

ICPHSO

International Consumer Product Health
and Safety Organization

Annual Meeting & Training Symposium

Symposium on Product Safety and
Retailers

February 22, 2005
Rosen Centre Hotel
Orlando, Florida

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Barnes & Thornburg LLP

Panel 1 -- Legal and Consumer Issues

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BREAKING AWAY REVISITED -- A RETAILER'S CYCLING SHOE PROBLEM

An Exciting Drama
Involving a Hypothetical




Cast of Characters:

- *Joe Chapelle:* Nick Legstrong a bike racing legend and bike specialty entrepreneur from Bloomington, Indiana
- *Marc Schoem:* Played as himself from CPSC
- *Sally Greenberg:* A consumer advocate from Cycling Safety Advocates


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I. Background

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Nick Legstrong never really made it on European cycling circuit, but in his hometown, Bloomington, Indiana, he was somewhat of a local legend. After basketball, cycling had already been the City's second most popular sport long before Lance Armstrong won his sixth Tour de France. (Remember the Academy Award winning film - *Breaking Away*). Nick's popularity began growing when he led his college bike team to a victory at Indiana University's Little 500 race. Riding for an Italian team, Nick actually won a stage on the famed Tour de France. However, the life of a pro cyclist wore on Nick.

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In late 2000, he decided to give up on pro cycling, returning to Bloomington. Nick thought he could make a living by opening a specialty bike store and cashing in on his local notoriety. Nick's store was an instant success. Because Nick knew so much about cycling, he was able to help customers, mostly "weekend warrior" cyclists, pick out exactly the bikes and accessories they needed. Nick's jovial personality and careful, honest business practices helped him take his business to new level.

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By 2004, Nick expanded his business and opened up several smaller stores in neighboring communities. He began purchasing specialty products from many small manufacturers. While visiting Denver, Colorado, Nick discovered a small manufacturer, *High Peak Shoe Company*, who had created innovative bike shoes. Many novice riders, using bike shoes and cleats, encountered problems disengaging their shoes from their bike pedals, often falling over until they got used to the shoes. Some experienced riders also wanted bike cleats they could more quickly disengage. *High Peak* developed a shoe that had a unique spring device on the bottom. Some Denver cyclists were using the shoes as part of a marketing program were pleased.

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Nick negotiated a licensing agreement with High Peak and placed his own “Nick’s” label on them. As the summer cycling season began, sales took off. The shoes became very popular. Not only were cyclists buying them, but some customers started buying the shoes to use in “spinning classes” in health clubs. Nick was a master marketer and before long sales reached about 500,000.




II. Initial Complaints

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After a few months, Nick's retail headquarters started receiving e-mail complaints through his website. Consumers began complaining that the shoe's spring mechanism would jam. Most of the complaints came from very experienced riders. No injuries were reported. Nick's marketing staff asked for the shoes to be sent back and would replace them. The staff at Nick's distribution center did not let Nick's management know that they were beginning to see increasing numbers of returns. The staff treated this as a "routine problem." One manager, Bob Bumbler, kept a file folder with e-mail printouts and letters about the shoes. He did not think too much about the problem until the file folder getting thicker.

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One day, Bob realized that the “shoe folder” was the biggest in his desk. Bob reviewed a few of the more recent e-mails and letters.


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In one letter, a woman complained about bumps and bruises she sustained when her bike fell over while she was trying to disengage her bike shoes from her pedals. One man sustained a bruised thigh when his “spin bike” flopped over as he tried to get his shoe loose in a fit of frustration.

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Bumbler decided it was time to contact High Peak, the Denver manufacturer. Bumbler called his contact in at High Peak, but the small company refused to admit there were any problems with the shoes. Its position was that inexperienced cyclists were the problem.


“Maybe a spring here or there would fail but this was hardly a major problem,” according to High Peak. Bumbler sought assurances that High Peak would continue to take back the shoes.

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Bumbler had a vague recollection about a bike manufacturer getting into some kind of trouble for failing to report a problem to the Consumer Product Safety Commission. He had read something in a cycling magazine but could not really remember much about the problem. A few more weeks went by and finally Bumbler thought he should mention something to the senior management at Nick Cycling Supply, Inc., the name of Nick's burgeoning company.



III. Disaster Strikes


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Meanwhile, Nick was oblivious to any problems. Every fall, hundreds of cycling enthusiasts converged on Bloomington for the Hilly Hundred, a 100 mile bike ride through the scenic hills of southern Indiana. Nick had supported Indiana's newly elected governor and contacted him about wearing the popular shoes when he rode in the Hilly Hundred. One of the issues the Governor ran on was promotion of Indiana-based business, and had decided to ride in the annual event to help boost its popularity and visibility.


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The Governor's advance team let Nick know that the governor would be delighted to wear the shoes and help showcase the Indiana based product. The Governor donned the shoes at the beginning of the Hilly Hundred ride. All went well. In fact, the Governor was wearing the shoes while he was interviewed for one of the nationally syndicated Sunday news shows about the Indiana's business development efforts. Following the interview, cameras still rolling, the Governor took off on an Indiana-made road bike, with Nick's shoes clipped to the pedals.

He rolled down the hill, his tires slipped on some gravel and he went down tumbling over into a deep ditch next to a cow pasture. Sam Yoder, an Amish farmer who owned the pasture and witnessed accident, was quoted on television: "I was sure we lost us another Governor. He just kept flipping and rolling all the way down that ditch." The Governor suffered a broken leg. The Governor, who was trying to showcase Hoosier business, was hurt, embarrassed and a little angry. His staff had the shoes examined.

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A staff member at the CPSC caught the news show and remembered receiving a couple of complaints about some bike shoes. He made a note to look into this problem on Monday. Meanwhile, the notoriety of the accident also reached a representative of Cycling Safety Advocates ("CSA"), a consumer group. CSA sent a FOIA request demanding access to all incident records related to this product and for a rulemaking banning the shoes' mechanism and all related products. CSA has also filed a class action lawsuit in Federal court on behalf of all consumers injured by the shoes.

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The following Monday, Nick called his lawyer. He relayed the whole story and further said that Bob Bumbler had just told him that the company had been getting complaints for quite awhile. Nick was aggravated that he had not heard about the problems previously. He was worried about all the good will he had created in his business and told his lawyer he wanted to do the right thing.




VI. The Issues


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- A large black left square bracket is on the left side of the slide. A large yellow right square bracket is on the right side. A horizontal line with a light green-to-white gradient runs across the slide, positioned between the brackets.
- What should Nick's company say and give the CPSC?


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- What does the Consumer Product Safety Act have to say about this?

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- If High Peak had known about the injuries and incidents and reported them, would this discharge Nick's responsibility to report?

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- What is the likely CPSC response?


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- Is Nick's company vulnerable to potential civil penalties for failure to report?


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- What strategy should the company adopt for dealing with the CPSC in this matter?

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- What impact will the publicity have on the CPSC?
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- Should Nick have reacted differently?

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- Was it the unfortunate victim of circumstance or was its delay in reacting sooner excusable despite the tragic accident?

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- What role should Cycling Safety Advocates (“CSA”) play in this case?

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- Should the CPSC grant CSA access to documents?

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- What system could Nick have in place to realize early warning signs of a problem?

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Conclusion



Thank You