattled Scanlon, in an interview last week with The Plain Dealer, defended himself against what he believes to be politically motivated and unfair attacks against him and the agency, and said the commission is steadily working to protect consumers. As an example, he cited the success of Operation Toyland, in which Customs Service inspectors working with the commission have seized thousands of imported unsafe toys.

Scanlon also discussed several of the most controversial issues facing the commission, including disposable cigarette lighters, which result in the deaths of about 200 consumers a year, 140 of whom are children. Most of the fires from the lighters stem from child play, while only 1% are caused by malfunctioning lighters, Scanlon said.

He said the commission is investigating each child fatality and a report is expected in December on what caused the fires. For the commission to act before the report is complete is senseless, he said. Scanlon also said research still is being conducted on how to child-proof a lighter.

Scanlon also said he cannot understand the criticism. "Our staff has been working on this issue diligently, as a regular course of commission business."

Eckart, however, says the problem of disposable lighters is not new. He said the issue was first raised by CPSC staff in 1973 and that the commission has yet to respond to a 1985 petition filed by a nurse to require that the lighters be child resistant. Since that petition was filed, about 400 children under the age of 5 have died.

Eckart's bill, co-sponsored by Rep. James Florio, D-N.J., chairman of the consumer subcommittee of the House Energy and Commerce Committee, requires the CPSC to act on a citizens petition within 120 days.



**Regent®**  
**WHERE PERFORMANCE COUNTS**

November 10, 1987

Mr. David Schmeltzer  
Associate Executive Director  
Directorate for Compliance and  
Administrative Litigation  
U.S. Consumer Product Safety Commission  
5401 Westbard Avenue  
Bethesda, MD 20816

Dear Mr. Schmeltzer:

We are in receipt of your letter of November 3, 1987 regarding Lawn Darts.

It is our understanding you are now asking the industry to be in compliance with the five (5) "voluntary" actions by January 20, 1988, rather than June 30, 1988. In the case of the elimination of combination sets including lawn darts the target date was January 1, 1989.

You indicate you have been directed by the Commission to conduct a survey by January 20, 1988. If the term "survey" includes looking for evidence of compliance in the retail marketplace you should be aware you are unlikely to find any significant evidence of the changeover in January. As we discussed in July, this product and certain components are already produced to some degree for Spring 1988 shipments. The June 30, 1988 and January 1, 1989 dates were selected to allow an orderly phase-in from the old standards to the new. Current inventory levels and lengthy lead times will not allow an orderly changeover by the January 20th date. Major shipments do not begin until February, March and April and even items in compliance with the new standards in our inventory as of January 20th will only begin appearing in stores over a period of several months following January.

If your survey is to be a check with suppliers on what actions have been taken as of January 20th towards accomplishing the requested revisions, we believe we will be able to demonstrate actions both taken and planned which will bring us into compliance by the original dates requested.

If your survey is to be a review of compliance with the existing regulation you will once again find our products in compliance as in the past.



**Regent**<sup>®</sup>  
WHERE PERFORMANCE COUNTS

It is also not clear to us what action you are requesting with regard to the warning on the fin of each lawn dart. We would appreciate clarification at your earliest convenience as changes are already in progress to conform with the July agreement.

We continue to be anxious to work with the Commission and our industry to reduce safety problems caused by improper use of this product.

Sincerely,

REGENT SPORTS CORPORATION

Stephen R. Vultaggio  
Vice President - Marketing

SV/jmf

cc: ✓ Office of the Secretary  
✓ U.S. Consumer Product Safety Commission  
Mr. I. Lawner



Crown Recreation, Inc.  
Collette Manufacturing Company  
Bldg. #9, DeGraff Street  
Amsterdam, New York 12010

CAI-88-4  
Tel: 518-842-0510  
Fax: 518-842-1553  
Telex: 5101009917  
ANSBACK: (COLLETTEMFGCO)

CARM

November 16, 1987

Mr. David Schmeltzer,  
Associate Executive Director  
Directorate for Compliance and Administrative Litigation  
U. S. Consumer Product Safety Commission  
5401 Westbard Avenue  
Bethesda, Maryland

Dear Mr. Schmeltzer:

I am in receipt of your letter of November 3, 1987 regarding the advance notice of proposed rulemaking regarding lawn darts. In earlier correspondence (see attached letter of August 11, 1987) I indicated my agreement with the recommendations suggested at that time. In reviewing your letter of November 3, I note that it appears to be the desire of the Commissioners to accelerate the implementation of the five actions as outlined.

Acceleration of implementation would pose considerable problems and financial hardship in that our packaging would need to be altered and it is virtually impossible to do this in the short period of time indicated. The design, components and packaging of these items cannot readily be changed in a three month time frame. We have been aware of the June 30, 1988 and January 1, 1989 dates and have planned our packaging requirements in accordance with these dates.

We do not want to be penalized or to have it appear that we are not cooperating, but our advance planning will not allow us to accelerate our schedule of implementation. Please be assured that we are attempting to be cooperative and are willing to do what is necessary if we have sufficient lead time.

Very truly yours, /

Richard R. Lamontagne,  
President

RRL:pb

NOV 28 2:42

RECEIVED  
COMPLIANCE & ENFORCEMENT  
CPSC

COPY

December 10, 1987

Mr. Richard R. Lamontagne  
Crown Recreation, Inc.  
Collette Manufacturing Company  
Building #9, DeGraff Street  
Amsterdam, New York 12010

Dear Mr. Lamontagne:

Thank you for your letter of November 16, 1987, regarding lawn darts. Since your letter deals with the lead time necessary to accomplish changes in packaging to conform to the five voluntary actions described in the advance notice of proposed rulemaking (ANPR), I am taking the liberty of forwarding your letter to the CPSC's Office of the Secretary, so it can be included as a comment on the ANPR.

If you wish to comment more extensively on the lead time needed to carry out changes in packaging or on any other issues discussed in the ANPR, please submit your comments to the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207, no later than December 21, 1987.

Thank you again for your letter and the information you provided on necessary lead time for implementing the requests.

Yours truly,

/s/  
David Schmeltzer  
Associate Executive Director  
Directorate for Compliance and  
Administrative Litigation

cc: Office of the Secretary ✓  
CPSC Eastern Regional Center

Mrs. Cynthia [REDACTED]  
[REDACTED]

Commissioner Sadye E. Dunn  
Consumer Product Safety Commission  
Washington, D.C. 20207

December 7, 1987

Dear Commissioner Dunn:

This letter is in response to the Advance notice of proposed rule making regarding lawn darts in the October 20, 1987 Federal Register. The object of this proceeding is to "ensure that lawn darts are kept out of the hands of children." This goal can only be achieved by stopping the sale of lawn darts. The use of lawn darts by the adult population only increases the potential threat to children. As a child develops, his innate curiosity impels him to investigate activities and to mimic the behavior of others. Parents and others are often surprisingly out of tune with their child's developmental progress and seem unaware of their capabilities.

As a pediatric nurse, I frequently teach parents the value of anticipatory guidance regarding developmental expectations to alert them to the type of accidents that are most likely to occur at any given age and to environmental circumstances that might precipitate an accident.

Accidents are the leading cause of death in children beyond one year of age, and the type of injury and the circumstances surrounding the accident are closely related to normal growth and development (Brown 1978). Trauma is the most common cause of blindness in children over two years of age, often caused by a penetrating wound from a sharp instrument (Whaley & Wong). The developmental stage of the child partially determines the types of accidents that are most likely to occur at a specific age, and thus provides clues to preventive measures that might be implemented. At all ages, children are continually in contact with toys, tools, and an infinite variety of mechanical devices that they may explore without proper guidance or supervision.

Theoretically all accidents are preventable, and one of the chief responsibilities of society is to anticipate and recognize where safety measures are applicable. Two major areas of focus for accident prevention are:



- 1 -- Instructing those concerned about measures to safeguard the environment so that exogenous factors are removed, such as attractive hazards.
- 2 -- Being attentive and alert to the endogenous factors that are intrinsic in the behavioral characteristics of the developing child, (Whaley & Wong)

Lawn darts are an attractive hazard to children of all ages. Children observe adults at play utilizing lawn dart competitive games. Preventive aspects of child care must be an ongoing part of health promotion through childhood. Children need toys and activities that increase their sense of competence but that do not create a threat to their health and safety. Because accidents are the greatest threat to children raised in the United States, any effort to reduce this risk will not be in vain.

Sincerely,



Cynthia [REDACTED], R.N., B.S.N.

## References

- Brown, V.: Providing a safe environment for children, American Journal Maternal Child Nursing. 3 (1): 53-55, 1978.
- Whaley, Lucille F., and Wong, Donna L.: Essentials of pediatric nursing, ed. 2, St. Louis, 1985, C.V. Mosby Co.
- Johnston, M.: Toward a culture of caring: children, their environment, and changing, American Journal Maternal Child Nursing. 4: 210-214, 1979.
- Smart, M.S., and Smart, R.C.: Children: development and relationships, ed. 4, New York, 1982, Macmillan, Inc.
- Christophersen, Edward R.: Accident prevention in primary care, The Pediatric Clinics of North America. 33 (4): 925-933, 1986.

Gordon [REDACTED]  
[REDACTED] IN 46517  
November 16, 1987

Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207

LAWN DARTS:

I note in the October 20 Federal Register, the notice of proposed rule making on LAWN DARTS.

CURRENT REGULATION SUFFICIENT:

Current labeling on lawn darts are sufficient to warn consumers about the possible hazards of their use. Further regulation is in the direction of trying to make every activity safe for every one. This is inherently impossible without affecting basic freedoms that we all enjoy. These freedoms include the right to engage in dangerous pastimes.

REGULATED QUALITY OF LIFE WORSE:

Further regulation of lawn darts does not enhance the quality of life in the US. Rather this further regulation only adds to the skein of regulation which makes it difficult to pass through life in this country without the ever present aid of an attorney.

Sincerely,

[REDACTED]

Gordon [REDACTED]



**STATE OF CONNECTICUT**  
**DEPARTMENT OF CONSUMER PROTECTION**

December 8, 1987

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

Re: ANPR - Lawn Darts

Dear Ms. Dunn:

The Connecticut Department of Consumer Protection supports efforts by the U.S. Consumer Product Safety Commission to reduce the risk of injury or death related to the use of lawn darts.

I believe the front panel warning label should be more conspicuous and that a conspicuous warning should also appear on a fin of each lawn dart. Retailers have legal obligations concerning the display and sale of lawn darts and should receive instructions concerning these obligations with each shipment of lawn darts. Lawn darts should not be sold in combination sets to avoid equating the safety of lawn darts to that of the companion set, e.g. badminton.

It is essential that these regulatory options be coupled with on-going enforcement. Enforcement is the most critical component in achieving the long-term objective of reducing injuries and deaths arising from the use of lawn darts.

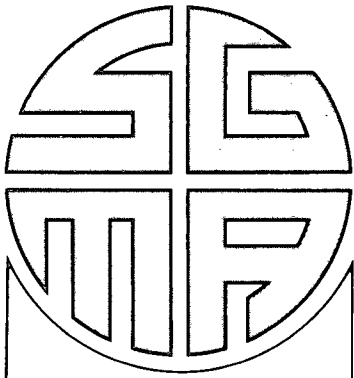
In closing, I would encourage the commission to proceed with the rulemaking steps under both the CPSA and the FHSA rather than under CPSA alone. Many states adopt by reference standards under FHSA. Rules promulgated under FHSA can be enforced by these state governments thereby extending the limited resources of the Consumer Product Safety Commission.

Sincerely,

A handwritten signature in cursive script that reads "Mary M. Heslin".

Mary M. Heslin  
Commissioner

MMH:cdh



# SPORTING GOODS MANUFACTURERS ASSN.

RECEIVED-OFFICE  
OF THE SECRETARY

'87 DEC 21 P5:01

CONSUMER PRODUCT  
SAFETY COMMISSION

December 17, 1987

## Respond to:

MILTON M. BUSH, ESQ.  
Washington Office  
1625 K Street, N.W.  
Suite 900  
Washington, D.C. 20006  
(202) 775-1762

## Board of Directors

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Chief Executive Officer

Executive Office  
200 Castlewood Drive  
North Palm Beach  
Florida 33408  
(305) 842-4100

Office of The Secretary  
Consumer Product Safety Commission  
Washington, D.C. 20207

This is in response to the Advance Notice of Proposed Rulemaking in the Federal Register, dated October 20, 1987, seeking comments and data on lawn darts.

The Sporting Goods Manufacturers Association (SGMA), in cooperation with the American Society of Testing and Materials (ASTM) intends to develop a voluntary safety standard on lawn darts to address the risk of injury identified in subsection C of the ANPR. (This decision was reached at a meeting of lawn dart manufacturers, distributors and importers on December 10, 1987, with ASTM and the CPSC in attendance.) The development of the standard, however, in and of itself, is not an admission of the risks of injury associated with lawn darts identified in subsection C of the ANPR.

The following discussion, to the extent possible, outlines the plan for the development of the voluntary standard. Should there be any questions about the details of the plan, reference should be made to ASTM and their procedures for voluntary standards development.

ASTM, through their recognized balloting procedures, would notify all interested groups and persons of all proceedings prior to and during the development of the standard. ASTM has committed to holding an organizational meeting of all interested groups and persons in January, 1988.

The views of interested groups and persons will be incorporated into the standard by recognized ASTM due process safeguards. We understand that the guiding principle is "one interest, one vote," one of the caveats being that the number of voting producers cannot be more than the non-producers.

The development of the standard by ASTM will be guided by Regulations Governing ASTM Technical Committees under the time constraints of an emergency standard. ASTM has stated that a realistic estimate for the promulgation of a final lawn dart standard could be as quick as six to seven months.

Page 2

ASTM has stated that a detailed schedule of the various stages of the development process would be planned at the organizational meeting as well as the list of people expected to participate, a description of their background and experience.

While ASTM will provide the necessary meeting facilities for the development of the standard, any test facilities or equipment will be those made available by the participants with oversight by ASTM.

Should the Commission require additional information or clarification, we stand willing to cooperate fully.

Sincerely,

A handwritten signature in black ink, appearing to read "Milton M. Bush". The signature is fluid and cursive, with the first name "Milton" and last name "Bush" clearly distinguishable.

Milton M. Bush, Esq.  
Director of Washington Operations

MMB:pwb

cc: Drew Azarra, ASTM



## Consumer Federation of America

December 21, 1987

Ms. Sadye Dunn  
Secretary  
Consumer Product Safety Commission  
5401 Westbard Avenue  
5th Floor  
Bethesda, MD 20207

Dear Ms. Dunn:

Enclosed please find five copies of comments of Consumer Federation of America on the Advance Notice of Proposed Rulemaking on lawn darts.

Thank you,

Mary Ellen Fise  
Product Safety Director

CONSUMER PRODUCT  
SAFETY COMMISSION

DEC 22 10:18 '87

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OF THE SECRETARY



# Consumer Federation of America

COMMENTS OF  
CONSUMER FEDERATION OF AMERICA  
ON

CONSUMER PRODUCT SAFETY COMMISSION  
ADVANCE NOTICE OF PROPOSED RULEMAKING  
ON LAWN DARTS

[52 FED. REG. 38935]

Submitted by:

Mary Ellen R. Fise  
CFA Product Safety Director

December 21, 1987



The Consumer Federation of America (CFA) 1/ is pleased to submit these comments on the Advance Notice of Proposed Rulemaking (ANPR) on Lawn Darts published by the Consumer Product Safety Commission (CPSC) [52 Fed. Reg. 38935]. CFA strongly supports a ban of all lawn darts.

The case this Fall (1987), in which a four-year-old girl in Pride, Louisiana was struck by a lawn dart, underscores the need for CPSC to act quickly to ban this lethal product. This little girl was admitted to the hospital to have a lawn dart that was imbedded in her brain removed. She has been having seizures, and it is still unclear whether she will have any permanent brain damage.

CFA believes that the distinction in the existing regulations, between lawn darts intended for adults and those intended for children, is meaningless. The simple fact is that, regardless of intended use, children play with lawn darts and are injured and killed by them. Data collected by CPSC indicates that 81% of the lawn dart injuries reported in 1986 involved children age 14 and younger; over 50% of the victims were below age 10. Yet all of these injuries were caused by lawn darts intended for adults.

---

1 Consumer Federation of America's (CFA) members include 240 state, local and national organizations, representing 50 million consumers. A non-profit consumer advocacy organization, CFA represents consumers before Congress and the regulatory agencies. Children's safety is a high priority for CFA.

### Regulatory Alternatives Under Consideration

CFA believes that any regulatory or non-regulatory option that falls short of an absolute ban on all lawn darts will fail to protect consumers from the unreasonable risk of injury posed by these products.

The non-regulatory options, or voluntary compliance with some or all of the limitations discussed at the July 17, 1987 meeting between the industry and CPSC (See 52 Fed. Reg. 38936, numbers 1-5), are not adequate to keep the product out of the hands of children. Despite all of these limitations, lawn darts will still be offered for sale to consumers, who will take them home where they will be accessible to children. The existing warning obviously has not deterred families with children from buying these products. CFA believes the agency's suggestion that an increase in warning size will have a significant impact on the 500,000 lawn darts sets sold each year is implausible. Likewise, placing a warning on the fin in contrasting texture will have little, and possibly no, impact on children who want to experiment with this attractive game of skill. CFA believes the remaining three limitations (discussed in the ANPR) regarding modifications, retail display information and combination sets, will be equally ineffective measures to address the real concern -- preventing children from playing with lawn darts.

For the same reasons as just discussed, the non-banning regulatory options available to the Commission, such as setting a

mandatory standard setting forth warning requirements, would also be inadequate. Unless the Commission were to promulgate a mandatory standard that, by setting forth stringent performance requirements, had the effect of banning lawn darts as we know them today, we believe a mandatory standard for lawn darts would be an improper alternative for the Commission to consider. Such performance requirements would have to ensure that the product be designed in such a way as to prevent, regardless of velocity, penetration of human skin, blinding and other risks.

#### Non-compliance by Industry with Existing Regulation

The agency's review of industry compliance with the lawn dart regulation evidenced widespread non-compliance. CFA also reported violations of the lawn dart regulation to CPSC in June of this year (see Attachment 1). But despite increased compliance efforts by CPSC, lawn dart manufacturers and distributors continue to violate the law.

On December 16, 1987, CFA again visited the Zayre store in Beverly, Massachusetts to determine whether lawn darts were being sold in violation of existing law. Sports Action's "Three in One Game Set" of yard (lawn) darts, badminton, and volleyball was still in violation. (The product is described in #1, p.1 of CFA's June 8, 1987 letter; see Attachment 1.) No warning whatsoever was on the box. There were 14 boxes on the shelf, retailing for \$24.99 each. The store also was still carrying Sports Action "yard darts" for \$4.99. Again, this product was

found violative of the CPSC regulation because the warning was found on the back of the package rather than in the principal display panel. This was the exact violation we reported in June 1987 (paragraph 2 of #1, p.1, June 8, 1987 letter; see Attachment 1). CFA believes that, if the evidence is supportive of repeated violations, CPSC should seek civil penalties from the manufacturers in question. This is certainly one positive step that should be initiated while this rulemaking is proceeding. Because of extremely limited compliance resources, CPSC is often forced (as it has been in the case of lawn darts) to take a reactive position in enforcing existing CPSC laws. This reality, coupled with the lawn dart industry's blatant disregard for the law, adds further weight to the need for a ban.

### Conclusion

As we have in the past (see September 22, 1987 letter, Attachment 2), CFA again urges the commission to ban all lawn darts. The inadequacy of labeling and the deaths and severe injuries associated with lawn darts support this action. America's children and their families need you to exercise your regulatory responsibility in order that they be protected from this deadly product.

September 29, 1987

LETTER TO THE EDITOR:

I read the article of the tragic death of Michelle Snow caused by a lawn dart. I greatly sympathize with the family and realize the tremendous grief they must bear.

However, I think we need to be careful when we talk about banning something like a lawn dart because of one reported death in 17 years. This is an adult piece of equipment and any adult familiar with the equipment will quickly realize it isn't a toy that should be left in sight or reach of a child anymore than a loaded gun.

A baseball bat can be a lethal weapon if used in an unfamiliar or unsupervised manner. We have all heard the stories of a young child being hit accidentally in the head by another child and causing severe injuries or death. Does this mean that we should ban baseball bats because they caused a death or injuries because the bat was improperly used?

I guess we could look at the many injuries and deaths caused by the sport of football. We could rationalize that because someone manufactured footballs they have caused this game to be played which causes all these deaths and injuries and therefore we should stop the manufacture of footballs.

Accidents are a part of life. However, nowadays, anytime someone has an accident they automatically figure it has to be someone else's fault. If we can pass the blame onto someone else we feel it relieves us of the responsibility.

The manufacture of lawn darts didn't cause Michelle's death. It was the improper use of a recreational piece of equipment.

Sincerely,

Carl [REDACTED]

Carl [REDACTED]

CM/jw

10/29/87

Consumer Prod Safety Comm.  
Washington, D.C. 20207

Dear Sir,

I would like to complain about the sale of "Lawn Barts". I know these are very dangerous and many children have been injured.

My children have been given these for gifts and each time I remove them and return them, the price is very affordable, and children do not have the maturity to use them properly.

I personally would like to see them off the market completely. If you can accomplish this you have our full support.

Sincerely,  
Nancy [redacted]  
[redacted]

**From the Pen of Nancy Mease**



City of Rochester

CA1-88-14

City Council

City Hall  
30 Church Street  
Rochester, New York 14614  
(716) 428-7538

RECEIVED-OFFICE  
OF THE SECRETARY  
JAN 25 P 3:20  
CONSUMER PRODUCT  
SAFETY COMMISSION

January 20, 1988

Sadye E. Dunn, Director  
Office of the Secretary  
U.S. Consumer Product Safety Commission  
Washington, D. C. 20207

Dear Ms. Dunn,

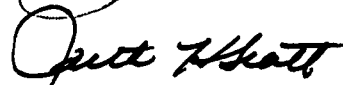
It has come to our attention that the Consumer Product Safety Commission has initiated potential rule-making steps that would either place further restrictions on the labeling of lawn darts or call for their outright prohibition. We understand that after a ban on darts was issued by the Food and Drug Administration in December, 1970, the Consumer Product Safety Commission exempted companies from this ban if they followed a series of rules designed to keep them out of the hands of children. Despite these efforts, it is clear that the overwhelming majority of injuries nationally occur to minors. Our local statistics confirm that national trend.

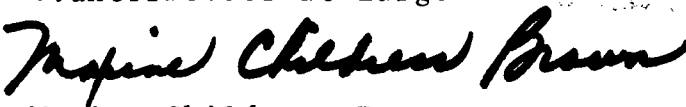
In our metropolitan area, sixteen people have been injured by lawn darts between 1980 and 1984. Most of these injuries occurred to children under the age of fifteen and can be characterized as puncture wounds or fractures to sensitive parts of the body, including the eyes and ears. The most serious injury recorded occurred in June of 1984 to an eight-year old boy who has been left partially paralyzed. The family of the injured youth is still embroiled in a \$17 million law suit with Regents Sports Company of Suffolk County (the manufacturer of Jarts) and Fay's Drug, Inc. (the store chain that sold the "game").

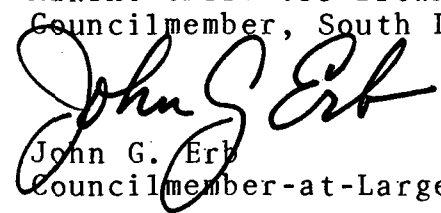
It is our opinion as elected officials that if you were trying to choose between further labeling restrictions and an outright ban on this product, we would prefer to see a ban on the sale completely. The labeling restrictions have had little effect in keeping this product out of the hands of children. Lawn darts appear inherently dangerous and the reinstatement of your ban seems appropriate.

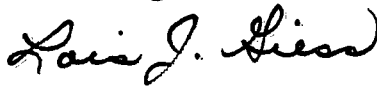
Sincerely,

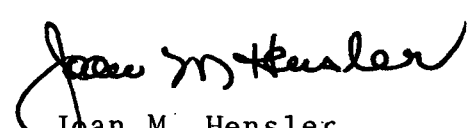
  
John G. Curran, President  
Rochester City Council

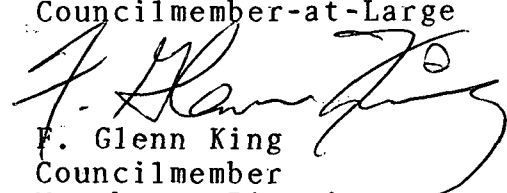
  
Ruth H. Scott, Vice President  
Councilmember-at-Large

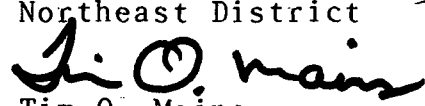
  
Maxine Childress Brown  
Councilmember, South District

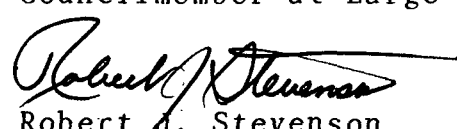
  
John G. Erb  
Councilmember-at-Large

  
Lois J. Giess  
Councilmember  
East District

  
Joan M. Hensler  
Councilmember-at-Large

  
F. Glenn King  
Councilmember  
Northeast District

  
Tim O. Mains  
Councilmember-at-Large

  
Robert J. Stevenson  
Councilmember  
Northwest District

TOM/bm



HELEN M. [REDACTED]

CA-1-88-13

Oct 5/85

A ———  
Lo. W. Hamitway Canon.

Reading the article in the paper to take steps to ban lawn darts is just one of the most ridiculous things I ever read.

Lawn darts have been in our house with seven kids for twenty years and we have more fun and enjoyment with them especially when we have family picnics and go on outings, don't put the blame on the jorts, put it on the stupid people that don't know how to control their children. Thank You

Cathy [REDACTED]

12-1-87

This letter is in response to the Commission's proposal on lawn darts.

September 7, of this year my eight year old son's life tragically changed. A lawn dart penetrated his right eye. He has had two operations and two more are planned. He lost his lens and iris, and sight in his eye. His doctors are optimistic he will see again. For the rest of his life he will have a reminder of this unnecessary accident, for his eye will never look the same again.

The manner in which lawn darts are sold would not change the accident he had. This game ~~is~~ (set) is about 15 years old.

The only way to save other children is to ban the sale of this game. If they are around "ever" children are

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COMPLAINTS & ENFORCEMENT  
CITY OF LOS ANGELES  
JAN 10 1988

going to be hurt.

I recently had a conversation with a woman I did not know.

I told her of my sons accident and she told me she had a set of lawn darts but they weren't dangerous 'because' the end wasn't 'real sharp'.

She is a grandmother and said she bought them for her twelve year old grandson and she was in the yard when he plays. People are buying them for their kids. This woman proved that to me.

Last night my son asked me "why don't they quit selling lawn darts"? I

Could not give him a answer.

Please help prevent other tragedy from occurring from this game, I strongly urge your office to ban the sale of lawn darts.

Sincerely, Cathy [REDACTED]