



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action Commissioners Voting by Ballot*

Commissioners Voting: Chairman Inez M. Tenenbaum
 Commissioner Nancy A. Nord
 Commissioner Anne M. Northup
 Commissioner Robert S. Adler

ITEM:

Hewlett-Packard Company - Proposed Civil Penalty Settlement of \$425,000.00
(Briefing package dated January 9, 2012, OS No. 3239)

DECISION:

The Commission voted (3-1) to provisionally accept the attached Settlement Agreement and Order, which would order Hewlett-Packard ("HP") of Palo Alto, CA, to pay a civil penalty of \$425,000.00, as specified. The provisional Settlement Agreement and Final Order will be announced in a *Federal Register* Notice. The Commission's Office of the General Counsel negotiated the proposed agreement to settle staff allegations that HP knowingly failed to report in a timely manner under section 15(b) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2064(b), lithium-ion battery packs, in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4). Section 20(a)(1) of the CPSA, 15 U.S.C. § 2069(a)(1), permits the imposition of civil penalties for any person who knowingly violates section 19 of the CPSA by a company's failure to report information under section 15(b). Chairman Tenenbaum and Commissioners Nord and Northup voted to provisionally accept the Settlement Agreement and Order. Commissioner Adler voted to reject the Settlement Agreement and Order. Chairman Tenenbaum and Commissioner Adler issued the attached statements about the matter.

For the Commission:


Todd A. Stevenson
Secretary

*Ballot vote due January 19, 2012

(Commissioner Adler extended the due date for the vote from January 13, 2012.)

Attachment: Statement of Chairman Tenenbaum
 Statement of Commissioner Adler



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January 19, 2012

**STATEMENT OF CHAIRMAN INEZ M. TENENBAUM
ON THE VOTE TO APPROVE PROVISIONALLY A CIVIL PENALTY SETTLEMENT
WITH HEWLETT-PACKARD COMPANY**

Today I voted to approve provisionally a civil penalty settlement with the Hewlett-Packard Company (HP) that would settle staff allegations that HP knowingly failed to report defective lithium-ion batteries that were the subject of a recall in October 2008.¹ I voted to accept this settlement in light of the facts and careful consideration of the civil penalty factors, but my vote is not without significant reservation.

I share many of the very valid concerns articulated by my colleague, Commissioner Robert S. Adler,² including concern as to whether this agreement sufficiently effectuates the main purposes of seeking a civil penalty. In the end, though, I decided to vote for the settlement agreement with HP because my concerns speak more to how the Commission will approach civil penalty cases going forward, especially those that fall under our enhanced statutory authorities.

More to the point, through passage of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Congress sent a clear signal by dramatically raising the statutory limits on civil penalties available in CPSC enforcement actions.³ As Congress intended, this enhanced authority empowers the Commission to seek, as appropriate, significantly higher civil penalties to ensure that civil penalties do not get written off as a cost of doing business, but rather truly serve their intended policy purpose.

While this settlement with HP was negotiated under the pre-CPSIA statutory scheme, it is my strong hope and expectation that future enforcement actions, particularly those that arise under our enhanced authorities, will (as Congress intended) include civil penalty amounts that maximize the likelihood of deterring violations, providing just punishment, promoting respect for and compliance with the law, reflecting the seriousness of the violation, and ultimately protecting the public from unreasonable risks of injury and death.

¹ "PC Notebook Computer Batteries Recalled Due to Fire and Burn Hazard," Oct. 30, 2008, available at: <http://www.cpsc.gov/cpsc/pub/prerel/prhtml09/09035.html>.

² Dissenting Opinion of Commissioner Robert S. Adler Regarding a Settlement Agreement with the Hewlett-Packard Company, dated January 19, 2012, available at <http://www.cpsc.gov/pr/adler01192012.pdf>.

³ Pursuant to CPSA Section 20(a)(1), 15 U.S.C. § 2069(a)(1), for violations occurring after August 13, 2009 any person who knowingly violates CPSA section 19 shall be subject to a civil penalty not to exceed \$100,000 for each violation, up to a maximum penalty of \$15 million for any related series of violations. For violations occurring from January 1, 2005 to August 13, 2009, maximum penalty amounts are \$8,000 for each violation, and \$1,825,000 for any related series of violations.



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**DISSENTING OPINION OF COMMISSIONER ROBERT S. ADLER
REGARDING A CIVIL PENALTY SETTLEMENT AGREEMENT WITH
THE HEWLETT-PACKARD COMPANY**

January 19, 2012

Today the Consumer Product Safety Commission (CPSC or Commission) voted provisional acceptance of an agreement with Hewlett-Packard Company (HP). The agreement concerned CPSC staff allegations that HP failed to immediately inform the Commission that some of its lithium-ion battery packs for its notebook computers contained a defect that caused some of the battery packs to overheat, posing a fire and burn hazard to consumers. This defect eventually led HP, in cooperation with the CPSC, to undertake a recall of a number of the battery packs.¹ And after extensive negotiations with CPSC staff, HP agreed to settle these allegations by paying a civil penalty in the amount of \$425,000. While I am pleased to see this matter resolved, after taking all of the relevant factors into consideration, I believe the size of the proposed penalty is too small and therefore voted against accepting this settlement agreement.

Our staff alleges that HP imported approximately 32,000 lithium-ion batteries into the United States between December 2004 and July 2006 for a variety of HP notebook computers. These batteries were either sold with, or as accessories for, the notebook computers. The computers sold for between \$700 and \$3,000. The batteries sold separately for \$100-\$160.

According to the allegations in the settlement agreement, beginning in June 2005, HP started receiving complaints that the batteries posed a safety hazard as they were overheating, sometimes resulting in flames or fires. Almost two years later (March/April 2007), HP conducted a study from which it obtained additional information about the products. CPSC staff alleges that, as of September 2007, HP knew of approximately 22 reports regarding these batteries, including incidents of injuries to consumers. Despite

¹ "PC Notebook Computer Batteries Recalled Due to Fire and Burn Hazard," Oct. 30, 2008, available at: <http://www.cpsc.gov/cpsc/pub/prerecl/prhtml09/09035.html>.

having this information, HP did not report to the Commission, as required by law,² until July 25, 2008 – many months after the staff alleges they should have reported. By that time, HP was aware of an additional 9 incidents involving their laptop computer batteries. As noted earlier, following consultation with the Commission, HP eventually conducted a recall in cooperation with the agency in October 2008.

The Commission is charged with protecting the public from unreasonable risks of injury or death from thousands of types of consumer products under the agency's jurisdiction. When a firm is alleged to have committed a violation of one of the statutes we enforce, in addition to ensuring that the defective product is removed from commerce (usually via a recall), the Commission may seek a civil penalty for a firm's delay in notifying the Commission of the potential hazard. I voted to reject the HP agreement because I do not believe that it effectuates the main purposes of seeking a civil penalty.

Section 20(b) of the CPSA, as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA), specifies a number of factors the Commission must consider when determining the amount of any penalty to be sought:

The nature, circumstances, extent and gravity of the violation, including the nature of the product defect, the severity of the risk of injury, the occurrence or absence of injury, the number of defective products distributed, the appropriateness of the size of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate.³

In 2010, the Commission issued a regulation, "Civil Penalty Factors," interpreting these factors. The factors are not weighted in either the statute or the regulation, so it remains up to the Commission to determine which ones deserve more weight in any given set of circumstances. Further, all civil penalty cases are different and trying to compare one case to another can be a difficult task.

That said, I agree with the purposes of civil penalty enforcement as described in our regulation:

Deterring violations; providing just punishment; promoting respect for the law; promoting full compliance with law; reflecting the seriousness of the violation; and protecting the public.⁴

² Section 15(b) of the Consumer Product Safety Act requires manufacturers of consumer products who obtain information which reasonably supports the conclusion that their products contain a defect which could create a substantial product hazard to immediately inform the CPSC of the defect. 15 U.S.C. § 2064.

³ 15 U.S.C. § 2069(b).

⁴ 16 C.F.R. § 1119.1.

Upon careful consideration of the statute, our civil penalty regulations, and the facts of this case, I have determined that the proposed civil penalty amount, while reflecting good faith negotiations between agency staff and the company, does not come close to what I consider the appropriate amount for this case. My reasons are as follows:

- For a company the size of HP, a civil penalty of \$425,000 represents a tiny fraction of its annual revenues, wealth, and financial resources. The deterrent effect of this amount on a company that according to public records⁵ employs hundreds of thousands of employees and generates annual revenues in excess of a hundred billion dollars is infinitesimal.
- Although the number of incidents and injuries associated with the battery packs thankfully appears small, that seems totally related to luck and not to the actual hazard associated with products that pose a fire and burn hazard to consumers. Such a small penalty rewards good luck rather than demonstrates a small risk. Unfortunately, I fear it will be interpreted as the latter.
- According to staff allegations, HP knew of approximately 22 reports regarding the battery packs as of September 2007, yet did not report until July 2008, some ten months later – during which time the company became aware of an additional nine incidents involving the battery packs. HP is a large technically-savvy company that knew, or should have known, that the law requires reports of defects that *could* present a substantial product hazard. I find it completely unreasonable for a company this sophisticated to maintain that it should not have reported under the facts alleged by staff.
- A civil penalty this small might be advanced as precedential – a proposition I strongly reject – especially as the Commission moves into the higher authorized civil penalty amounts provided in the CPSIA.

In sum, I do not believe a civil penalty this small in relation to the size of this company and in relation to the potential harm of this defect achieves the purposes of civil penalty enforcement.

⁵ See: “HP Fast Facts at: <http://www8.hp.com/us/en/hp-information/facts.html>.