U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

MINUTES OF COMMISSION MEETING
April 15, 1993
5401 Westbard Avenue
Bethesda, Maryland

The April 15, 1993, meeting of the U.S. Consumer Product Safety Commission was convened in open session by Chairman Jacqueline Jones-Smith. Commissioners Carol G. Dawson and Mary Sheila Gall were present.

Agenda Matter

Baby Walker Petition HP 92-2

On March 31, 1993, the Commission was briefed by staff on petition HP 92-2 from the Consumer Federation of America, the American Academy of Pediatrics, the Washington Chapter of the American Academy of Pediatrics, the National SAFE KIDS Campaign, and Consumers Union requesting a ban of baby walkers as a mechanical hazard under the Federal Hazardous Substances Act. (Ref: Staff briefing package dated March 15, 1993.)

Following introductory comments by Chairman Jones-Smith (copy attached), the Commission voted unanimously (3-0) on motion of Chairman Jones-Smith to deny petition HP 92-2, a petition requesting that the Commission ban baby walkers as a mechanical hazard under the Federal Hazardous Substances Act.

Commissioner Gall then moved that the Commission direct the staff to prepare an enhancement level project sheet for Commission consideration for inclusion in the current operating plan at the next mid year review, with recommendations for an appropriate course of action for the Commission to adopt in addressing the alleged hazards posed by baby walkers. The motion was adopted by a vote of 2-1 with Chairman Jones-Smith and Commissioner Gall voting in favor and Commissioner Dawson opposed.

Separate statements regarding the baby walkers petition have been filed by Chairman Jones-Smith and Commissioners Dawson and Gall, copies of which are attached.

There being no further business on the agenda, Chairman Jones-Smith adjourned the meeting.

For the Commission

Sheldon D. Butts
Deputy Secretary

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CHAIRMAN JACQUELINE JONES SMITH'S
OPENING STATEMENT
COMMISSION MEETING ON PETITION HP 92 -2
TO BAN BABY WALKERS

April 15, 1993

Good morning. Today, the Commission will consider the merits of Petition HP 92-2, which requests that the Commission ban baby walkers as a mechanical hazard under the provisions of the Federal Hazardous Substances Act (FHSA).

On March 31st, the Staff briefed the Commission on this matter. According to Staff, preliminary data indicate that there were about 28,500 emergency room treated injuries associated with baby walkers in 1991. About 81% of these injuries, or about 27,000, were to children under 15 months; and about 77% of the total involved falls down steps. In addition, staff estimates that there has been about one death annually associated with baby walkers.

This suggests to me that there may in fact be some potential hazard associated with the use of baby walkers. However, Petitioners are not merely requesting that this Commission acknowledge the existence of a product related hazard. Nor are Petitioners requesting that the Commission simply initiate a rule-making proceeding to determine whether this product poses an unreasonable risk -- and thus subject to some, undetermined, remedial action within its jurisdiction.

No, Petitioners are requesting one specific remedy -- which is that the Commission undertake the appropriate rule-making initiative to ban baby walkers. That, of course, is the most extreme measure that this Commission can adopt with regard to a consumer product. As such, our statutes prescribe that certain rigorous findings must be made before a product can be declared to be a banned hazardous substance.

Specifically, under Section 3(i)(2) of the FHSA, the Commission first must find that: the "benefits expected from the regulation bear a reasonable relationship to its costs"; and secondly that: "the regulation imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the regulation is being promulgated."

While these requirements are formidable, this Commission has and will ban a dangerous product when the facts so warrant. Indeed, this Commission recently voted to ban infant cushions.

If, in my analysis of the facts in evidence with regard to the present case, these statutory requirements are met, I certainly would not hesitate to vote to grant the Petition.

Let me re-emphasize, however, that the issue presented to the Commission by this Petition is **not** whether or not baby walkers present a possible hazard, and it is **not** whether or not these products pose an unreasonable risk of injury; **nor** is it whether or not this Commission could or should adopt some form of regulation reasonably calculated to reduce these alleged risks.

The only issue that we need address is whether the facts before the Commission, at this time, compel this body to set in motion a rule making procedure, as requested by the Petitioner, to **ban baby walkers** as a mechanical hazard under the FHSA. The other issues, should they have merit, can and will be addressed separately.

Do either of my colleagues have any opening remarks or any comments at this time?

If not, I would like to ask the Staff if they have anything to add to the Record at this time? Or if they wish to summarize the issues before the Commission? Please proceed.

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CHAIRMAN JACQUELINE JONES-SMITH'S STATEMENT ON PETITION HP 92-2 TO BAN BABY WALKERS

April 15, 1993

Today, the Commission voted unanimously to deny Petition HP 92-2, which requested that the Commission ban baby walkers as a mechanical hazard under the provisions of the Federal Hazardous Substances Act (FHSA). I presented this motion to the Commission and I feel confident that this was the only proper course of action open to the Commission consistent with the statutory requirements of the FHSA.

While I felt obligated to deny Petitioner's request, nonetheless, I believe that the preliminary evidence before the Commission is compelling enough to direct the Staff to evaluate the feasibility of a product standard for baby walkers. Therefore, I supported a motion to direct the Staff to prepare an enhancement level project sheet, on this matter, for inclusion in the current operating plan at our up-coming mid year review. This action is consistent with the standard operating procedures of the Commission. My understanding, as acknowledged by the Staff during the March 31st briefing and today's meeting on this Petition, is that the Staff was inclined to move in this direction prior to the submission of the Petition. Our action today in denying the Petition should not in any way inhibit this independent analysis being conducted by the Staff. I look forward to learning of its recommendations.

My votes today were based upon the following facts and considerations:

According to the briefing materials provided by the Staff, preliminary data indicate that there were about 28,500 emergency room treated injuries associated with baby walkers in 1991. About 81% of these injuries, or about 27,000, were to children under 15 months of age; and about 77% of the total involved falls down steps. In addition, staff estimates that there has been about one death annually associated with baby walkers.

This suggests to me that there may in fact be some potential hazard associated with the use of baby walkers. However, Petitioners were not merely requesting that the Commission acknowledge the existence of a product related hazard. Nor were Petitioners requesting that the Commission simply initiate a rule-making proceeding to determine whether this product poses an

unreasonable risk -- and thus subject to some, undetermined, remedial action within our jurisdiction.

No, Petitioners were requesting one specific remedy -- which was that the Commission undertake the requisite rulemaking procedures to ban baby walkers. That, of course, is the most extreme measure that this Commission can adopt with regard to a consumer product. As such, our statutes prescribe that certain rigorous findings must be made before a product can be declared to be a banned hazardous substance.

Specifically, under Section 3(i)(2) of the FHSA, the Commission first must find that: the "benefits expected from the regulation bear a reasonable relationship to its costs"; and secondly that: "the regulation imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the regulation is being promulgated."

While these requirements are formidable, this Commission has and will ban a dangerous product when the facts so warrant. This Commission recently banned infant cushions. If, in my analysis of the facts in evidence with regard to the present case, I determined that this statutory requirement was met, I certainly would not have hesitated to vote to grant the Petition. This, however was not the case.

Instead, the available facts indicate that there currently exists at least one less burdensome regulatory alternative, as well as other possible, alternative remedies that could be implemented.

Specifically, there is an existing Canadian voluntary design standard that addresses the physical capability of a baby walker to fit through the door of a typical basement stairway. In addition, there are some reasonable indications that other technical design or performance requirements could, similarly, act to inhibit -- if not wholly prevent -- the most common stairway fall incidents.

Thus, the least burdensome alternative requirement of the statute is not met. Similarly, the available facts indicate, preliminarily, that the requisite cost-benefit findings could not be made.

First, Staff produced compelling evidence indicating that parents place an exceptionally high value on baby walkers. Indeed, one study demonstrated that about two thirds of parents continued placing children in these devices even after the child sustained a walker related injury. This conforms to the kind of "costs and benefits that cannot be quantified in monetary terms" that the statute requires us to weigh.

Even in terms of dollars and cents, however, preliminary Staff estimates calculate that the additional costs that might be imposed

by the contemplated product modifications are well below that which consumers would be willing to pay due to the perceived benefits conferred by the use of this product.

I firmly believe that my determination based on the available facts and evidence is a reasonable basis for my denial of this Petition.

As I noted earlier, the only issue that the Commission was required to address today was whether the facts and evidence available to the Commission, compelled us to undertake the specific rule making procedure requested by the Petitioner; that is, to ban baby walkers as a mechanical hazard under the FHSA. We concluded that it was insufficient to warrant this action.

Nonetheless, as part of their briefing package, the Staff recommended that the Commission proceed with a project that would allow Staff to evaluate the feasibility and adequacy of a product standard for baby walkers and the costs and benefits of the regulatory alternatives. I am inclined to agree that the preliminary data justifies such a project.

In evaluating the feasibility and adequacy of a product standard for baby walkers I believe such a project should include an examination of the role of properly installed and latched preventive gates and the role of caregivers in preventing baby walker injuries. This touches upon the sensitive and controversial issue of parental supervision. While there are differences of opinion as to the extent to which caregivers can be relied upon to monitor the safe use of baby walkers, I believe nonetheless this is a relevant factor to consider.

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STATEMENT OF COMMISSIONER MARY SHEILA GALL ON PETITION HP 92-2 TO BAN BABY WALKERS

APRIL 15, 1993

Today, I have voted to deny the petition of the Consumer Federation of America et al, requesting that the Commission find that baby walkers are banned hazardous substances under the Federal Hazardous Substances Act (FHSA). The petitioners contend that the record establishes that baby walkers should be banned as mechanical hazards presenting an unreasonable risk of injury and death to children. I disagree.

It is my view that the record indicates that alternatives, short of a ban, exist through which the Commission may address the risk of injury. Nearly 80% of baby walker incidents involve stairs. The evidence presented by staff makes clear that there are a number of potential design modifications which could lessen the possibility of unsupervised or poorly supervised children falling down unprotected stairs while in walkers. These include enlarging the walker, making the walker a stationary treadmill, and utilizing retracting wheels or wheel stop mechanisms. The voluntary standard in use in Canada demonstrates the existence of one such alternative.

Further, the evidence establishes that the benefits of a ban would not bear a reasonable relationship to its cost. The record demonstrates that the additional cost resulting from possible product modifications is well below that which consumers would be willing to pay as a result of the benefits derived from the use of baby walkers. Beyond the monetary assessment, it is obvious that parents and others caring for children highly value baby walkers since it is estimated that 3.6 million are sold annually with four million in use. A ban, which would deprive the millions of consumers who use walkers without incident each year, is unwarranted. This is particularly true since appropriate use of the product, that is, using the product as labeled and according to directions, would address a large percentage of the injuries with which the petitioners are concerned.

Beyond these observations is the simple fact that it is far from clear that baby walkers present a mechanical hazard under FHSA. In normal use in a protected environment under appropriate supervision, there is no evidence that the design or manufacture of walkers present an unreasonable risk of falls. Nor is there evidence which suggests that the design or

manufacture presents an unreasonable risk when subjected to reasonably foreseeable damage or abuse. It is my view that inadequate supervision or the failure to protect stairs is not abuse of the product. It may be irresponsible behavior on the part of the person caring for the child, but it is not abuse of the product. In fact, while no one is perfect, when it comes to safety, there is no substitute for a watchful parent or care provider.

When Congress passed the Federal Hazardous Substances Act, it required the Commission to make certain findings before acting. In this instance, the currently available information does not establish a reasonable likelihood that the Commission could make the findings necessary to support a ban. The fact that there are a substantial number of incidents involving baby walkers, by itself, does not establish that the risk associated with their use is unreasonable.

Open stairways are a persistent hazard in the home. The staff has noted that there is data which indicates that an estimated 21,000 children under the age of fifteen months are treated in emergency rooms each year for falls down stairs without product involvement. This underscores the dangers of inadequate supervision and unprotected stairs. Further, the simple fact that a product could be redesigned to reduce the opportunity for injury to occur (and in this case despite the care provider's behavior), does not establish that its design or manufacture presents an unreasonable risk of personal injury or illness.

I also voted to direct the staff to prepare an enhancement level project sheet for inclusion in the current operating plan at the next mid-year review. This will provide the Commission with a more detailed picture of falls in walkers and a deeper understanding of their causes, including the extent of supervision and a profile of the caregiver. Prior to the submission of the petition, the Hazard Identification and Analysis staff had already identified baby walkers as an issue to be considered under the risk-based decision making aspect of the Commission's Long Range Plan. Regardless of the pendency of the petition, the staff would have presented this issue for the Commission's consideration at mid year review.

In conclusion, the evidence before the Commission does not indicate that the proposed ban is the least burdensome alternative that will adequately address the risk associated with baby walkers. Further, the record demonstrates that the benefits of the ban do not bear a reasonable relationship to its cost. While even under the best of circumstances accidents can and do occur, parents and caregivers must act in a responsible manner in providing appropriate oversight and supervision of the children entrusted to their care.

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STATEMENT OF
COMMISSIONER CAROL G. DAWSON
ON H.P. 92-2 TO BAN BABY WALKERS

April 15, 1993

Today, the Commission considered a petition to ban the sale of baby walkers because petitioners allege they present a mechanical hazard under provisions of the Federal Hazardous Substances Act (FHSA). The petitioners assert that baby walkers present an unreasonable risk of injury, citing injuries caused by babies falling down stairs while using them.

Certainly every member of the Commission is very concerned with the numbers of injuries involved. Yet the critical question is whether, under the law, the product itself is defective, or whether the risk involved is a matter of parental supervision and the lack of precaution in barring access to stairs while infants are in the baby walkers.

The petition fails to identify, in my view, an actual product defect which presents an unreasonable risk of injury. Therefore, I joined in the unanimous decision of the Commission to deny the petition. If granted, the petition would have initiated a rulemaking procedure leading to the ban of the sale of baby walkers.

Baby walkers are increasingly popular. Approximately 3.6 million are sold each year. Of the millions of children using baby walkers, most do so safely.

In its continuing efforts to reduce childhood injuries associated with juvenile products, the Commission has already addressed mechanical hazards associated with baby walkers, such as tipover, pinching and scissoring, through both mandatory and voluntary standards. Our data indicate that the hazards addressed by these standards have been substantially reduced. Warning labels regarding appropriate use and the need for parental supervision are included in those standards.

Petitioners take the position that these standards and educational efforts have failed to affect the number of injuries. The petitioners further allege that the number of baby walker-related injuries have more than doubled over the past twelve

years. But Commission data indicate that there has been no significant change in the rate of baby walker injuries from 1984-1991. An apparent increase in the number of injuries cited by petitioners is very likely due to the overall increase in the number of children under 15 months who are using the product and an increase in the number of homes with stairs.

Falls down stairs or between levels account for an estimated 81 percent of injuries associated with baby walkers involving children under 15 months. But our own data indicate that the number of children who fall down stairs in baby walkers is approximately the same as those who fall down stairs while crawling or walking. These data suggest that, whether or not the product is used, parental supervision is the key to preventing stair accidents. Closing doors and barring access to openings with currently available (and safer) baby gates are more responsible approaches than any additional government standard-setting.

The proportion of "more severe" injuries related to baby walkers is similar to those related to other commonly used juvenile products, such as cribs, playpens, high chairs and changing tables. The number of fatal accidents associated with baby walkers is about one per year, far less than the number of fatal accidents associated with most other juvenile products.

The petitioners correctly observe that some parents and caretakers ignore the warning labels concerning risks of use near stairs. But we cannot so easily dismiss the fact that millions of parents do adequately supervise their children in baby walkers.

I have also opposed the motion to direct the staff to proceed with their proposed recommendations to study this issue further with a view to possible rulemaking in the future. My colleagues, however, voted 2-1 to grant staff authority to present the Commission with a project with up to $50,000 in contract funds to do further research. In my experience, such a course flies in the face of common sense. It would also unfairly raise expectations that the Commission would, in the future, commence rulemaking with regard to baby walkers, when the facts do not support such action.