



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action Commissioners Voting by Ballot*

Commissioners Voting: Chairman Inez M. Tenenbaum
Commissioner Thomas H. Moore
Commissioner Nancy A. Nord
Commissioner Anne M. Northup
Commissioner Robert S. Adler

ITEM:


Schylling Associates, Inc. - Proposed Civil Penalty Settlement of \$400,000.00
(Briefing package dated May 18, 2010, OS No. 5753)

DECISION:

The Commission voted unanimously (5-0) to provisionally accept the Settlement Agreement and Order, which would order Schylling Associates, Inc. ("Schylling") to pay a civil penalty of \$400,000.00, as specified in the Order. The provisional Settlement Agreement and Final Order will be announced in a *Federal Register* Notice. The Commission's Office of General Counsel Compliance Division staff negotiated a proposed agreement that resolves the staff's allegations that the firm violated section 19(a)(1) and 20(d) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. §§ 2068(a)(1) and 2069(d). The staff alleges that Schylling's importation, sale, or offering for sale, certain consumer products, tin pail toys and spinning tops, entrusted to or for use by children, violated the Lead Paint Ban, and that Schylling committed these prohibited acts "knowingly" as that term is defined in section 20(d) of the CPSA. The settlement agreement also resolves certain possible liabilities of Sections 19(a)(1) and 19(a)(4) of the CPSA for possible CPSA violations with other products. Section 20(a)(1) of the CPSA, 15 U.S.C. § 2069(a)(1), permits the imposition of civil penalties for the violations.

Commissioner Northup issued the attached statement with her vote.

For the Commission:


Todd A. Stevenson
Secretary

*Ballot vote due May 25, 2010



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BETHESDA, MD 20814

STATEMENT OF COMMISSIONER ANNE M. NORTHUP ON THE PROPOSED
\$400,000 CIVIL PENALTY SETTLEMENT FOR SCHYLLING ASSOCIATES, INC.

May 25, 2010

During my tenure as a Commissioner, I have voted on a number of publicly announced settlements and reviewed previous civil penalty cases concerning lead paint on children's products that were recalled in late 2007 and early 2008. Although I believe the agency should impose the lowest civil penalties consistent with ensuring safe products and a level playing field, the staff's initial \$200,000 settlement recommendation came as a surprise and I voted against it based on the other penalties we have assessed.¹ Upon further review,² the staff has now recommended a \$400,000 settlement. I think this amount is more appropriate given the seriousness of the conduct at issue while keeping in mind the proportionality of the penalty to the company's size.

As stated in the settlement agreement, Schylling distributed toys in commerce that contained paint with very high levels of lead and failed to report its violations to this agency for five years. These violations posed an actual risk of harm to children and were not mere technical offenses. Only when a prominent newspaper discovered one of the violations did Schylling then report that violation to the agency. Even then it failed to test other similar products for lead paint, as one of their retailers tested a Winnie-the-Pooh top and found it violated the lead limits. I also believe the agency could have proved that Schylling committed these prohibited acts "knowingly" as that term is defined in section 20(d) of the Consumer Product Safety Act.

As an aside, I personally believe that it is inappropriate and risky for companies to ask political figures—including those who exercise control over the agency via budget or supervisory authority—to try to persuade the Commission to reduce a civil penalty. Our civil penalties are open for public comment for two weeks after publication in the Federal Register, and elected officials can comment upon them at that time. Intervention during the Commission's quasi-judicial civil penalty decision-making process creates the possibility of conscious or subconscious influence on the fair resolution of cases. It also creates a perception that penalties vary according to the political influence of the violator rather than the severity of offenses.

I believe that the civil penalty settlement unanimously accepted today does justice for consumers and the company considering the nature, circumstances, extent, and gravity of the serious violations involved. I am also pleased that we have reconsidered the staff's analysis behind the factors pertaining to the case. The penalty will deter non-compliance and create the proper incentives to import safe products in the future without crippling the company. I believe Schylling has received a proportionately lower civil penalty than a similarly situated major corporation would receive if it engaged in similar conduct.

¹ The Commission voted 4-1 on February 3 to provisionally accept the staff's recommendation, subject to public comment.

² On Friday, February 5 (within 48 hours of the initial vote, as required by our longstanding voting procedures), the Commission—with Chairman Tenenbaum, Commissioner Adler, and myself in the majority—voted 3-0-2 to rescind the February 3 vote and return the matter to staff for further consideration.