UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)
	)
Nautilus, Inc.	) CPSC DOCKET NO. 05-C0008
	)
	)

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 Nautilus, Inc. ("Nautilus" or "Respondent"), a corporation, in accordance with 16 C.F.R. § 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act ("CPSA"). This Settlement Agreement and the incorporated and attached Order settle 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. Nautilus is a corporation organized and existing under the laws of the State of Washington with its principal corporate offices located at 1400 NE 136th Avenue, Vancouver, WA 98661. Nautilus manufactures and sells, either through retailers or direct sales methods, such as infomercials, health and fitness products under several brand names, including Bowflex.

II. ALLEGATIONS OF THE STAFF

A. Bowflex Power Pro Fitness Machines-Backboard Bench

4. Between January 1995 and December 2003, Nautilus manufactured and/or sold in commerce nationwide approximately 420,000 Bowflex Power Pro Fitness Machines equipped with a Lat Tower and a backboard bench.

5. The Bowflex Power Pro Fitness Machine is sold to, and/or is used by, consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and is, therefore, a "consumer product" as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2052(a)(1). Respondent is a "manufacturer" and "retailer" of the Bowflex Power Pro exercise equipment, which is "distributed in commerce" as those terms are defined in sections 3(a)(4), (6), (11), and (12) of the CPSA, 15 U.S.C. §§ 2052(a)(4), (6), (11), and (12).

6. The Bowflex Power Pro Fitness Machine is an item of exercise equipment that uses 10 to 14 resistance rods, a pulley system, and a backboard bench. The Bowflex Power Pro's backboard bench can break apart and collapse unexpectedly during normal and foreseeable use of the exercise equipment. If a backboard bench breaks apart and collapses unexpectedly during use, it may cause the consumer to fall and suffer serious injuries.

7. Between December 1998 and July 2002, Nautilus learned of about 25 reports of consumers sustaining injuries when the Bowflex Power Pro's backboard bench broke apart and collapsed unexpectedly during use of the

exercise equipment. Nautilus knew of lacerations requiring sutures, back, neck, and spinal injuries.

8. In June 2000, after learning of about eight reported incidents of the Bowflex Power Pro Fitness Machine's backboard bench breaking apart and collapsing unexpectedly during use, Nautilus reinforced the backboard bench by adding a steel plate.

9. On July 1, 2002, the Commission's National Injury Information Clearinghouse forwarded to Nautilus an in-depth investigation report. In this report, a consumer alleged the backboard bench broke apart and collapsed unexpectedly during use. The consumer suffered injuries to his back, tongue, and teeth. In its letter, the Clearinghouse advised Nautilus about the CPSA's reporting requirement and the procedures for submitting a report to the Commission. At the time it received this letter from the Clearinghouse, Nautilus knew of at least 27 incident reports of which 25 claimed injuries resulting from the Bowflex Power Pro's backboard bench collapsing and breaking apart unexpectedly during use, but did not report the defect or risk to the Commission.

10. As the facts described in paragraphs 4 through 9 above show, Nautilus obtained information which reasonably supported the conclusion that the Bowflex Power Pro exercise equipment 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 such information to the Commission as required by sections 15(b) (2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b) (2) and (3).

11. By failing to furnish information as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), Nautilus violated section 19(a) (4) of the CPSA, 15 U.S.C. § 2068(a) (4).

12. Nautilus committed this failure to timely report to the Commission "knowingly" as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d), subjecting Nautilus to civil penalties under section 20 of the CPSA, 15 U.S.C. § 2069.

B. Bowflex Power Pro and Bowflex Ultimate Fitness Machines-Seat Pin

13. Between January 1995 to April 2004, Bowflex manufactured and/or sold in commerce nationwide approximately 420,000 Bowflex Power Pro Fitness Machines with a Lat Tower and approximately 102,000 Bowflex Ultimate Fitness Machines, respectively. Each of these items of equipment is equipped with a seat pin that is used to reposition the seat for different types of exercises.

14. The Bowflex Power Pro and Bowflex Ultimate Fitness Machines are sold to, and/or are used by, consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and are, therefore, "consumer products" as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2052(a)(1). Respondent is a "manufacturer" and "retailer" of the Bowflex Power Pro and Bowflex Ultimate, which are "distributed in commerce" as those terms are defined in sections 3(a)(4), (6), (11), and (12) of the CPSA, 15 U.S.C. §§ 2052(a)(4), (6), (11), and (12).

15. The Bowflex Power Pro and Ultimate Fitness Machines are items of exercise equipment with resistance rods, pull down pulleys, and a bench. The

seat pins on the Bowflex Power and Ultimate Fitness Machines can disengage or break unexpectedly during normal and foreseeable use. If a seat pin disengages or breaks unexpectedly during use, it may cause the seat to move suddenly and cause the consumer to fall and suffer serious injuries.

16. Between August 5, 2002 and April 16, 2004, the date Nautilus submitted a full report to the Commission, Nautilus learned of about 32 reports of consumers sustaining injuries when the Bowflex Power Pro's and Ultimate's seat pins disengaged or broke unexpectedly during use. Injuries reported included a blood clot, a laceration requiring sutures, pulled ligaments, and back, disc, and neck injuries.

17. As a result of the Commission's investigation of the Power Pro's backboard bench, Nautilus reviewed its products and reported on April 16, 2004 the defect associated with the fitness machines identified in paragraph 13 above.

18. As the facts described in paragraphs 13 through 17 above show, Nautilus obtained information which reasonably supported the conclusion that the Bowflex Power Pro and Ultimate Fitness Machine described in paragraph 13 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 such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3).

19. By failing to furnish the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), Nautilus violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

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

C. Bowflex Power Pro Fitness Machine-Incline Support Bracket

21. Between January 1995 and April 2004, Nautilus manufactured and/or sold in commerce nationwide approximately 260,000 Bowflex Power Pro exercise equipment without a Lat Tower, which were equipped with an incline support bracket.

22. The Bowflex Power Pro Fitness Machine is sold to, and/or is used by, consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and is, therefore, a "consumer product" as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2052(a)(1). Respondent is a "manufacturer" and "retailer" of the Bowflex Power Pro Fitness Machine, which is "distributed in commerce" as those terms are defined in sections 3(a)(4), (6), (11), and (12) of the CPSA, 15 U.S.C. §§ 2052(a)(4), (6), (11), and (12).

23. The incline support bracket of the Bowflex Power Pro Fitness Machine can break or bend unexpectedly during normal and foreseeable use of the exercise equipment. If an incline support bracket breaks or bends unexpectedly during use, it may cause the consumer to fall and suffer serious injuries.

24. Between May 7, 2001 and April 16, 2004, the date Nautilus submitted a full report to the Commission, Nautilus was aware of approximately 28 reports of

consumers sustaining injuries when the incline support bracket of the Bowflex Power Pro Fitness Machine broke or bent unexpectedly during use of the exercise equipment. Injuries reported included lacerations requiring sutures, fractures, back pain, and numbness. Nautilus reported after completing the product review described in paragraph 17 above.

25. In August 2002, Nautilus made a running change to the material used in the incline support bracket to make it more robust and resistant to accidental breakage, but did not report the defect or risk to the Commission.

26. As the facts described in paragraphs 21 through 25 above show, Nautilus obtained information which reasonably supported the conclusion that the Bowflex Power Pro Fitness Machine described in paragraph 21 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 such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. §§ 2064(b)(2) and (3).

27. By failing to furnish the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. § 2064(b), Nautilus violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

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

III. NAUTILUS' RESPONSE

29. Nautilus denies the staff's allegations that it violated the CPSA as set forth in paragraphs 4 through 27 above.

30. Nautilus believed that injury reports about the backboard bench and incline support breakage were consistent with the type of injuries associated when exercising with the type of exercise equipment identified in paragraphs 4, 13, and 21. With respect to the seat pin, Nautilus believed that the reports of seat pin disengagement did not reflect a product defect, but instead reflected consumer error in removing and repositioning the seat pin. The product change made in August 2002 to the incline support bracket was to address warranty claims, not a recognized risk of injury.

31. Nautilus denies that a defect in any of its products caused injury to any person, or that it knowingly violated the reporting requirements of the CPSA. Nautilus is entering into this Agreement to resolve the staff's claims without the expense and distraction of litigation. By agreeing to this settlement, Nautilus does not admit any of the allegations set forth above in this Agreement, or any fault, liability or statutory or regulatory violation.

IV. AGREEMENT OF THE PARTIES

32. The Consumer Product Safety Commission has jurisdiction over this matter and over Nautilus under the Consumer Product Safety Act, 15 U.S.C. § 2051 et seq.

33. This Agreement is entered into for settlement purposes only and does not constitute an admission by Nautilus or a determination by the Commission

that the products referenced in paragraphs 4 through 26 contain or contained a defect or defects which could create a substantial product hazard or create an unreasonable risk of serious injury or death, or that Nautilus knowingly violated the CPSA's reporting requirements.

34. In settlement of the staff's allegations, Nautilus agrees to pay a civil penalty in the amount of $950,000.00 as set forth in the incorporated Order.

35. This Settlement Agreement and Order resolves the failures to report set forth in paragraphs 4 through 29, above.

36. 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 to Justice Act.

37. 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 C.F.R. § 1118.20(e). If the Commission does not receive any written objections within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the Federal Register.

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

39. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. § 2051 et seq., and that a violation of this Order may subject Nautilus to appropriate legal action.

40. 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.

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

42. This Settlement Agreement and Order shall expire and have no force or effect if it is not provisionally accepted by the Commission on or before April 2nd, 2005.

RESPONDENT, NAUTILUS, INC.

Dated: 3/28/05 By: _____
Wayne Bolio
Senior Vice President-Law and General Counsel
Nautilus, Inc.
1400 NE 136th Avenue
Vancouver, WA 98661

Dated: 3/28/05 By: _____
Erika Z. Jones, Esquire
Attorney for Nautilus, Inc.
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Dated: 03/28/05 By: _____
Dennis C. Kacoyanis, Trial Attorney
Legal Division
Office of Compliance

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	
	)	
Nautilus, Inc.	)	CPSC DOCKET NO. 05-C0008
	)	
	)	

ORDER

Upon consideration of the Settlement Agreement entered into between Respondent Nautilus, Inc. and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Nautilus, Inc.; 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, Nautilus, Inc. shall pay to the Commission a civil penalty in the amount of $950,000 within twenty (20) days after service upon Respondent of this Final Order of the Commission.

Provisionally accepted and Provisional Order issued on the 4th date of April, 2005.

BY ORDER OF THE COMMISSION

TODD A. STEVENSON, SECRETARY
Consumer Product Safety Commission

Finally accepted and Final Order issued on the _____ day of _____, 2005.

BY ORDER OF THE COMMISSION

_____
TODD A. STEVENSON, SECRETARY
Consumer Product Safety Commission,