

Dated: January 11, 1995.
Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
 [FR Doc. 95-1165 Filed 1-17-95; 8:45 am]
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CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 95-C0006]

Boley Corp., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e)-(h). Published below is a provisionally-accepted Settlement Agreement with Boley Corporation, a corporation.
DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its

contents by filing a written request with the Office of the Secretary by February 2, 1995.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 95-C0006, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0626.

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

Dated: January 11, 1995.

Sadye E. Dunn,
Secretary.

Settlement Agreement and Order

1. Boley Corporation (hereinafter, "Boley"), a corporation, enters into this Settlement agreement and Order (hereinafter, "Settlement Agreement") with the staff of the Consumer Project Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Settlement Agreement is to settle the staff's allegations that Boley knowingly caused the introduction into interstate commerce of certain banned

hazardous toys, in violation of section 4(a) of the Federal Hazardous Substances Act, 15 U.S.C. 1263(a).

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

3. Boley is a corporation organized and existing under the laws of the State of California, since 1983. The firm's principal place of business is located at 2022 Violet Street, Los Angeles, California 90021. Boley is an importer and wholesale distributor of toys. Toys intended for use by children under three years of age constitute less than ten percent of the firm's business.

II. Allegations of the Staff

4. Boley is a "person" within the meaning of section 2 of the FHSA, 15 U.S.C. 1261(e), and therefore, subject to the jurisdiction of the Consumer Product Safety Commission.

5. On five occasions between April 7, 1991, and March 22, 1992, Boley caused the introduction into interstate commerce of 13 kinds of toys (78,408 units) intended for use by children under three years of age, which are identified and described below:

Sample No.	Product	Entry date	Expt/mfg
M-867-2037	Row boats	4/7/91	Switoy Limited.
M-867-2430	Wind-Up Wanderer and Happy Bird toys	2/11/91	Switoy Limited.
M-867-2431	Wind-Up Wanderer Cloud Buster	2/11/91	Switoy Limited.
M-867-2453	Funny Buster	2/18/91	Switoy Limited.
P-867-7718	Plastic twin baby	2/28/91	Switoy Limited.
P-867-7820	Megatop machine cement truck	3/22/92	Switoy Limited.
P-867-7821	Megatop machine bulldozer	3/22/92	Switoy Limited.
P-867-7822	Megatop machine crane truck	3/22/92	Switoy Limited.
P-867-7823	Megatop machine dump truck	3/22/92	Switoy Limited.
P-867-7824	Megatop machine desert star van	3/22/92	Switoy Limited.
P-867-7825	Megatop machine desert star racing car	3/22/92	Switoy Limited.
P-867-7826	Desert star jeep	3/22/92	Switoy Limited.
P-867-7827	Desert star bug	3/22/94	Switoy Limited.

6. The toys identified in paragraph 6 above are subject to, but failed to comply with, the Commission's Small Parts Regulation, 16 CFR part 1501, in that when tested under the "use and abuse" test methods specified in 16 CFR 1500.51 and 1500.52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the tested toys fit completely within the test cylinder, as set forth in 16 CFR 1501.4.

7. Because separated parts fit completely within the test cylinder as described in paragraph 7 above, each of

the toys identified in paragraph five presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration and/or ingestion of small parts).

8. Each of the toys identified in paragraph 6 above is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

9. Each of the toys identified in paragraph 6 above is a "banned hazardous substance" pursuant to (a) section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) (any toy or other article intended for use by children

which bears or contains a hazardous substance); and (b) 16 CFR 1500.18(a)(9).

10. Boley knowingly introduced or caused the introduction into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the banned hazardous toys identified in paragraph 6 above, in violation of sections 4 (a) or (c) of the FHSA, 15 U.S.C. 1263 (a) or (c), respectively.

III. Response of Boley

11. Boley denies the allegations of the staff set forth in paragraphs 5 through 11

above that it has knowingly caused the introduction into commerce of the aforesaid banned hazardous toys, or that it has violated the FHSA as alleged by the staff.

IV. Agreement of the Parties

12. The Consumer Product Safety Commission has jurisdiction over Boley and the subject matter of this Settlement Agreement under the following acts: Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

13. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by reference.

14. The Commission does not make any determination that Boley knowingly violated the FHSA. The Commission and Boley agree that this Agreement is entered into for the purposes of settlement only.

15. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Boley 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 Boley failed to comply with the FHSA as aforesaid, (4) to a statement of findings of fact and conclusions of law, and (5) to all claims under the Equal Access to Justice Act, 28 U.S.C. 2412.

16. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and, the Commission may publicize the terms of the Settlement Agreement and the Order.

17. Upon provisional acceptance of this Settlement Agreement by the Commission, this Settlement Agreement and the Provisional Order 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)-(h). If the Commission does not receive any written request not to accept the Settlement Agreement within 15 days, the Settlement Agreement shall be deemed finally accepted and the Final Order shall be deemed issued on the 16th day after the date the Settlement Agreement is published in the **Federal Register**.

18. The parties further agree that the Commission shall issue the aforesaid Order; and that a violation of the Order shall subject Boley to appropriate legal action.

19. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement may not be used to vary or contradict its terms.

20. The provisions of the Settlement Agreement and Final Order shall apply to Boley and each of its successors and assigns.

Respondent Boley Corporation,

Dated: November 11, 1994, by:

Ronald Wong,

President, Boley Corporation, 2022 Violet Street, Los Angeles, California 90021.

Commission Staff

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: December 6, 1994, by:

Earl A. Gershenow,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: December 6, 1994, by:

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Order

Upon consideration of the Settlement Agreement entered into between respondent Boley Corporation, a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and Boley Corporation; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, That the Settlement Agreement and Order be and hereby is accepted; and it is

Further Ordered, That upon final acceptance of the Settlement Agreement and Order, Boley Corporation shall pay to the Commission a civil penalty in the amount of sixty thousand and 00/100 dollars (\$60,000.00) in three (3) payments of twenty thousand and 00/100 dollars (\$20,000.00) each. The first payment shall be due within twenty (20) days after service of the Final Order of the Commission accepting the Settlement Agreement, hereinafter, the "anniversary date." The second payment shall be made within one year of the anniversary date, and the third payment shall be made within two years of the anniversary date. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs 5 through 11 of the

Settlement Agreement and Order that Boley Corporation knowingly violated the FHSA. Upon the failure by Boley Corporation to make a payment or upon the making of a late payment by Boley Corporation (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b).

Provisionally accepted and Provisional Order issued on the 11th day of January 1995.

By order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

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BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be discussed are promotion of partnership and partnership training. **DATES:** The meeting is to be held Wednesday February 1, 1995, in room 1E801, Conference Room 4 the Pentagon from 10:00 a.m. until 12 noon. Comments should be received by January 24, 1995, in order to be considered at the February 1, meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-served basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 2461