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Playskool Travel-Lite Crib (Part B)

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Description

Part B of the Playskool Travel-Lite Crib case details the recall process as it occurred, including negotiations between Kolcraft and the CPSC, and Kolcraft's actions in conducting its recall. It also discusses three additional infant deaths that occurred after the recall.

Body

Starting the Recall

The Travel-Lite had been off store shelves for almost a year when Kolcraft received the February 1, 1993, letter from the U.S. Consumer Product Safety Commission (CPSC). And although the crib carried a limited one-year warranty, the product had not included a mail-in warranty registration card for consumers. By February 1993, the earliest users of the crib would have long outgrown it, and in many cases the original purchasers would have discarded, stored, sold, or given away their cribs.

Sanfred Koltun met with Bernard Greenberg and John Staas, an attorney and Kolcraft's vice president of operations, to discuss the situation. Kolcraft retained a law firm in Washington, D.C., and on February 12 drafted a response to the CPSC. In it they proposed notification procedures, including contacting retailers with a letter and a poster informing them of a potential problem with the Travel-Lite, and

providing a toll free number for consumers to call. A copy of the poster Kolcraft designed for display in retail locations was passed to Hasbro, and on February 18, staff at Hasbro approved the poster. Deposition of Malcolm Denniss, 8/27/1999, p. 64. On February 19, a Friday, Kolcraft sent retailers a letter and an accompanying 8-1/2" x 11" poster, which included a drawing of the Travel-Lite.

Also on February 19, Kolcraft's lawyers in Washington received notice that the compliance staff at the CPSC had made a preliminary determination that the Playskool Travel-Lite crib presented "a substantial risk of injury to children as defined by section 15 (a) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. § 2064 (a). Specifically, there have been three reports to the Commission of infant fatalities resulting from the product folding up during use." Linda Ginzel, as independent administrator of the estate of Daniel Keysar, deceased, and on behalf of Boaz Keysar, Ely Keysar, and Linda Ginzel, next of kin, plaintiff, v. Kolcraft Enterprises, Inc., a Delaware Corporation, and Hasbro, Inc., a Rhode Island Corporation, defendants, #98L7063, Circuit Court of Cook County, County Department, Law Division. From appendix, tab 7. On February 22, 1993, the CPSC received from Kolcraft a copy of the letter and poster the company had mailed to retailers the previous Friday. On February 24, 1993, William J. Moore, Jr., an attorney in the office of compliance and enforcement of the CPSC, wrote a letter to Kolcraft's attorneys in Washington, D.C. His letter stated, in part:

We take serious exception with your proposal to print the pediatrician poster in black and white. The poster will be competing with many other pieces of information. ... The staff was very troubled to learn that the retailer letter and accompanying poster you provided to us on Monday, February 22, 1993, had already been sent to the retailers the previous Friday. The staff had been asking to review the proposed retailer notice for several days. Your February 12 letter promised to provide these documents to us by February 16. We stood willing and able to give quick guidance for producing effective notice documents. ...

The 8-1/2 x 11 inch, black and white, thin stock "poster" sent to retailers had many serious shortcomings, in our view. It did not even have the Playskool name on the crib.

Moore added that his staff "wishes to work with Kolcraft to make this an effective ... recall and to prevent further tragedy." From appendix to #98L7063, tab 7.

In a conference call on March 1, Kolcraft's attorneys in Washington tried to reassure the CPSC that Kolcraft and their firm were responding quickly and responsibly. Kolcraft had by then agreed to send a notice to approximately 26,000 pediatricians on a list maintained by the American Academy of Pediatrics. In addition, it would send a revised letter to Sears and to smaller retailers. The JC Penney's chain would be able to notify its catalog customers directly from its database. Kolcraft's attorneys expressed concern with the tone of Moore's letter and asked that it be purged from the case file, a suggestion that the CPSC rejected. From telephone notes in appendix to #98L7063, tab 7.

After confidential negotiations between Kolcraft attorneys and the CPSC, the CPSC on March 10 issued a press release announcing the product recall ([Exhibit 1](#)). Hasbro was not involved.

Six weeks after its request for a full report, the CPSC was still attempting to acquire testing data on the Travel-Lite and status reports on the progression of the recall. March 16, 1993, documents from appendix to #98L7063, tab 7. On March 19, 1993, John Staas wrote a memo to Kolcraft's file, From appendix to #98L7063, tab 6. with the subject line, "Testing information requested by CPSC." It read in part:

Using the ASTM play yard standard as a model Kolcraft measured and maintained the following performance features on the Travel-Lite crib:

1. Caps, sleeves, etc. secured to stay on with 15 lbf force or more.
2. Uniformly spaced components.
3. Side height of 20 inches.
4. Side strength and deflection of top rails and supporting methods to withstand 50 lbf static.
5. load.
6. Floor strength to withstand 50 cycle 30 ft. load.
7. Holes sized to avoid finger entrapment.
8. Mesh openings to avoid finger and toe entrapment and snaring of buttons.
9. Twelve-gauge vinyl used on the top rails.

Staas mentioned reaching compliance with regulations on sharp points and edges, and flame-retardant standards, and added that:

Kolcraft designers conducted use and abuse tests on these cribs, consisting of repeated cycles of leaning, pushing, sitting on and throwing the crib, and

turning it on its sides. Kolcraft also tested the folding mechanism to determine if it could be inadvertently folded or lowered by a child while the crib was in use. Kolcraft used CPSC 16 CFR § 1500.53 (e) (3) as its standard to test the folding mechanisms.

CPSC use and abuse standard 16 CFR § 1500.53 (e) (3) prescribes a standard of 4 inch-pound torque to measure the susceptibility of a product to the twisting motion of a child 36 to 96 months of age. The Travel-Lite top rails were designed and measured to require four times the force of the CPSC regulation. Kolcraft's measurements using a torque wrench indicated that 15-20 inch-pounds was approximately the range needed to activate the folding mechanism.

Kolcraft was able to produce no records on the testing of such a twisting motion. Later, Edward Johnson said he could not recall which of the tests his department performed had received written notations, and which had been informal. Deposition of Edward Johnson, 5/13/1999, pp. 20-26. In addition to simply turning the dials at either end of the crib, as intended, the crib could also fold closed if the collapsible top rails were turned firmly enough (i.e. 15-20 inch-pounds, as noted by Kolcraft) to dislodge the nub holding them in place.

On July 12, 1995, a ten-month-old boy in Indianapolis was strangled in the "V" of his collapsed Travel-Lite. He was the fourth known victim of the crib.

By June 1996, of the 11,600 sold, 2,736 Travel-Lites could be accounted for. Noting that the returns had stopped, and that there had been no recent injury or death reports, the CPSC closed its case. The status of 76 percent of the cribs remained unknown. Mitch Lipka, "Deaths of six babies expose fatal flaws of system," Sun-Sentinel, South Florida, November 28-30, 1999.

After the Recall

On May 12, 1998, during naptime at his childcare provider, 16-month-old Danny Keysar was found unconscious in the "V" of a Travel-Lite. He was rushed to the emergency room but could not be revived. He was the fifth reported death in a Travel-Lite ([Exhibit 2](#)).

On August 19, 1998, a ten-month-old New Jersey boy was found dead, strangled in the “V” of his Travel- Lite. He was the sixth victim ([Exhibit 3](#)).

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