

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. _____
	)	
WAL-MART STORES, INC.,	)	
a Delaware Corporation, SAM'S EAST, INC.,	)	
a Delaware Corporation, SAM'S WEST, INC.,	)	
a Delaware Corporation, and	)	
ICON HEALTH & FITNESS, INC.,	)	
a Utah Corporation,	)	
	)	
Defendants.	)	
	)	JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff, United States of America, by its undersigned attorneys, alleges:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355(a).
2. This Court has venue in this matter pursuant to 28 U.S.C. §§ 1391(b), (c), and 1395(a).

**NATURE OF THE CLAIM**

3. Plaintiff, the United States of America, seeks civil penalties and injunctive relief against the defendants, Icon Health & Fitness, Inc. ("Icon"), Wal-Mart Stores, Inc. ("Wal-Mart"), Sam's East, Inc., and Sam's West, Inc., for failing to give the Consumer Product Safety Commission ("CPSC" or "the Commission") timely notice of defective products that could create substantial product hazards and of products posing unreasonable risks of serious injury to consumers. Specifically, the United States seeks civil penalties because the defendants failed to report a dangerous defect and unreasonable risk of injury in exercise equipment manufactured by Icon and distributed by Wal-Mart, Sam's East, and Sam's West, even after these companies had been notified of dozens of injuries caused by the equipment - many of which occurred in Wal-Mart's, Sam's East's, and Sam's West's own stores. The United States seeks injunctive relief against the defendants because they continue to deny that they have any obligation to report such defects, risks, and injuries.

**DEFENDANTS**

4. Wal-Mart is a retailer, and is the parent company of the wholly owned subsidiaries, Sam's East, Inc., and Sam's West, Inc., both doing business as "Sam's Club." Wal-Mart, Sam's East, Inc., and Sam's

West, Inc., are all Delaware corporations with principal places of business in Bentonville, Arkansas. There are at least 25 Wal-Mart stores and 11 Sam's Clubs located in Maryland. Because of the corporate relationship between the three companies, this Complaint shall hereafter use the term "Wal-Mart" to refer to all three corporations unless otherwise noted.

5. Icon is a manufacturer and marketer of fitness equipment incorporated in Utah. Icon's principal place of business is in Logan, Utah.

### **CONSUMER PRODUCT SAFETY ACT, 15 U.S.C. § 2051 et. seq.**

6. The CPSC is an independent federal agency that was created to protect the public against unreasonable risks of injury from consumer products. The Commission enforces the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2051 et. seq. The principal offices of the CPSC are at 4330 East West Highway, Bethesda, Maryland. 16 C.F.R. § 1000.4(a).
7. Under the CPSA, "[e]very manufacturer of a consumer product . . . and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product . . . contains a defect which could create a substantial product hazard" must "immediately inform the Commission" of the defect unless it "has actual knowledge that the Commission has been adequately informed" of the defect. 15 U.S.C. § 2064(b)(2). The CPSA defines a "substantial product hazard" as a product defect that "creates a substantial risk of injury to the public." 15 U.S.C. § 2064(a)(2).
8. The CPSA also requires any manufacturer, distributor, or retailer who "obtains information which reasonably supports the conclusion that [a] product . . . creates an unreasonable risk of serious injury or death" to "immediately inform the Commission" of the risk unless the manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of the risk. 15 U.S.C. § 2064(b)(3). Regulations promulgated pursuant to the CPSA define "serious injury" to include any significant injury, including fractures and other injuries necessitating medical or surgical treatment. 16 C.F.R. § 1115.6(c).
9. The CPSA regulations indicate that the requirement that reports be made "immediately" means "within 24 hours" after a company has obtained the requisite information regarding a defect or unreasonable risk. 16 C.F.R. § 1115.14(e). Because of this time limit, the regulations permit initial reports to be made by telephone to the CPSC's headquarters in Bethesda, Maryland. 16 C.F.R. § 1115.13(b), (c) (providing the telephone number 301-504-0608). Reports may also be made in writing and sent to the agency's formal business address: Washington, DC 20207. Id.
10. The failure to furnish information required by 15 U.S.C. § 2064(b) is a prohibited act under the CPSA. 15 U.S.C. § 2068(a)(4).
11. Any person who knowingly fails to furnish such information may be punished by the assessment of civil penalties. 15 U.S.C. § 2069(a)(1).

### **THE FACTS**

12. Icon describes itself as the world's largest manufacturer and marketer of fitness equipment. Among its many products are three exercise machines: the Weider Power Glide, model WECR4406, Weider Shape Glider, model WECR 4306, and the Weslo Shape Trainer, model WLCR4356 (collectively, "the Weider and Weslo machines"). The basic design, construction, and operation of these three machines

are similar: each has a seat that slides along a track when the user pulls or pushes on a set of handlebars. The three machines are different, however, in terms of their prices, their features, the accessories with which they are packaged, and the manner in which they are marketed and distributed.

13. The Weider and Weslo machines were produced for sale to consumers for use in or around a household or residence, in recreation or otherwise. The Weider and Weslo machines were distributed for sale throughout the United States.
14. Between 1996 and 1999, Wal-Mart sold two of the Weider and Weslo machines - the Weider Power Glide, model WECR4406 (the "Weider machine"), and the Weslo Shape Trainer, model WLCR4356 (the "Weslo machine") - at prices ranging from \$99 to \$149. Wal-Mart did not sell any units of the Weider Shape Glider, model WECR 4306.
15. All three of the Weider and Weslo machines suffered from a common defect. A link-arm supporting the seat on these products was designed in a way that permits it to unexpectedly disconnect during use, causing the user to fall abruptly. The link-arm defect is present in all Weider and Weslo machines manufactured prior to October 1996, when Icon began using a different type of link-arm.
16. The defect in the Weider and Weslo machines created a substantial product hazard.
17. The design of the Weider and Weslo machines manufactured prior to October 1996 created an unreasonable risk of serious injury to consumers.
18. Icon and Wal-Mart first began to receive information about user injuries related to the Weider and Weslo machines in the late summer of 1996. On July 26, 1996, Wal-Mart learned of an injury to a user of the Weider machine caused by the failure of the link-arm connecting the seat to the machine. This incident took place in a Wal-Mart store while the consumer was trying out the equipment, and resulted in a fractured tailbone and an injury to the consumer's lower spine.
19. Between July 1996 and December 1996, Wal-Mart learned of at least ten incidents and seven additional injuries caused by the disconnection of the link-arm and the collapse of the seat on the Weider and Weslo machines.
20. Similarly, by December 1996, Icon was aware of at least 22 incidents involving disconnection of the link arm on Weider and Weslo machines.
21. As of January 8, 1998, Icon had been notified of at least 86 incidents involving failures of the link-arms connecting seats to the Weider and Weslo machines. These incidents resulted in 68 injuries to consumers. The injuries included fractured vertebrae, herniated discs, various spinal and tail bone injuries, and other problems that required medical attention. Some of the injuries resulted in partial disability and/or required rehabilitative treatment such as physical therapy.
22. As of December 10, 1999, Wal-Mart had been notified of at least 46 different incidents involving Weider or Weslo machines sold in its stores where the seat on the Weider or Weslo unexpectedly disconnected during use. At least 29 of these 46 incidents occurred in Wal-Mart stores while consumers were trying out the equipment. Incidents involving Weider or Weslo equipment sold by Wal-Mart have involved at least 41 injuries to consumers.
23. Neither Icon nor Wal-Mart reported to the CPSC to notify it of these incidents or the related injuries

until after they received specific inquiries from the CPSC.

24. Prior to being contacted by the CPSC about the Weider and Weslo machines, both Wal-Mart and Icon knew about the reporting requirements of the CPSA.
25. The CPSC was not informed about any possible problem with the Weider and Weslo machines, and the danger thereby posed to consumers, until it was contacted in December 1997 by a consumer who had purchased a Weslo machine from Wal-Mart and suffered an injury when the seat unexpectedly detached from the machine.
26. On December 17, 1997, the CPSC sent Icon a letter inquiring as to whether other consumers had been injured by disconnecting seats. Icon responded to this letter by filing a report on January 8, 1998, acknowledging the problems it had experienced with the Weslo machine, and also notifying the CPSC of the similar problems affecting the Weider machine and the Weider Shape Glider, model WECR 4306. This report was delivered to the CPSC's offices in Bethesda, Maryland. Icon's report indicated that at that time Icon was aware of 59 consumer injuries that had resulted from unexpected seat disconnections.
27. On April 15, 1998, after considering the evidence submitted by Icon, the CPSC notified the company that it had made a preliminary determination that its equipment presented a substantial hazard to users and asked the company to conduct a recall of the defective products. Icon eventually agreed to conduct a recall of the Weider and Weslo machines, and the CPSC and Icon announced the beginning of this recall on April 15, 1999.
28. On November 9, 1999, the CPSC sent Wal-Mart a letter seeking information about consumer injuries related to the Weider and Weslo machines. Wal-Mart submitted a partial response to this request on December 10, 1999, and has periodically supplemented its response since that date. This response was faxed to the CPSC's offices in Bethesda, Maryland.
29. Wal-Mart has consistently maintained that it was under no obligation to make a report to the CPSC regarding the injuries to users of the Weider and Weslo machines, even though at least 29 of those injuries occurred in Wal-Mart stores and were contemporaneously reported to Wal-Mart employees.

### **COUNT I**

30. Paragraphs 1-29 are incorporated by reference and realleged as if set forth fully herein.
31. Not later than December 1996, Icon had obtained information that reasonably supported the conclusion that each of the three Weider and Weslo machines contained a defect that could create a substantial product hazard, i.e., a defect that could create a substantial risk of injury to the public.
32. Under 15 U.S.C. §§ 2064(b)(2), Icon was required "immediately" to furnish the CPSC with the information it had obtained regarding defects that could create a substantial product hazard.
33. From the time it obtained the information regarding defects that could create a substantial product hazard, and continuing until at least January 1998, when Icon responded to the CPSC's request for information, Icon knowingly violated 15 U.S.C. § 2068(a)(4) by failing immediately to furnish the CPSC with this information.

### **COUNT II**

34. Paragraphs 1-29 are incorporated by reference and realleged as if set forth fully herein.
35. Not later than December 1996, Wal-Mart had obtained information that reasonably supported the conclusion that the Weider machine and the Weslo machine each contained a defect that could create a substantial product hazard, i.e., a defect that could create a substantial risk of injury to the public.
36. Under 15 U.S.C. §§ 2064(b)(2), Wal-Mart was required "immediately" to furnish the CPSC with the information it had obtained regarding defects that could create a substantial product hazard.
37. From the time it obtained the information regarding defects that could create a substantial product hazard, and continuing until at least December 1999, when Wal-Mart finally made a partial response to the CPSC's request for information, Wal-Mart knowingly violated 15 U.S.C. § 2068(a)(4) by failing immediately to furnish the CPSC with this information.

### **COUNT III**

38. Paragraphs 1-29 are incorporated by reference and realleged as if set forth fully herein.
39. Not later than December 1996, Icon had obtained information that reasonably supported the conclusion that each of the three Weider and Weslo machines created an unreasonable risk of serious injury.
40. Under 15 U.S.C. § 2064(b)(3), Icon was required immediately to furnish the CPSC with the information it had obtained regarding the unreasonable risk of serious injury.
41. From the time it obtained the information regarding the unreasonable risk of serious injury and continuing until at least January 1998, when Icon responded to the CPSC's request for information, Icon knowingly violated 15 U.S.C. § 2068(a)(4) by failing immediately to furnish the CPSC with the required information.

### **COUNT IV**

42. Paragraphs 1-29 are incorporated by reference and realleged as if set forth fully herein.
43. Not later than December 1996, Wal-Mart had obtained information that reasonably supported the conclusion that the Weider machine and the Weslo machine each created an unreasonable risk of serious injury.
44. Under 15 U.S.C. § 2064(b)(3), Wal-Mart was required immediately to furnish the CPSC with the information it had obtained regarding the unreasonable risk of serious injury.
45. From the time it obtained the information regarding the unreasonable risk of serious injury and continuing until at least December 1999, when Wal-Mart finally made a partial response to the CPSC's request for information, Wal-Mart knowingly violated 15 U.S.C. § 2068(a)(4) by failing immediately to furnish the CPSC with the required information.

### **RELIEF REQUESTED**

the United States respectfully requests that this Court:

- I. Assess civil penalties of up to the statutory maximum of \$1,500,000 per product against each corporate defendant for the CPSA violations alleged in Counts I-IV of this Complaint. 15 U.S.C. § 2069(a)(3); 59 F.R. 66523-02 (indicating that \$1,500,000 is the maximum allowable civil penalty for any related series of violations during the time periods set forth in Paragraphs 30-45). As provided by 15 U.S.C. § 2069(a)(1), a separate penalty should be imposed on each Defendant for each model of the Weider and Weslo machines it manufactured or sold.
- II. Award Plaintiff injunctive relief against the defendants that would: (1) require each company to comply with the reporting requirements of the CPSA and its accompanying regulations; (2) assure such compliance by requiring the defendants to establish internal recordkeeping and monitoring systems designed to provide timely notice to the CPSC whenever they obtain information which reasonably supports the conclusion that a product contains a defect which would create a substantial product hazard or poses an unreasonable risk of serious injury to consumers; (3) provide for liquidated damages in the event that the defendants fail to comply with the reporting requirements of the CPSA; and (4) require the defendants to establish escrow accounts containing funds that could be used to pay any liquidated damages imposed by the Court.
- III. Award plaintiff judgment for its costs and for such other and further relief that this Court deems just and proper.

Respectfully submitted,

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