

U.S.C. 2051–2084. Violation of this Order may subject Respondents to appropriate legal action.

32. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

33. If, after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Respondents determine that severing the provision materially affects the purpose of the Settlement Agreement and Order.

34. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced and approved by the Commission.

35. The provisions of this Settlement Agreement and Order shall apply to Respondents and each of their successors and assigns.

Dated: September 6, 2004.
Johnson Health Tech Co., Ltd.
Jason Lo,
Chief Executive Officer.

Dated: August 25, 2004.
Horizon Fitness, Inc.
Robert Whip,
President.

Thomas L. Skalmoski, Esquire,
Attorney for Respondents Horizon and Johnson.

The U.S. Consumer Product Safety Commission.
Alan H. Schoem,
Director Office of Compliance.
Eric L. Stone,
Director, Legal Division, Office of Compliance.

Dated: September 10, 2004.
By: Michelle Faust Gillice,
Trial Attorney
Belinda V. Bell,
Trial Attorney, Legal Division, Office of Compliance.

In the Matter of Johnson Health Tech Co., Ltd. and Horizon Fitness, Inc.; Order. [CPSC Docket No. 05–C0001]

Upon consideration of the Settlement Agreement between Respondents Johnson Health Tech Co., Ltd (“Johnson”) and Horizon Fitness, Inc. (“Horizon”) and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Johnson and Horizon, and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered that the Settlement Agreement be, and hereby is, accepted, and it is

Further Ordered that Johnson and Horizon shall pay the United States Treasury a civil penalty of five hundred thousand 00/100 dollars (\$500,000) in four installments. The first payment of \$125,000.00 shall be paid within twenty (20) calendar days of service of the final Settlement Agreement and Order. The second payment of \$125,000.00 shall be paid within 110 days of such service. The third payment of \$125,000.00 shall be paid within 200 days of such service. The fourth and final payment of \$125,000.00 shall be paid within 290 days of such service. Upon failure of Respondents Johnson and Horizon to make a payment or upon the making of a late payment by Respondents Johnson and Horizon (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 4th day of October, 2004.

By Order of the Commission:
Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. 04–22719 Filed 10–7–04; 8:45 am]
BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 05–C0002]

Sears, Roebuck and Company, a Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

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. Published below is a provisionally-accepted Settlement Agreement with Sears, Roebuck and Co., a corporation, containing a civil penalty of \$500,000. **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 (October 25, 2004.).

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the

Comment 05–C00002, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7587.

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

Dated: October 4, 2004.

Todd A. Stevenson,
Secretary.

In the Matter of Sears, Roebuck and Co., a corporation; Settlement Agreement and Order

1. This Settlement Agreement is made by and between the staff (“the staff”) of the U.S. Consumer Product Safety Commission (“the Commission”) and Sears, Roebuck and Co. (“Sears” 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. Sears is a corporation organized and existing under the laws of the State of New York with its principal corporate offices located at 3333 Beverly Road, Hoffman Estates, IL 60179.

II. Allegations of the Staff

4. Between January 1995 and January 2002, Murray, Inc., 219 Franklin Road, Brentwood, TN 37027, manufactured for Sears approximately 36,000 rear-engine riding lawnmowers, model numbers, 502.270210, 502.270211, 502.256210, 502.256220, 502.251250, 536.270211, and 536.270212 (“the subject rear-engine riding lawnmowers” or “the lawnmowers”). Sears sold the lawnmowers under the Craftsman label.

5. The subject rear-engine riding lawnmowers were sold to consumers for use in or around a permanent or temporary household or residence and are, therefore, “consumer products” as defined in section 3(a)(1)(i) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1)(i). Respondent is a “retailer” and a “private labeler” of the subject rear-engine riding lawnmowers, which were “distributed in commerce”

as those terms are defined in sections 3(a)(6), (7), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(6), (7), (11), and (12).

6. The subject rear-engine riding lawnmowers' fuel tanks can crack and leak fuel and the leaking fuel can ignite, posing a burn or fire hazard to consumers.

7. From 1999 through 2001, Sears received approximately 1,600 reports of fuel leakage and fuel tank cracking associated with the subject rear-engine riding lawnmowers. Sears replaced the fuel tanks on the lawnmowers.

8. On four occasions between July 1999 and September 2001, Sears forwarded to Murray reports of consumers alleging fuel tank leaks on the subject rear-engine riding lawnmowers. During this period, Sears and Murray communicated about the fuel tanks leaking.

9. On or about July 15, 2000 and on or about August 31, 2000 the Commission's National Injury Information Clearinghouse ("Clearinghouse") forwarded to Sears two reports of consumers alleging fuel tank leaks on the subject rear-engine riding lawnmowers. In both instances, the Clearinghouse advised Sears that the forwarded reports, either alone or with other information Sears had or may later obtain on the lawnmowers, may reasonably support the conclusion that the product contained a defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death. If this were the case, the Clearinghouse instructed Sears to report under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

10. Despite being aware of the information set forth in paragraphs 4 through 9 above, Sears never reported to the Commission.

11. Sears obtained information which reasonably supported the conclusion that the subject rear-engine riding lawnmower as 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 to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3).

12. By failing to immediately inform the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Sears violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

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

III. Sears' Response

14. Sears contests and denies the staff's allegations set forth above in this Settlement Agreement and Order to resolve this claim without the expense and distraction of litigation. By agreeing to this settlement, Sears does not admit any of the allegations set forth above in this Settlement Agreement, or any fault, liability or statutory or regulatory violation.

15. Sears provided all of the reported incidents to Murray—the company that had designed and manufactured the subject rear-engine riding lawnmowers—and Sears reasonably expected Murray to assess whether, based upon all of the information available to Murray, CPSC should be notified and/or a corrective action should be undertaken.

16. Sears cooperated in the voluntary recall of the subject rear-engine riding lawnmowers.

IV. Agreement of the Parties

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

18. This Agreement is entered into for settlement purposes only and does not constitute an admission by Sears that it has violated the law or a determination by the Commission of any disputed issue of law or fact.

19. In settlement of the staff's allegations, Sears agrees to pay a civil penalty in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) as set forth in the incorporated Order.

20. 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 of Justice Act.

21. 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 request not to accept the Agreement within 15 days, the

Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

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

23. Sears' full and timely payment to the United States treasury of a civil penalty in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) resolves the allegations in paragraphs 4–13 above with respect to (a) Sears; (b) any Sears parent, subsidiary, affiliate, division, or related entity; (c) any shareholder, director, officer, employee, agent or attorney of any entity referenced in (a) or (b) above; and (d) any successor, heir, or assign of any entity referenced in (a), (b), or (c) above.

24. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051 *et seq.*, and a violation of this Order shall subject Sears to appropriate legal action.

25. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

26. The provisions of this Settlement Agreement and Order shall apply to Sears and each of its successors and assigns.

Respondent Sears, Roebuck and CO.

Dated: September 8, 2004.

Pamela R. Schneider, Vice President, Deputy General Counsel, Sears, Roebuck and Co., 3333 Beverly Road, Hoffman Estates, IL 60179.

Dated: September 13, 2004.

Eric A. Rubel, Esquire, Arnold & Porter, Attorneys for Respondent Sears, Roebuck and Co., 555 Twelfth Street, NW., Washington, DC 20004–1206.

Commission Staff

Nicholas Marchica, Acting Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207–0001.

Eric L. Stone, Director
Legal Division, Office of Compliance.

Dated: September 14, 2004.

Dennis C. Kacovanis,
Trial Attorney, Legal Division, Office of Compliance.

In the Matter of Sears, Roebuck, and Co., a corporation; Order

Upon consideration of the Settlement Agreement entered into between Respondent Sears, Roebuck and Co., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Respondent Sears, Roebuck and Co.; and it

appearing that the Settlement Agreement and Order is in the public interest, it is

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

Further Ordered that upon final acceptance of the Settlement Agreement and Order, Sears, Roebuck and Co. shall pay to the Commission a civil penalty in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$5000,000.00) within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting the attached Settlement Agreement. Upon the failure of Respondent Sears, Roebuck and Co. to pay or to make untimely pay the civil penalty, interest 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 4th date of October, 2004.

By Order of The Commission.
Todd A. Stevenson,
Secretary, Consumer Product Safety
Commission.

[FR Doc. 04-22718 Filed 10-7-04; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed collection; comment request

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Security Services (DSS) announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 7, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Security Service, Program Integration Branch, ATTN: Mr. Richard L. Lawhorn, 1340 Braddock Place, Alexandria, VA 22314-1650.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Defense Security Service, Program Integration Branch (703) 325-5327.

Title: Associated Form; and OMB Number: Personnel Security Investigation Projection for Industry Survey; DSS Form 232; OMB Number 0704-0417.

Needs and Uses: Executive Order (EO) 12829, "National Industrial Security Program (NISP)," stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. EO 1282 also authorizes the Executive Agent to issue, after consultation with affected agencies, standard forms that will promote the implementation of the NISP.

Under the NISP, the Defense Security Service is responsible for conducting personnel security investigations of employees of those cleared contractor entities under its security cognizance. In the past, DSS has relied on historical data for agency budget projections regarding the numbers of personnel security investigations required by cleared contractor entities; however, historical data did not provide a particularly accurate or credible estimate of such workload. In this proposed collection of information, DSS requests the voluntary assistance of the Facility Security Officers of cleared contractor entities to provide projections of the numbers and types of personnel security investigations required. The data will be incorporated into DDS' budget submissions.

The Assistant Secretary of Defense assigned DSS responsibility for the following types of investigations within industry:

- A Single Scope Background Investigation (SSBI).
- National Agency Check with Local Agency Check and Credit Check (NACLC).
- SSBI Periodic Reinvestigation (SSBI-PR or TS-PR).

In accordance with 5200.2-R, DSS is also responsible for conducting TS-PRs every 5 years, SECRET-PRs every 10 years and CONFIDENTIAL-PRs every 15 years. In addition, under specified circumstances, DSS is required to conduct SSBIs, NACLCs and National Agency Checks (NACs) for sensitive positions that do not require personnel security clearances.

Representative of various industry associations, the National Industrial Security Program Policy Advisory Committee (NISPPAC), the Military Services, various elements of the Department of Defense and other Federal Government Agencies are aware of the annual survey.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 15,146.

Number of Respondents: 12,117.

Responses per Respondent: 1.

Average Burden per Response: 75 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The executive of the DSS Form 232 is an essential factor in projecting the needs of cleared contractor entities for PSIs. This collection of information requests the voluntary assistance of the Facility Security Officer to provide projections of the numbers and types of PSIs. The data will be incorporated into DSS' budget submissions. The form is authorized for local reproduction and will be available electronically on the World Wide Web. The form will display OMB approval number 0704-0417.

Dated: September 27, 2004.

Patricia L. Toppings,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

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BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04-18]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104-164 dated 21 July 1996.