

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
)
)

BRITAX CHILD SAFETY, INC.)
)
)

CPSC DOCKET NO.: 18-1

Respondent.)
_____)

RESPONDENT BRITAX CHILD SAFETY'S ANSWER TO COMPLAINT

Respondent, Britax Child Safety ("Britax"), by and through its undersigned counsel, hereby files this Answer to the CPSC Complaint, and states as follows:

"Nature of Proceedings"

1. The allegations contained in Paragraph 1 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Britax denies the allegations contained in Paragraph 1 of the Complaint.

2. Britax admits the allegations contained in Paragraph 2 of the Complaint.

"Jurisdiction"

3. The allegations contained in Paragraph 3 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Britax denies the allegations contained in Paragraph 3 of the Complaint.

"Parties"

4. Britax admits the allegations contained in Paragraph 4 of the Complaint.

5. Britax admits the allegations contained in Paragraph 5 of the Complaint.

6. Britax admits that B.O.B. Trailers, Inc. was acquired by and merged into Britax Child Safety, Inc. on December 13, 2011. The remaining allegations contained in Paragraph 6 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Britax denies the remaining allegations contained in Paragraph 6 of the Complaint.

7. Britax admits that B.O.B. Trailers, Inc. was acquired by and merged into Britax Child Safety, Inc. on December 13, 2011. The remaining allegations contained in Paragraph 7 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Britax denies the remaining allegations contained in Paragraph 7 of the Complaint.

8. The allegations contained in Paragraph 8 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Britax denies the allegations contained in Paragraph 8 of the Complaint.

9. The allegations contained in Paragraph 9 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Britax denies the allegations contained in Paragraph 9 of the Complaint.

"The Consumer Product"

10. Britax admits the allegations contained in Paragraph 10 of the Complaint only to the extent that it pertains to the time period after December 2011. Britax is without sufficient knowledge or information to admit or deny the remainder of the allegations contained in Paragraph 10 of the Complaint, and therefore denies these allegations.

11. Britax admits the allegations contained in Paragraph 11 of the Complaint only to the extent that it pertains to the time period after December 2011. Britax is without sufficient knowledge or information to admit or deny the remainder of the allegations contained in Paragraph 11 of the Complaint, and therefore denies these allegations.

12. With the exception of the Revolution SE Demo, Britax admits the allegations contained in Paragraph 12 of the Complaint. Britax is without sufficient knowledge or information to admit or deny the allegations with respect to the Revolution SE Demo, and therefore denies these allegations.

13. Britax admits the allegations contained in Paragraph 13 of the Complaint.

14. Britax admits that B.O.B. Trailers, Inc. designed, imported, and distributed an undetermined number of strollers in the U.S. between 1997 and December 2011.

15. Britax admits that as of the date of the filing of its Section 15(b) report, it had shipped approximately 493,000 Strollers into the U.S. market (the "Strollers"), and denies the remainder of the allegations in Paragraph 15 of the Complaint.

16. Britax admits the allegations contained in Paragraph 16 of the Complaint.

17. Britax admits that since December 2011, the Strollers were distributed in the U.S. through mass retailers as well as through independent juvenile products specialty stores and outdoor specialty stores. Britax is without sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 17 of the Complaint and, therefore denies these allegations.

18. Britax admits the allegation contained in Paragraph 18 of the Complaint only to the extent that it pertains to the time period after December 2011. Britax is without sufficient knowledge or information to admit or deny the remainder of the allegations contained in Paragraph 18 of the Complaint, and, therefore denies these allegations.

19. Britax admits that the Strollers are designed with a removable quick release mechanism, and a front wheel fork assembly containing dropouts with secondary wheel retention devices to enable consumers to quickly detach and remove the front wheel by disengaging the

quick release mechanism (hereinafter, the “Front Wheel Attachment System”). Further answering, Britax admits that the quick release lever is a device that supplies the clamping force to hold the Stroller wheel securely in place but states that other design features also help to hold the wheel securely in place. All remaining allegations contained in Paragraph 19 of the Complaint are denied.

20. Britax admits that the Front Wheel Attachment System includes a quick release mechanism consisting of a quick release lever on one end of an axle, two springs, and a tension adjusting nut on the other end; the quick release mechanism secures the front wheel onto the front wheel fork assembly within the secondary retention devices at the end of the dropout. All remaining allegations contained in Paragraph 20 of the Complaint are denied.

21. Britax admits that the Front Wheel Attachment System includes a quick release mechanism that secures the Stroller’s front wheel onto the front wheel fork assembly within the secondary retention devices at the end of the dropouts; the indentations on the outside of the dropouts mate with the ridged surface on the quick release lever housing and the tension adjusting nut to further secure the wheel to the Stroller. All remaining allegations contained in Paragraph 21 of the Complaint are denied

22. Britax admits the allegations contained in Paragraph 22 of the Complaint and further states that the User Guides for the Strollers provide detailed instructions and warnings for consumers.

23. Britax admits the allegations contained in Paragraph 23 of the Complaint only to the extent that it pertains to the time period after December 2011. Britax is without sufficient knowledge or information to admit or deny the remainder of the allegations contained in Paragraph 23 of the Complaint, and, therefore denies these allegations.

“The Defect Present in the Strollers”

24. Britax denies the allegations contained in Paragraph 24 of the Complaint.

25. Britax denies the allegations contained in Paragraph 25 of the Complaint.

26. Britax denies the allegations contained in Paragraph 26 of the Complaint.

27. Britax admits that the front wheel can separate from the front fork during use if the wheel is not properly secured by the quick release mechanism within the fork dropout and secondary retention devices. Britax denies the remaining allegations contained in Paragraph 27 of the Complaint.

28. Britax denies the allegations contained in Paragraph 28 of the Complaint.

29. Britax denies the allegations contained in Paragraph 29 of the Complaint.

30. Britax denies the allegations contained in Paragraph 30 of the Complaint.

31. Britax denies the allegations contained in Paragraph 31 of the Complaint.

32. Britax denies the allegations contained in Paragraph 32 of the Complaint.

33. Britax admits the allegations contained in Paragraph 33 of the Complaint to the extent that it agrees the instructions accompanying the Strollers contain the quoted statement, but the instructions accompanying the Strollers are not limited to the statement quoted in Paragraph 33 and that statement standing alone does not present a complete portrayal of the relevant instructions.

34. Britax admits that beginning in June 2013 Strollers included a flag tag label to the quick release lever that addressed the hazard of an incorrectly adjusted quick release mechanism, and denies the remaining allegations contained in Paragraph 34 of the Complaint.

35. Britax is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 35 of the Complaint, and therefore, denies these allegations.

36. Britax denies the allegations contained in Paragraph 36 of the Complaint.

“The Substantial Risk of Injury Posed by the Strollers”

37. Britax admits consumers have reported injuries, some requiring medical treatment and surgery, when the front wheel was not properly secured while jogging. The remaining allegations contained in Paragraph 37 of the Complaint are denied.

38. Britax admits consumers have reported injuries to children, including a concussion, injuries to the head and face requiring stitches, dental injuries, contusions and abrasions, when the front wheel was not properly secured while jogging. Britax denies the remainder of the allegations in Paragraph 38.

39. Britax admits consumers have reported injuries, including a torn labrum, fractured bones and torn ligaments, contusions and abrasions, when the front wheel was not properly secured while jogging. Britax denies the remainder of the allegations in Paragraph 39.

40. Britax denies the allegations contained in Paragraph 40 of the Complaint.

41. Britax denies the allegations contained in Paragraph 41 of the Complaint.

42. Britax denies the allegations contained in Paragraph 42 of the Complaint.

“Legal Authority Under the CPSA”

43. The allegations contained in Paragraph 43 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Britax denies the allegations contained in Paragraph 43 of the Complaint.

44. The allegations contained in Paragraph 44 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Britax denies the allegations contained in Paragraph 44 of the Complaint.

45. The allegations contained in Paragraph 45 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Britax denies the allegations contained in Paragraph 45 of the Complaint.

46. The allegations contained in Paragraph 46 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Britax denies the allegations contained in Paragraph 46 of the Complaint.

“Count I”

47. Britax repeats and restates its answers, denials, and defenses to Paragraphs 1 through 46 and incorporates each by reference as if fully set forth herein.

48. Britax admits the allegations contained in Paragraph 48 of the Complaint.

49. Britax denies the allegations contained in Paragraph 49 of the Complaint.

50. Britax denies the allegations contained in Paragraph 50 of the Complaint.

51. Britax denies the allegations contained in Paragraph 51 of the Complaint.

“Relief Sought”

Britax denies that CPSC is entitled to the “Relief Sought” including the relief set forth in paragraphs A through D, inclusive of subparts. Britax further denies all allegations contained in the Complaint not specifically admitted, and denies all titles and subheadings in the Complaint.

ADDITIONAL DEFENSES

By asserting the matters set forth below, Britax does not allege or admit that it has the burden of proof and/or the burden of persuasion with respect to any of these matters.

FIRST ADDITIONAL DEFENSE

The Complaint fails to state a claim upon which relief can be granted, or upon which relief can be granted against Britax.

SECOND ADDITIONAL DEFENSE

The complaint fails to identify a “defect” in the Strollers within the meaning of 15 U.S.C. §2064(a)(2) and (b)(3), and 16 C.F.R. § 1115.4.

THIRD ADDITIONAL DEFENSE

The complaint fails to identify a “substantial product hazard” within the meaning of 15 U.S.C. §2064(a)(2) and (b)(3), and 16 C.F.R. § 1115.4.

FOURTH ADDITIONAL DEFENSE

The complaint fails to identify a “substantial risk of injury to the public” within the meaning of 15 U.S.C. §2064(a)(2) and (b)(3).

FIFTH ADDITIONAL DEFENSE

The complaint fails to identify an “unreasonable risk of serious injury or death” within the meaning of 15 U.S.C. §2064(b)(4) and 16 C.F.R. § 1115.6.

SIXTH ADDITIONAL DEFENSE

On March 4, 2014, the CPSC unanimously adopted a final rule establishing a mandatory safety standard for carriages and strollers. Among other things, this standard (16 C.F.R. Part 1227) expressly considered and addressed the risk of injury associated with front wheel detachment from removable wheel fork assemblies on jogging strollers equipped with bicycle-style, quick-release mechanisms. To address this specific risk of injury, the Commission mandated that strollers containing quick-release wheel hubs comply with a performance requirement that effectively requires a secondary locking or retention device to hold the wheel in the fork when removal is attempted by applying a separation pull force of 25 lbf. This new requirement for strollers is identical to the longstanding requirement in ASTM F2680-09, *Standard Specification for Manually Operated Front Wheel Retention Systems for Bicycles*.

As required by Section 104 of the Consumer Product Safety Improvement Act of 2008 (Pub.L 110-314) and Section 9 of the Consumer Product Safety Act (15 U.S.C. §2068), the Commission found that the adoption of the secondary retention requirement for jogging strollers would eliminate or adequately reduce any unreasonable risk of injury associated with front wheel detachment from removable wheel fork assemblies. The Strollers comply with the secondary retention requirement and therefore do not present an unreasonable risk of injury associated with front wheel detachment.

SEVENTH ADDITIONAL DEFENSE

The Sixth Additional Defense is incorporated herein by reference. The Strollers comply with the secondary retention requirement incorporated into the CPSC Stroller Standard (16 C.F.R. Part 1227) and therefore do not contain a defect or present a substantial risk of injury to the public with respect to front wheel detachment.

EIGHTH ADDITIONAL DEFENSE

The Complaint fails to identify a risk of injury that outweighs the utility to a consumer of an easily removable front wheel from the Strollers.

NINTH ADDITIONAL DEFENSE

The Presiding Officer for this proceeding is an “Officer of the United States” who must be appointed in accordance with the Appointments Clause of the U.S. Constitution. The Commission’s procedures for appointing a Presiding Officer are not consistent with the Constitutional requirements for appointments of “Officers of the United States.”

TENTH ADDITIONAL DEFENSE

The alleged injuries were caused by acts or omissions of third-persons or entities over which Britax had no control.

ELEVENTH ADDITIONAL DEFENSE

The alleged injuries were caused or contributed to, directly and proximately, in whole or in part, by misuse, unauthorized use, unintended use, unforeseeable use and/or improper use of the product at issue.

TWELFTH ADDITIONAL DEFENSE

The Complaint may be barred by the doctrine of estoppel, waiver and/or laches.

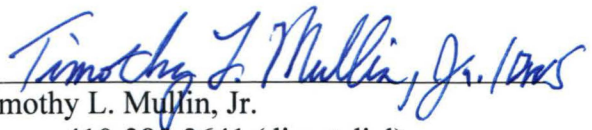
THIRTEENTH ADDITIONAL DEFENSE

Britax reserves the right to amend this Answer to add additional defenses if they become apparent from further discovery.

WHEREFORE, Defendant, Britax Child Safety, requests the entry of an Order:

- A. Dismissing this case;
- B. Awarding to it its costs and expenses, including attorneys' fees; and
- C. Granting to it such other and further relief as may be justified.

Dated: March 12, 2018


Timothy L. Mullin, Jr.

410-385-3641 (direct dial)
tmullin@MilesStockbridge.com

Dwight W. Stone II
410-385-3649 (direct dial)
dstone@MilesStockbridge.com

Susan DuMont
410-385-3768 (direct dial)
sdumont@MilesStockbridge.com

MILES & STOCKBRIDGE P.C.
100 Light Street
Baltimore, MD 21202
410-385-3700 (fax)

Erika Z. Jones
202-263-3232 (direct dial)
ejones@mayerbrown.com

Adam C. Sloane
202-263-3269 (direct dial)
asloane@mayerbrown.com

MAYER BROWN LLP
1999 K Street, N.W.
Washington, DC 20006-1101
(202)263-5232 (fax)

Attorneys for Respondent,
Britax Child Safety

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2018, a true and correct copy of the foregoing Answer was served first class, postage prepaid, U.S. Mail on the Secretary of the U.S. Consumer Product Safety Commission, and all parties and participants of record in these proceeding in the following manner:

Original and three copies by U.S. Mail, and one copy by electronic mail, to the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills:

Alberta Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
amills@cpsc.gov

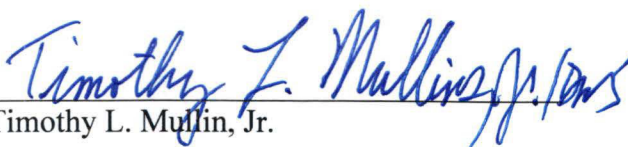
One copy by U.S. Mail and one copy by electronic mail to Complaint Counsel:

Mary B. Murphy
Complaint Counsel and Assistant General Counsel
Division of Compliance
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
mmurphy@cpsc.gov

Philip Z. Brown, Trial Attorney
Gregory M. Reyes, Trial Attorney
Complaint Counsel
Division of Compliance
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
pbrown@cpsc.gov
greyes@cpsc.gov

One copy by U.S. Mail and one copy by electronic mail to co-counsel for Britax Child
Safety:

Erika Z. Jones
Adam C. Sloane
Mayer Brown LLP
1999 K Street, N.W.
Washington, DC 20006
ejones@mayerbrown.com
asloane@mayerbrown.com


Timothy L. Mullin, Jr.