

Dated: January 11, 1995.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

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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 Product 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 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