

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 11, 2003.

Todd A. Stevenson,
Secretary.

Settlement Agreement and Order

1. This Settlement Agreement is made by and between the staff ("staff") of the U.S. Consumer Product Safety Commission ("the Commission") and Brunswick Corporation ("Brunswick" or "Respondent"), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"). This Settlement Agreement settles the staff's allegations set forth below.

I. The Parties

2. The Commission is an independent Federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

3. Brunswick is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices located at 1 North Field Court, Lake Forest, IL 60045.

II. Allegations of the Staff

4. Between June 1998 and June 2000, Brunswick manufactured and distributed nationwide approximately 40,000 Mongoose and Roadmaster bicycles. By Us International Corporation, a Taiwanese corporation, manufactured the Ballistic 105 fork ("fork") that was welded onto these bicycles.

5. The Mongoose and Roadmaster bicycles are sold to and/or are used by consumers for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and are, therefore, "consumer products" as defined in section 3(a)(1) of the consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1). Respondent was a "manufacturer" and "distributor" of the Mongoose and Roadmaster bicycles, which were "distributed in commerce" as those terms are defined in sections 3(a)(4), (5), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (5), (11), and (12).

6. The forks of these bicycles are defective because they can break apart during normal and foreseeable use of the bicycles, causing riders to lose control, fall and suffer serious injuries such as facial abrasions, dental trauma, broken bones, and lacerations requiring sutures.

7. Between September 1998 and September 1999, Brunswick received at least 14 incident reports involving the bicycles' forks breaking apart during normal and foreseeable use of the bicycles, causing riders to lose control and fall to the ground. Injuries known to Brunswick included broken and lost teeth, broken bones, jaw fractures, abrasions, concussions, and lacerations requiring sutures.

8. In September 1999, Brunswick concluded that there might be a problem with the bicycles' forks.

9. In October 1999, Brunswick asked By Us to determine the scope of a recall and met with the president of By Us on November 18, 1999. At the meeting By Us told Brunswick that one of its subcontractors, Akisu Machinery Company, Ltd. ("Akisu"), had improperly welded the forks onto the bicycles. Brunswick reported to the Commission on November 19, 1999, about the bicycles' forks breaking apart.

10. By the time Brunswick reported to the Commission on November 19, 1999, Brunswick had knowledge of at least 19 incident reports involving the bicycles' forks breaking apart.

11. In July 2000, two months after the commencement of the recall, Brunswick obtained at least six additional incident reports involving the bicycles' forks breaking apart. The serial numbers of these forks were outside the range of bicycles recalled. By August 2000, Brunswick knew of another three incident reports involving the bicycles' forks breaking apart. The serial numbers of these forks also fell outside the range of bicycles recalled.

12. In August 2000, By Us gave Brunswick the serial numbers of all forks manufactured by its subcontractor, Akisu. The serial numbers of these forks included bicycles outside the range of those Brunswick had recalled.

13. Brunswick did not report to the Commission until October 30, 2000, about the defect in forks on bicycles outside the scope of the recall.

14. In each of the instances described in paragraphs 4 through 13 above, Brunswick obtained information which reasonably supported the conclusion that the bicycles' forks described in paragraph 4 above contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3).

15. By failing to provide the information to the Commission in a timely manner as required by section

15(b) of the CPSA, 15 U.S.C. 2064(b), Brunswick violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

16. Brunswick committed this failure to timely report to the Commission "knowingly" as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus, subjecting Brunswick to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

III. Brunswick's Response

17. Brunswick denies the staff's allegations that it violated the CPSA as set forth in paragraphs 14 through 16 above.

IV. Agreement of the Parties

18. The Consumer Product Safety Commission has jurisdiction over this matter and over Brunswick under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

19. This Agreement is entered into for settlement purposes only and does not constitute an admission by Brunswick or a determination by the Commission that Brunswick knowingly violated the CPSA's Reporting Requirement.

20. In settlement of the staff's allegations, Brunswick agrees to pay a civil penalty in the amount of one million and 00/100 dollars (\$1,000,000.00) as set forth in the incorporated Order.

21. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the CPSA and the underlying regulations, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

22. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written objections within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

23. The Commission may publicize the terms of the Settlement Agreement and Order.

24. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051 *et seq.*, and