

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010899C]

Marine Mammals; Scientific Research Permit (PHF393-1480-00)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Permit.

SUMMARY: Notice is hereby given that Ms. Deborah A. Glockner-Ferrari, 39 Woodvine Court, Covington, LA 70433, has been issued a permit to take North Pacific humpback whales (*Megaptera novaeangliae*), bottlenose dolphins (*Tursiops truncatus*), Hawaiian spinner dolphins (*Stenella longirostris*), spotted dolphins (*Stenella attenuata*), false killer whales (*Pseudorca crassidens*), and pilot whales (*Globicephala macrorhynchus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (562/980-4001); and

Protected Species Program Manager, Pacific Islands Area Office, 2570 Dole Street, Room 106, Honolulu, HI 9682-2396 (808/973-2987).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713-2289.

SUPPLEMENTARY INFORMATION: On December 4, 1998, notice was published in the Federal Register (63 FR 67045) that a request for a scientific research permit to take the above-references species had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations

Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217-227).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 19, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

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CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 99-1]

Cadet Manufacturing Company; Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a complaint under the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceeding (16 CFR Part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaints which it issues. Published below is a Complaint in the matter of Cadet Manufacturing Company.

SUPPLEMENTARY INFORMATION: The text of the Complaint appears below.

Dated: January 21, 1999.

Sadye E. Dunn,

Secretary.

In the Matter of Cadet Manufacturing Company, 2500 W. Fourth Plain Boulevard, Vancouver, Washington 98660, a Domestic Corporation.

COMPLAINT

Nature of Proceedings

1. This is an administrative enforcement proceeding pursuant to section 15 of the Consumer Product Safety Act ("CPSA"), as amended, 15 U.S.C. 2064, for public notification and remedial action to protect the public from substantial risks of injury presented by certain electric in-wall heaters manufactured by Cadet

Manufacturing Company of Vancouver, Washington. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission, 16 CFR Part 1025.

Jurisdiction

2. This proceeding is instituted pursuant to the authority contained in sections 15(c), (d), and (f) of the CPSA, 15 U.S.C. 2064(c), (d), and (f).

Parties

3. Complaint Counsel is the staff of the Legal Division, Office of Compliance, Consumer Product Safety Commission, an independent federal regulatory commission established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

4. Respondent Cadet Manufacturing Company ("Cadet") is a domestic corporation last organized and existing under the laws of the State of Washington, since 1993, with its principal place of business located at 2500 W. Fourth Plain Boulevard, Vancouver, Washington 98660.

5. Cadet manufactures electric heaters for use in or around a permanent or temporary household or residence; and is, therefore, a "manufacturer" of "consumer product[s]," as those terms are defined in sections 3(a) (1) and (4) of the CPSA, 15 U.S.C. 2052(a) (1) and (4).

Consumer Products

6. Since 1978, Cadet has manufactured and distributed in commerce electric in-wall heaters for use in homes and residences under the brand names "Cadet" and "Encore," all models and variants within each model of the series FW (models FW-051, FW-101, FW-122, FW-202, FW-202, and FW-751), manufactured between 1978 and 1989; series FX (Models FX-051, FX-052, FX-071, FX-072, FX-101, FX-102, FX-151, FX-122, FX-152, FX-202, and FX-242), manufactured between 1984 and 1995; series LX (models LX-242, LX-242, LX-302, LX-302, LX-402, LX-402, and LX-482), manufactured between 1984 and 1995; series TK (models TK-051, TK-071, TK-072, TK-101, TK-102, TK-151, and TK-152), manufactured between 1986 and 1998; series ZA (models ZA-051, ZA-052, ZA-071, ZA-072, ZA-101, ZA-102, ZA-122, ZA-151, ZA-152, ZA-202, ZA-242, manufactured between 1984 and 1995); first generation series Z (models Z-072, Z-101, Z-102, Z-152, Z-202, and Z-208), manufactured between 1993 and 1997; and/or all series and models of the same or functionally identical heaters

manufactured and distributed by Cadet under the Encore brand (hereinafter collectively, the "heaters"). Each of the heaters is, therefore, a "consumer product" "distributed in commerce" within the meaning of sections 3(a)(1) and (11) of the CPSA, 15 U.S.C. 2052(a)(1), and (11), respectively.

7. Each of the heaters consists of a motor-driven fan, a heating element, and an over-temperature limit control switch ("OTC") housed in a metal box that is intended to be installed in a wall or under cabinets. The heater is connected to the main electric power supply in the home or residence. When energized with electric current, the fan of the heater pulls room air over the heating element, and pushes the heated air back into the room.

Product Defect

8. The heaters within series FW, FX, LX, TK, ZA, and/or the same or functionally identical Encore brand heaters, are defective because their design causes the heaters to overheat, fail, and catch fire; and/or allow lint, dirt, or debris within the heaters to catch fire. The heater design can also cause the heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence, or energize the heaters creating a risk of electric shock.

9. The heaters within the series FW, FX, LX, TK, ZA heaters, and/or same or functionally identical Encore brand heaters, are defective because they were manufactured or assembled with inadequate or faulty components, electrical connections, and/or contacts, which cause the components, electrical connections, and/or contacts to fail, overheat, and catch fire; and/or allow lint, dirt, or debris within the heaters to catch fire. These defects can also cause the heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence.

10. The heaters within the first generation Z series, and/or the same or functionally identical Encore heaters are defective in design or manufacture because the heater element can overheat, explode, and spew molten metal particles into the living space of a home or residence.

Substantial Product Hazards and Risks of Injury

11. The design defects in the series FW, FX, LX, TK, ZA heaters, and/or the same or functionally identical Encore brand heaters, identified in paragraph 8 above are prevalent within those heaters.

12. The manufacturing or assembly defects in the series FW, FX, LX, TK, ZA heaters, and/or the same or functionally identical Encore brand heaters, identified in paragraph 9 above are prevalent within those heaters.

13. The design or manufacturing defects in the first generation series Z heaters, and/or the same or functionally identical Encore brand heaters, identified in paragraph 10 above are prevalent within those heaters.

14. The defects identified and described in paragraphs 8 through 10 above have caused or contributed to serious thermal burns and death, and are likely to cause serious electric shock injury and death.

15. The staff knows of at least 183 instances of electrical fire or malfunction involving the heaters: 85 units of series FX; 18 units of series FW; 2 units of series LX; 49 units of series ZA; 2 units of series TK; and 27 units of series Z (first generation); including 131 heaters that allegedly smoked, sparked, caught fire, emitted flame, and/or ejected burning particles or molten metal particles as the result of the defects identified and described in paragraphs 8 through 10 above. These incidents have resulted in three deaths and two burn injuries.

16. Between 1978 and 1998, Cadet manufactured approximately 1,800,000 potentially defective heaters that present the hazards and risks of injury described in paragraphs 14 and 15 above.

17. It is likely that the series FX, FW, LX, TK, first generation Z, ZA heaters, and/or the same or functionally identical Encore brand heaters, will continue to fail in the same way and to present the same hazards and risks of injury as a result of the defects described in paragraphs 8 through 10 above, if public notice and remedial actions are not taken to eliminate or reduce the risk of injury presented by the heaters. Each of the heaters, therefore, presents a "substantial product hazard" within the meaning of sections 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), by reason of the substantial risk of injury or death alleged in paragraphs 11 through 17 above.

Relief Sought

Complaint Counsel requests the Commission to issue the following relief.

A. Determine that the heaters present a substantial product hazard within the meaning of section 15(a)(2), 15 U.S.C. 2064(a)(2).

B. Determine that public notification under section 15(c) of the CPSA, 15 U.S.C. 2064(c), is required to protect the

public adequately from the risks of injury presented by the heaters.

C. Order Cadet, under section 15(c) of the CPSA, 15 U.S.C. 2064(c), to give such notice as is reasonably necessary to protect the public.

D. Order Cadet, under section 15(d) of the CPSA, 15 U.S.C. 2064(d), to cease manufacturing for sale, offering for sale, and distributing in commerce the defective heaters.

E. Order Cadet under section 15(d) of the CPSA, 15 U.S.C. 2064(d), to elect one of the following remedial actions:

1. Repair each heater in such a manner that it is free of defect and works in a proper and safe manner.

2. Replace each heater with a new heater, free of any defect, that works in a proper and safe manner.

3. Refund the purchase price of each heater, including the costs of materials, labor, and profit.

F. Order Cadet to submit a corrective action plan satisfactory to the Commission that requires Cadet to undertake public notice and remedial actions in accordance with paragraphs C, D, and E above, pursuant to section 15(d) of the CPSA, 15 U.S.C. 2064(d).

G. Order Cadet for a period of five (5) years after issuance of the Final Order in this matter, to notify the Commission at least sixty (60) days prior to any change in its business (such as incorporation, dissolution, assignment, sale, or petition for bankruptcy) that results in, or is intended to result in, the emergence of a successor corporation, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission in this matter.

H. Grant such other and further relief as the Commission may deem necessary.

Issued by Order of the Commission.

Dated: January 14, 1999.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207, Tel: (301) 504-0621, ext. 1349.

Eric L. Stone,

Director, Legal Division, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207, Tel: (301) 504-06261, ext. 1350.

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Trial Attorneys, Complaint Counsel, Legal Division, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207, Tel: (301) 504-9626, ext. 1343.

Hand Delivery Address: 4330 East West Highway, Room 613, Bethesda, Maryland 20814.

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