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Hobbyist Pyrotechnicians and  
All Concerned

RE: U.S./CPSC vs. Firefox

Fellow Pyros and Others:

Please allow this letter to update you on the current standing of the litigation ongoing between the United States Government (CPSC) against Firefox Enterprises, Inc. I will give a brief update and then discuss the current situation.

In response to the Governments complaint, Firefox filed a Motion to Dismiss the Complaint in December of 2004. The Motion to Dismiss was fully briefed by both Firefox and the Government. The U.S. District Court for Idaho set the Motion to Dismiss for an oral argument hearing on April 25, 2005. Firefox attended the hearing, with its attorneys, and argued the reasons why the Government's complaint should be dismissed. In simple terms, Firefox's Motion to Dismiss stated that the complaint should be dismissed because the Government failed to allege sufficient facts in the Complaint to allow the Government to proceed with the lawsuit. Firefox argued that the Government did not allege facts that gave it jurisdiction over the products Firefox sells under the Federal Hazardous Substances Act.

The Court, Judge Winmill, asked two questions at the beginning of the oral argument hearing. One question was posed to Firefox and the other question was posed to the Government. Both questions were very astute and went directly to the weakness in each party's argument. As the Motion to Dismiss was filed by Firefox, it went first and argued its basis for the Motion. The Government then went next and argued its position. During each sides argument, Judge Winmill asked very relevant questions. It was readily apparent that the Judge had read and studied each sides briefs. He came across very intelligently and seemed very balanced. He did not appear to be in favor of the Government, but he also did not appear to favor Firefox.

After the presentation of evidence the Judge did not rule, but he did give a very strong indication as to what his ruling would be. He stated that the burden which plaintiff, here the Government, must overcome in alleging facts in that of merely notice. The Plaintiff is not required to allege facts so detailed as to cover all claims. Further, the Court is to consider all the facts alleged as true when deciding if a plaintiff has met the burden. Judge Winmill further stated that the arguments of Firefox were very valid arguments, but would be better used in a Trial Rule 56 Motion for Summary Judgment as opposed to a Trial Rule 12 Motion to Dismiss. He stated he would have his formal decision very soon and thanked the parties and attorneys for the oral arguments.

We believe the words of Judge Winmill indicate that he will deny the Motion to Dismiss. Firefox will then have 10 days to file its answer to the Complaint after Judge Winmill officially denies the Motion. After the answer is filed, the discovery phase of the litigation will begin. The Government has already contacted Firefox's attorneys and requested a discovery conference as required by the Federal Rules of Trial Procedure. This would indicate that the Government also believes that Judge Winmill will deny the Motion to Dismiss.

Firefox is presently in the process of preparing to file its Answer and to begin the discovery phase of this litigation. The discovery phase requires that each side provide answers to written questions, provide copies of documents or access to documents requested and to provide persons to be deposed. The discovery phase of litigation takes the longest and is one of the most expensive phases. It will require Firefox to review thousands of pages of invoices, customer orders, sales receipts, to provide copies or access to these documents and to provide for Dianne, Gary and Skyler Purrington to appear and be deposed by the Government. It will also require the Government to provide all its reports, emails, memos, notes, telephone messages about its investigation of Firefox, information about the persons who provided the Government with information on Firefox, require the Government to name persons within the CPSC to be deposed to answer questions. It will allow Firefox to explore and expose the depth and breadth of the CPSC investigation into the chemical vendors and whom else is under investigation.

Firefox will continue to fight the improper allegations against it and promises to keep the pyrotechnic enthusiasts informed of the ongoing litigation.

Respectfully,

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