

**In the United States of America  
Before the Consumer Product Safety Commission**

**In the Matter of the Petition of  
Consumer Federation of America,  
The Drowning Prevention  
Foundation, et. al.  
to Ban Baby Bath Seats**

**No.** \_\_\_\_\_

Pursuant to the Administrative Procedures Act, 5 U.S.C. section 553 (e) and regulations of the Consumer Product Safety Commission (CPSC), 16 C.F.R. sections 1051 and 1500.201, Consumer Federation of America, The Drowning Prevention Foundation, The Danny Foundation, Intermountain Injury Control Research Center, California Coalition for Children's Safety and Health, California Drowning Prevention Network, Contra Costa County Childhood Injury Prevention Coalition, Greater Sacramento SAFE KIDS Coalition, and Kids in Danger, hereby petition the CPSC to determine, under section 3 (e) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. section 1262, that baby bath seats intended for use by children present a mechanical hazard and, therefore, pursuant to section 2 (f) (1) (D) of the FHSA, 15 U.S.C. section 1261, are hazardous substances. Accordingly, pursuant to section 2 (q) (1) (A) of the FHSA, 15 U.S.C. section 1261, these baby bath seats are banned hazardous substances.

**I.**

**Interest of Petitioners**

This petition is brought by nine organizations on behalf of their members and all children and their families affected by baby bath seats.

Consumer Federation of America (CFA) is the nation's largest consumer advocacy organization representing over 260 state, local, and national consumer organizations and over 50 million consumers.

The Drowning Prevention Foundation is a nonprofit foundation established to prevent drowning of infants and young children in or around the home or in residential swimming pools.

The Danny Foundation for Crib and Child Product Safety is a non-profit public charity established in 1986 to prevent injury and death from unsafe cribs and other nursery related products.

The Intermountain Injury Control Research Center is a private and federally funded center dedicated to the reduction of injury morbidity and mortality in Public Health Service Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming).

The California Coalition for Children's Safety and Health is a statewide organization committed to the prevention of unintentional traumatic brain injury among children.

The California Drowning Prevention Network is a California statewide organization of injury prevention specialists whose mission is to reduce toddler drowning and near drowning through policy change and public education.

The Contra Costa County Childhood Injury Prevention Coalition, founded in 1987, is a multi-disciplined coalition of 20 public and private agencies working to reduce childhood injuries in Contra Costa County, California.

Greater Sacramento SAFE KIDS Coalition is a local chapter of the National SAFE KIDS Campaign, which is dedicated to the prevention of trauma injuries to children.

Kids in Danger is a non-profit organization dedicated to protecting children by improving product safety. Kids in Danger educates the public, advocates for children, and promotes the development of safer children's products.

## **II.**

### **The Product**

Baby bath seats (or infant bath seats or bath rings as they are also known) are consumer products intended to assist in bathing infants by holding the infant in a sitting position in a full size bathtub. These products usually have suction cups to hold them in place in the bathtub and a plastic seat with leg openings to secure the infant in a sitting position being bathed. With a bath ring (used for the same purpose), the infant sits directly on the tub surface or on a mat attached to the legs of the bath ring.

Baby bath seats have very limited utility. They are not recommended for use until 6 months of age and when the child can sit upright unassisted. Once an infant can pull up or attempt to stand while holding onto objects, baby bath seats should be discontinued, since the infant could climb from the seat. The current standard for childhood development (i.e., the Denver Developmental Screening Test) indicates that infants begin attempts to pull themselves up to a standing position between 7 and 9 months of age. This time interval indicates that bath seats have a useful product life of approximately 2 months.

## **III.**

### **Hazards Presented by Baby Bath Seats**

Baby bath seats pose an unreasonable risk of injury and death to children. Each year at least eight babies die as a result of a drowning associated with bath seat use. Additionally, infants who experience "near miss" incidents may experience traumatic injuries. Drownings typically occur when the infant tips over, climbs out of, or slides through the product. In cases where the bath seat tips over with the child in the product, it is believed that the seat may contribute to the drowning because the child is unable to get free of the seat and/or the parent or caregiver is unable to extricate the child from the seat.<sup>1</sup> Two deaths were reported where the caregiver witnessed the event but was unable to free the child from the seat.<sup>2</sup>

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<sup>1</sup> See "The Role of Bathtub Seats and Rings in Infant Drowning Deaths, Rauchschalbe, Brenner and Smith, Pediatrics, vol. 100, No. 4, October 1997, page 5-electronic copy. (See Appendix to this Petition).

<sup>2</sup> Id.

## **A. Previous Consideration by the Consumer Product Safety Commission**

The Commission previously considered rulemaking as well as other options to address bath seat hazards as part of a staff generated briefing package, OS#5348, May 17, 1994. At that time 14 deaths and 7 near-drowning incidents had been identified. On June 15, 1994, the Commission decided by a two to one vote (Commissioners Gall and Jones-Smith in the majority and Chairman Brown in the minority) against initiating formal rulemaking proceedings and instead to work with industry to initiate a public information campaign focusing on the risks taken by parents and other caregivers that leave children unattended in bathtubs.

Events since 1994 have demonstrated that this decision has not been effective and that the Commission must re-examine this product and its decision in light of additional deaths and new information identified in this petition.

## **B. Additional bath seat drownings and near drownings**

There are currently 66 incidents of drowning and 37 reports of near drowning identified by CPSC staff. There have been an additional 52 documented deaths reported in the six years since the Commission made their decision in 1994. This is more than four times the number of deaths identified at the time of the previous decision. In the first six months of 2000 alone, five babies have died in bath seat incidents. This large number of additional drowning deaths (since the 1994 CPSC decision) alone justifies re-examination of this issue.

## **C. False Sense of Security and New Research**

Parents or caregivers who suffer the tragic loss of a child in a bath seat-related drowning are thought to have ignored the warning label printed directly on the product, which warns against leaving a child unattended while using a bath seat. This argument indicts the parent or caregiver for their irresponsible actions and absolves the product of having any causal role in the drowning incidents. However, recent research findings suggest that the inherent design of bath seat products induce a “false sense of security” among users that may over-shadow the message printed on warning labels. This “sense of security” leads to increased risk-taking behavior among those using the product even when the irresponsible nature of caregivers is taken into account. Thus, not only product design but commonly held perceptions among users must be considered when assessing the safety of this consumer product.<sup>3</sup>

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<sup>3</sup> Previous research conducted by CPSC found, among other things, that:

- “[A]lthough parents acknowledge intellectually the hazards involved, they do not truly believe something bad will happen to their child (if left alone in a bath seat). Lack of a direct personal experience with a drowning seems to increase the chance that a parent might engage in high risk behavior.”
- “Successful experiences with leaving a child unattended in the bath tend to encourage parents to repeat the high risk behavior.”
- “The sturdier, more luxury looking baby bath ring/seat models are preferred by parents and perceived to be safer than the more basic models. Parents indicated that if they were to leave their child unattended in the bathtub they would feel more confident in leaving if the child was in one of the luxury models. Therefore, certain models, more so than some others, potentially make parents feel over-confident that their children will be safe in the bath while using these particular baby bath rings/seats.” “A Focus Group Study to Evaluate Consumers Use and Perceptions of Baby Bath Rings/Seats, CPSC-R-93-5839, prepared for CPSC by Shugoll Research. (Included in Appendix to this Petition).

The recent research was conducted under the auspices of the Intermountain Injury Control Research Center at the University of Utah. Dr. Clay Mann reported those findings at the National Congress on Childhood Emergencies meeting in Baltimore, MD on March 27, 2000.<sup>4</sup>

The research compared 32 drowning incidents with a baby bath seat to 32 drowning incidents without any bath seat. Two statistically significant differences were found between these two groups:

1. **Water Depth:** The water was significantly deeper in the incidents involving baby bath seats. Median depth in baby bath seat incidents was 7.0 inches and 4.5 inches among incidents with no bath seat involvement.
2. **Willful versus Impulsive Decision to Leave an Infant Alone:** Dr. Mann reported that 75% of the incidents involving baby bath seats resulted from willful decisions to leave the infant unattended, while only 45% of the incidents without bath seats involved willful decisions. Willful decisions were those considered to be premeditated or thought out in advance by the caregiver (e.g., perform household chores, watch television). While the preponderance of infant drownings with no bath seat involvement were judged to result from impulsive decisions, (25% with bath seat and 55% no bath seat). Impulsive decisions were those judged to be sudden interruptions of the infant's bath, (i.e. answer telephone, and respond to another distressed child).

This research demonstrates that parents and caregivers of infants that use baby bath seats engage in more risk taking behavior than parents and caregivers not using baby bath seats. Caregivers using bath seats prepare baths with deeper water and are more likely to leave a child unattended in the bath for conscious, willful reasons (e.g., to perform household chores). This study demonstrates that enhanced risk taking behavior persists even when the irresponsible nature of caregivers is taken into account. There is a false sense of safety that is propagated by having a mechanical aid to "help" to hold a slippery baby upright. This "sense of security" promotes the idea that a child could be left alone in the bath for "just a minute."

#### **D. Drowning is a Silent and Speedy Event**

By age six months, an infant's lungs are well developed, and a baby gives tremendous volume to his or her cries when injured or frightened. Parents and other infant caregivers immediately respond to these high volume cries and rely upon them to signal any danger. Absent any cry from the baby, a parent or caregiver is likely to continue attending to other tasks.

Most parents and infant caregivers expect that they will be alerted to any drowning danger by the baby's distress cries. Most people believe that they will be alerted to someone drowning by cries for help or splashing and gasping by the victim. This is not true for drowning incidents involving infants and toddlers. Water in the airway blocks any effective sound from being heard and can cause tracheal constriction, which fully blocks the airway, and incapacitates the infant. Within moments, brain damage occurs followed by death after 4-5 minutes. Drowning is truly a silent and speedy event.

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<sup>4</sup> "Infant Seat Bathtub Drownings: Who's to Blame?" NC. Mann, R. Rauchschalbe, L. Olson, NZ. Cvijanovich, Intermountain Injury Control Research Center, University of Utah, Salt Lake City, UT and U.S. Consumer Product Safety Commission, Washington, DC. (Abstract included in Appendix to this Petition).

## **IV. Voluntary Standards Are Inadequate to Address the Drowning Risk Associated with Bath Seats**

### **A. ASTM Voluntary Standard, Infant Bath Seats, F 1967-99**

An American Society for Testing & Materials (ASTM) voluntary standard was recently established for baby bath seats.<sup>5</sup>

Although published last year, this standard has been under development for more than five years. Despite knowledge of drowning deaths in bath seats relating back to at least the early 1990s, no changes to products made yet have resulted in decreased number of deaths associated with this product. Instead, the number of deaths has increased during this period.

Additionally, concerns over the adequacy of this standard continue. For example, ongoing concerns include: the size of leg openings and submarining incidents; the efficacy of draft requirements for suction cups; the fact that the warning regarding when product should not be used on a slip-resistant surface is on package only and not on the product; the manufacturers' refusal to mark the product with a water depth line to guide consumers and reduce likelihood of filling bath with more water than needed; and a proposal to delete a requirement that the warning be "readable" when tested for permanence.

Perhaps of greatest concern is the incompatibility of bath seat products currently being sold with their use in bathtubs with textured, non-skid surfaces (see discussion below).

Even if changes were made to the voluntary standard to address the above and any other concerns, we do not believe that the risk of drowning would be eliminated. Others share this concern: "Finally, no design modification can address the major issue that leads to most of the drowning deaths, namely that the child was left unattended, apparently because the care giver thought that it was safe to do so. If anything, making the product more robust may only increase the perception that the child will be safe if left alone for a few moments."<sup>6</sup>

### **B. ASTM Voluntary Standard for Slip-Resistant Bathing Facilities, F 462-79**

In 1979, ASTM published a standard for Slip-Resistant Bathing Facilities.<sup>7</sup> This standard was re-approved in 1994. Virtually all new homes and homes with remodeled baths will have the benefit of this slip resistant feature in the bathtub basin. It is expected that this standard will be (and has been) effective in reducing fall injuries in bathrooms, which is a very serious injury problem to the general population and even a more serious injury problem to vulnerable populations, (i.e. elderly, disabled, infants and young children). Specifically, the standard states that it is intended to "reduce accidents to persons, especially children and the aged, resulting from the use of bathing facilities."<sup>8</sup>

Although this is a performance standard, it is our understanding that most if not all of the leading manufacturers of bathtubs choose to use textured surfaces to meet the performance requirements.

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<sup>5</sup> F 1967-99, Standard Consumer Safety Specification for Infant Bath Seats, American Society for Testing and Materials.

<sup>6</sup> Rauchschalbe et. al, Pediatrics, 8 (electronic copy).

<sup>7</sup> F 462-79, Standard Consumer Safety Specification for Slip-Resistant Bathing Facilities, American Society for Testing and Materials.

<sup>8</sup> See section 1.3, F 462-79.

The baby bath seat products currently being marketed contain warnings on their packaging and printed instruction sheets (but not on the products) that the seat is “not for use on textured, non-skid surfaces.” One manufacturer, in its instruction sheet, also warns against use of the product on a surface that has decals or mats attached. However, it may not be obvious to all consumers that their bath surface is textured even if they see, read and understand the warning accompanying the product. Some of the complying bathtub surfaces have a very subtle texture that would be considered smooth by many people. Furthermore, use of the product by the non-original owner (such as a friend or family member who was loaned the product, or a second purchaser through a used good sale) would be without benefit of this warning since the original box and instruction sheet are almost never kept and passed on to subsequent users. Even an original user may experience the incompatibility problem if using the product away from home (on a bathtub with textured surface) or with a second child after the family’s move to a new home.

**The incompatible combination of the bath seat and slip resistant standards in application creates a lethal situation for bath seat use.**

## V.

### Action Requested

For the reasons enumerated above, the Petitioners request that the Consumer Product Safety Commission ban baby bath seats under section 3 (e) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. section 1262, finding that baby bath seats intended for use by children present a mechanical hazard and, therefore, pursuant to section 2 (f) (1) (D) of the FHSA, 15 U.S.C. section 1261, are hazardous substances and accordingly, pursuant to section 2 (q) (1) (A) of the FHSA, 15 U.S.C. section 1261, these baby bath seats are banned hazardous substance. Specifically, the Petitioners request that CPSC issue a rule that states:

Under the authority of section 2 (f) (1) (D) of Federal Hazardous Substances Act and pursuant to provisions of section 3 (e) of the act, the Commission has determined that baby bath seats (including bath rings) intended for use by children present a mechanical hazard within the meaning of section 2 (s) of the Act because in normal use, or when subject to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness, and therefore are banned under section 2 (q) (1) (A) of the Act.

Respectfully submitted,

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## Appendix