



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814**

COMMISSIONER NANCY A. NORD

**Statement on the Commission's decision to provisionally
accept a civil penalty settlement with Williams-Sonoma, Inc.**

May 6, 2013

The Consumer Product Safety Commission has provisionally agreed to a settlement with Williams-Sonoma, Inc., regarding the company's alleged failure to notify CPSC promptly when safety concerns arose for one of its products¹ as required by Section 15 of the Consumer Product Safety Act. While I joined in approving the settlement, I am concerned that one provision of the settlement is inappropriate in that it smells of regulatory opportunism disguised as enforcement.

This settlement demands the company institute a broad compliance program for all "statutes and regulations enforced by the Commission." This is the second recent instance in which the agency has insisted on a comprehensive compliance program even absence any evidence of wide-spread noncompliance. To be clear, I am a strong advocate for corporate compliance programs. What I question, however, is the piecemeal creation of a mandate for such programs through enforcement. I am concerned that the compliance program language in this settlement is another step toward just such a de facto rule.

In this case, the scope of the compliance program included in the agreement addresses actions well beyond those that are subject to the penalty. Williams-Sonoma came before us on allegations that it took too long to notify us after it received information that its product might have a safety issue. The settlement addresses that—imposing a monetary penalty and requiring the company to have procedures to timely report safety concerns—but then goes well beyond. It demands a comprehensive compliance program to assure compliance with all our rules and statutes with a variety of related requirements.

This seems inappropriate to me for two reasons. First, using an alleged reporting failure as license to insert ourselves into the company's operations violates the notion that the punishment should fit the "crime." Second, Williams-Sonoma had prior voluntary recalls, but those recalls did not involve findings of defect or regulatory violations. Indeed, many would argue that pursuing a voluntary recall is good policy, and that companies that police their affairs effectively will necessarily have more

¹ The allegedly defective product was an outdoor swing/hammock that did not have sufficient drainage, allowing the wood supports to rot and risking collapse and resulting injury to users.

voluntary recalls than those that do not. Using those recalls to justify mandates unrelated to the current problem risks discouraging companies from participating in the voluntary recall process, as they may feel there is little benefit to doing so.

I joined in approving the settlement in this instance in deference to the negotiation process and the capable attorneys on both sides. Nonetheless, I remain concerned about the regulatory approach this provision signals. As already mentioned, we recently appended a similar compliance program requirement to a settlement with another company in a similar situation. In fact, the language is not merely similar; it is virtually identical. This suggests this is not merely a solution crafted for two particular problems, but rather represents a shift in agency policy that will stretch across all of our enforcement activity.

If we can demonstrate that requiring corporate compliance programs on a widespread basis is a good idea, then perhaps we can explore such a requirement. The right way to do this, though, is to use our rulemaking authority, to let the world know what we are considering and give the public the opportunity to weigh in. Trying to sneak a non-rule rule through the enforcement process is the essence of backdoor rulemaking. If the agency sees a need to require comprehensive compliance programs as redress for any rule violation, or even when there has been no rule violation, we should allow the sun to shine on CPSC policy and institute that requirement through appropriate process.