

GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP
COUNSELORS AT LAW
399 Park Avenue
25th Floor
New York, New York 10022-4877
(212) 557-4000
Fax: (212) 557-4415

CPSC UPDATE
December 8, 2010

By: David J. Evan, Esq. (devan@gdlsk.com)

NEW CONSUMER PRODUCT SAFETY INFORMATION DATABASE
TO POST CONSUMER COMPLAINTS

Commencing in March 2011, the Consumer Product Safety Commission (“CPSC”) will provide the public with access to product hazard information via a new database. The database will give consumers a forum to post complaints regarding products as well as provide the public with advance notice of potentially dangerous products as reported by consumers. Currently, only published product recall information has been available to the public and searchable on the CPSC website. This new database is significant in that businesses will now have to be diligent in monitoring these posts and timely responding to potentially false or misleading information.

The regulations allow for manufacturers and private labelers to register with the CPSC in order to electronically receive reports of harm concerning their products within five business days of the submission by a consumer. It is critical that manufacturers/private labelers register in January 2011 in order to take advantage of this important feature. If a company has not registered with the CPSC, reports of harm will be sent to the company via U.S. mail which will impede a company’s ability to timely respond to allegations of harmful products.

The CPSC will publish a report of harm on the database within 15 days after the report is received from the consumer (the public will not have access to the information during the 15 day period). Therefore, companies must be prepared to respond quickly. A company will receive the report within 5 business days from the date the CPSC receives it from the reporting party. It will then have 10 business days to request designation of confidential business information which may be contained in the report.

In addition, a company may submit comments to the CPSC regarding the report at any time before or after publication in order to rebut the consumers allegations or request that the report be excluded from the database or corrected because it contains materially inaccurate information.

Given the potential for abuse and inaccurate reporting, manufacturers and private labelers must be proactive in monitoring this database and promptly respond to any report it receives. We strongly recommend that Companies adopt internal procedures to specifically address this issue.

**RECENT AND UPCOMING ACCREDITED 3rd PARTY TESTING
AND CERTIFICATION EFFECTIVE DATES**

- **Children’s Clothing Flammability** – Certifications and accredited 3rd party testing are required for goods manufactured on or after **November 17, 2010**. Certain fabrics are exempt from testing and companies should review their product lines and fabrications to determine their compliance obligations.
- **Children’s Sleepwear Flammability** – Certifications and accredited 3rd party testing are required for goods manufactured on or after **February 18, 2011**. The children’s sleepwear regulations cover sleepwear (e.g., nightgowns, pajamas) as well as robes and loungewear up to size 14. In order to comply with the standard, the garment must pass stringent flammability testing or qualify as “tight fitting” as defined by specific dimensions in the regulations.
- **Lead Content in Children’s Products** – Certifications and accredited 3rd party testing are required for goods manufactured on or after **February 10, 2011**. This standard pertains to lead in the substrate (there is a separate standard for lead paint) and applies to any accessible component part of a children’s product. Certain materials are exempt from the standard.
- **Children’s Mattresses, Pads and Sets** - Certifications and accredited 3rd party testing are required for goods manufactured on or after **November 17, 2010**.
- **Children’s Carpet and Rugs** – Certifications and accredited 3rd party testing are required for goods manufactured on or after **October 19, 2010**.
- **Vinyl Plastic Film in Children’s Apparel** – Certifications and accredited 3rd party testing are required for goods manufactured on or after **October 19, 2010**.

DRAWSTRING PENALTY

The CPSC recently assessed a \$200,000 civil penalty against a company for the sale of children’s hooded sweatshirts with drawstrings at the neck. The CPSC considers children’s upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children. The Agency aggressively enforces this policy and companies should incorporate this prohibition in their product manuals.

CALIFORNIA PROPOSITION 65

This law continues to pose compliance problems for companies doing business in California. The law requires that companies provide a “clear and reasonable” warning for any product that it sells which contains a chemical on the list maintained by the State. Compliance with the Federal product safety standards will not protect you in California. In addition, unlike many of the Federal regulations, this warning law also applies to adult and well as children’s products. Companies are advised to assess whether they are complying with their Proposition 65 obligations in California.

Please feel free to contact this office should you have any questions.