



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

Record of Commission Action
Commissioners Voting by Ballot

1111 18th Street, N.W.
Washington, D.C.

Voting: Chairman King
Commissioner Franklin
Commissioner Pittle
Commissioner Sloan
Commissioner Zagoria

ITEM

Proposed Consent Agreement and Order in the Matter of Franzus Company, Inc., CPSC Docket No. 78-5

(Briefing material transmitted by the Office of the Secretary on December 20, 1978 and January 15, 1979.)

DECISION

Based upon the information presented in the above-referenced material, the Commission rejected the proposed Consent Agreement and approved the attached Order Rejecting Proposed Consent Agreement which was issued on January 16, 1979.

VOTE

Concurring: Chairman King (12-26-78 and 1-15-79)
Commissioner Franklin (12-26-78 and 1-15-79)
Commissioner Pittle (12-27-78 and 1-15-79)
Commissioner Sloan (12-27-78 and 1-16-79)
Commissioner Zagoria (12-27-78 and 1-16-79)

For the Commission:



Sadye E. Dunn, Secretary

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

_____)
In The Matter Of)
)
FRANZUS COMPANY, INC., a)
corporation and STUART) CPSC Docket No. 78-5
LEVENTHAL and GABE)
LEVENTHAL, individually and)
as officers and owners of)
FRANZUS COMPANY, INC.)
_____)

ORDER REJECTING PROPOSED
CONSENT AGREEMENT

On December 12, 1978, Administrative Law Judge Paul N. Pfeiffer certified a proposed Consent Agreement and Order in settlement of this matter to the Commission in accordance with section 1025.26 of the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR 1025.26. For the reasons discussed below, the Commission does not accept the proposed Consent Agreement and Order in the form submitted.

This proceeding under the Consumer Product Safety Act, 15 U.S.C. 2051 et seq., ("CPSA") began on November 9, 1978 when the staff issued a complaint containing two counts. The first charged that the respondents imported approximately 15,000 calculator adaptors that contain a defect that creates a substantial product hazard within the meaning of section 15 of the CPSA, 15 U.S.C. 2065. The respondents obtained the adaptors from Santek, Inc., Tokyo, Japan.

The second count of the complaint charged that the respondents failed to notify the Commission immediately that they had obtained information that supports the conclusion that the calculator adaptors contain a defect that could create a substantial product hazard. Giving such notice is required by section 15(b) of the CPSA and the failure to do so is a prohibited act punishable by the assessment of a civil penalty of \$2,000 per violation under section 20(a) (1) of the CPSA, 15 U.S.C. 2069 (a)(1). The complaint requested the Administrative Law Judge to fix the amount of the assessment.

Under the provisions of the proposed Consent Agreement and Order, the calculator adaptors would be declared to present a substantial product hazard within the meaning of CPSA section 15(a)(2) and the respondents would be enjoined from importing or distributing the adaptors or any others containing similar electric shock hazards. The respondents are further ordered to either destroy or dismantle the adaptors or to return them to Santek in Japan for destruction. The Consent Agreement and Order also provide that the respondents shall pay a civil penalty of \$1,000 if the adaptors are not destroyed, dismantled or returned to Santek on or before February 15, 1979.

The Commission has two concerns that lead it to reject the proposed Consent Agreement and Order in their present form. The first is that payment of the civil

penalty is conditional upon the performance of the corrective action called for in the Consent Agreement and Order by February 15, 1979. Although the complaint contains both the allegations that the calculator adaptors present a substantial product hazard and that the respondents failed to make a timely report as required by section 15(b), these issues are separate and distinct and not conditional upon one another. Since each count of the complaint has its own evidence and relief, we do not believe it is appropriate to link the performance of the corrective action that addresses the shock hazard with the penalty for failing to report under section 15(b). This expression of concern should not, however, be construed as a limitation on the staff to negotiate settlements to resolve alleged violations of any of the provisions of the CPSA, including civil penalties for failing to report under section 15(b). We see no basis, though, for connecting relief under the two counts of the complaint.

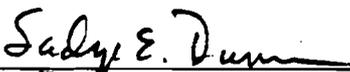
The Commission's second concern with the form of the proposed Consent Agreement and Order goes to the provision that permits the respondents the option of exporting the

adaptors back to Santek in Japan for destruction. The Congress, in recent amendments to the CPSA (Public Law 95-631, 92 Stat. 3742, November 10, 1978), has established a requirement that any person seeking to export any product that fails to meet a standard issued under the CPSA or has been declared to be a banned hazardous product must so inform the Commission at least 30 days before export. The Commission may, for good cause, allow a shorter time, but not less than ten days. The Commission must then give notice to the country of destination.

While the procedure just described does not expressly apply to products determined to present a substantial product hazard, the Commission urges the parties to agree to apply the spirit of the new legislation in this case. Therefore, if the respondents and the staff enter into another agreement that allows the respondents the option of returning the calculator adaptors to the vendor in Japan for destruction, the agreement ought to provide that respondents will notify the Commission, at least ten days prior to export, of its election to export the adaptors to Japan, the intended date of export and the particulars of transportation, to enable the Commission in turn to notify the appropriate Japanese officials.

Accordingly, It is ORDERED that the proposed Consent Agreement and Order certified to the Commission is rejected and the matter is returned to Administrative Law Judge to permit the parties to either conduct additional negotiations for a Consent Agreement and Order consistent with this Order or proceed to a hearing on the merits.

FOR THE COMMISSION



Sadye E. Dunn
Secretary,
Consumer Product Safety Commission

Dated: *January 16, 1979*