

DISSENTING OPINION
COMMISSIONER ROBERT S. ADLER and COMMISSIONER ELLIOT F. KAYE
IN THE MATTER OF BRITAX CHILD SAFETY, INC.
CPSC Docket 18-1
July 19, 2019

CPSC Complaint Counsel and Respondent in the above titled matter have come before the Commission for our approval of an “Addendum to the Consent Agreement” regarding the alleged hazards of single and double occupant strollers sold by Britax under the name, BOB. Once again, we must vigorously dissent. Regrettably, this new proposal continues the errors of the previous consent agreement.

Without repeating the full details of the previous consent agreement between Complaint Counsel and Respondent, we note that Complaint Counsel alleged in an administrative complaint against the company that the quick release mechanism on certain of its strollers failed to secure the front wheel to the fork, allowing the front wheel to detach suddenly and unexpectedly during use. Staff further alleged that this defect constituted a Substantial Product Hazard under section 15 of the Consumer Product Safety Act (CPSA), leading to a significant number of serious injuries both to caregivers pushing the strollers and to children occupying them. After the case was filed, the parties reached a negotiated settlement to which we objected.

Our objection to the consent agreement rested on at least two grounds: (i) the agreement between the parties was misleadingly described as an “information campaign” when, in fact, it was a recall with specific repairs available to those who managed to slog their way through the misdirection and obfuscation contained in the public announcement of the corrective action and (ii) the corrective action was offered only to a fraction of those who owned a BOB stroller – arguably only about a third of the owners.¹

Implementation Problems with the “Information Campaign”

Compounding the problems with the “information campaign,” when Britax sent out replacement parts for the BOB stroller, the parts turned out to be defective. Specifically, a new metal bolt meant to replace the strollers’ quick release bolt turned out to be prone to easy breakage. According to a story in the Washington Post,² consumers who installed the new bolts

¹ We also objected to the limited time period of 24 months for the “information campaign” coupled with the limit of 12 months for the availability of parts and accessories, discounts, and other incentives from the date of the announcement of the information campaign.

² Todd C. Frankel, “Britax sent defective fix to customers in deal to avoid safety recall of its BOB strollers,” Washington Post (May 3, 2019). https://www.washingtonpost.com/business/economy/britax-sent-defective-fix-to-customers-in-deal-to-avoid-safety-recall-of-its-bob-strollers/2019/05/03/f6db7c7c-6da9-11e9-be3a-33217240a539_story.html?utm_term=.278be93ee95b

almost immediately discovered how easily they broke. In one instance, a consumer who installed the replacement bolt found that it split into two pieces the day after he installed it.

To say the least, replacing a problem part of a product with another problem part raises serious questions about the company's quality control procedures as well as its commitment to the safety of its customers.

The Revised Agreement

At the outset, we note that the addendum to the consent agreement between Complaint Counsel and Britax contains additional relief for some of the owners of BOB strollers. That said, we cannot help but notice that these extra provisions came about only after a critical front-page article in the Washington Post highlighted the deficiencies in the original agreement.³ Whether the firm would have been amenable to strengthening the terms of the consent agreement without the added pressure of such negative publicity is highly iffy.

We would summarize the most significant features of the addendum to the consent agreement as follows:

- Britax will add new graphics and text to the home page for its BOB Gear that further directs consumers to the "Information Campaign."
- Britax will add tabs to its website that will attempt to improve the user experience with engaging the quick release mechanism of its stroller.
- Britax will increase the frequency of confidential reporting information to CPSC on the results of its information campaign.
- Britax will extend its incentives offer until January 10, 2021.
- Britax will re-send direct notice to consumers for whom it has registration data.
- Britax will provide substitute thru-bolts to replace the defective bolts it sent to consumers under the original consent agreement.

While we welcome the additional protections for consumers in the addendum, we fail to see how it does much to improve the overall weakness of the original consent agreement. The addendum does nothing to fix these problems with the original consent agreement:

The Corrective Action Plan is Not Just An Information Campaign; It's a Recall: Those owners of BOB strollers who read about Britax's "Information Campaign" may well not realize that Britax obligated itself to provide mechanical fixes to eligible consumers who requested such fixes. This is a direct result of the company's refusal to acknowledge that its agreement constitutes a recall as well as an "Information Campaign." Nothing in the addendum agreement

³ Todd Frankel, "After hundreds of crashes, this Britax jogging stroller faced recall. Then Trump appointees stepped in." Washington Post (April 2, 2019). https://www.washingtonpost.com/business/economy/after-hundreds-of-crashes-this-britax-jogging-stroller-faced-recall-then-trump-appointees-stepped-in/2019/04/02/faf23c20-4c06-11e9-b79a-961983b7e0cd_story.html?noredirect=on&utm_term=.e6c2c0e85497 .

provides the necessary clarity for consumers to understand their rights to remedial action. Accordingly, we continue our belief that the original consent agreement is aggressively misleading. As we said previously, without being fully informed that remedial action is available, consumers may ignore an information campaign that is fairly complex to follow and understand.

Providing Enhanced Remedies to a Limited Set of Consumers Does Nothing to Protect Those Excluded From the Corrective Action Plan: As much as we applaud Britax's offer to enhance certain aspects of the consent agreement for the small subset of consumers for whom it is willing to provide some remedial relief, we remain dissatisfied with the firm's refusal to include those who purchased strollers during two-thirds of the years of the product's sale to the public. The BOB strollers were manufactured beginning in 1997, yet, without any explanation in the record, Britax refuses to provide remedies for pre-2009 strollers. We see no indication that the hazard miraculously appeared in 2009 with no danger associated with earlier years of production. Certainly, to imagine that the pre-2009 strollers are all off the market is unreasonable given the sizable secondary market for these strollers. Yet, that is the implicit message in the firm's refusal to extend its remedies to earlier years of production.

Conclusion

Our test for whether to approve the addendum to the consent agreement is a simple one. If the consent agreement with the addendum had been presented to us as an original proposal in November 2018, would we have approved it? Our answer is an emphatic, no. The addendum may put more lipstick on the pig, but the underlying object remains as porcine as ever.