

Stevenson, Todd

2009-0010-0067

From: Desmond, Edward [edesmond@toyassociation.org]
Sent: Tuesday, April 21, 2009 4:25 PM
To: Tracking Labels; CPSC-OS; Wolfson, Scott; Falvey, Cheryl; Little, Barbara; Smith, Timothy; Mullan, John
Cc: Keithley, Carter; Lawrence, Joan; Locker, Frederick
Subject: TIA Comments on Section 103 - Tracking Labels for Children's Products
Attachments: TIA Comments on CPSIA 103 tracking labels 4-21-09.pdf

Good afternoon,

Attached please find the comments by the Toy Industry Association regarding Section 103 tracking labels. We appreciate your consideration of our views and are happy to add further clarification if you deem it necessary.

If any questions arise, please do not hesitate to contact me. Thank you.

Ed

Ed Desmond
Executive Vice President, External Affairs
Toy Industry Association
1025 F St., N.W., 10th Floor
Washington, D.C. 20004
T: 202-857-9608
F: 202-775-7253
E: edesmond@toyassociation.org



Toy Industry Association, Inc.

www.toyassociation.org

April 21, 2009

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway, Room 502
Bethesda, Maryland 20814

**RE: COMMENTS ON TRACKING LABELS
REQUIRED BY SECTION 103 OF THE CPSIA**

In response to the request by the Commission's staff, the Toy Industry Association, Inc ("TIA" or "Association"), on behalf of its more than 500 members, submits initial comments on subsections 103 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). TIA hopes that its initial comments help serve our mutual goal of ensuring that the dramatically new requirements for marking an enormous array of vastly different children's toys and/or packaging with tracking information mandated by the CPSIA is implemented in a thoughtful orderly fashion.

TIA recognizes the challenges faced by the Commission in recognizing that flexible marking solution may be required and that this may have to be an evolving process for the Commission. This is why TIA supported the National Association of Manufacturers Request for a Stay of Enforcement and why TIA believes that great care must be employed, so as not to unduly burden small manufacturers and importers when imposing such regulatory requirements. TIA accordingly reserves the right to supplement or amend its comments concerning implementation of these subsections, as appropriate.

Section 103 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") requires tracking labels on children's products beginning in August 2009. More specifically, CPSIA Section 103(a), entitled "Tracking Labels for Children's Products," requires the manufacturer of a children's product to "place permanent, distinguishing marks on the product and its packaging, *to the extent practicable*, that will enable" the manufacturer and ultimate purchaser to ascertain certain information regarding the product's source (emphasis supplied).

The purpose of this requirement is simply to ensure that manufacturers and consumers have sufficient information to easily "enable" a consumer to ascertain whether the product they possess is subject to a Recall (CPSIA § 103(a)). That is plain from the specific requirements in the new Section 2063(a) (5) which outline the purposes of such marking and the legislative history of the statutory provisions. The House Report explains that Section 103 aims to "aid in determining the origin of the product and the cause of the recall." H. Rep. 110-501, at 32 (2007).

The Senate Report similarly states that Section 103 addresses “the necessity to identify and remove these products from the stream of commerce as soon as possible after the notice of a voluntary or mandatory recall.” S. Rep. 110-265, at 13 (2008); *see id.* At 31 (tracking label requirement would “facilitate recalls”).

The Commission has not issued any guidance on the tracking-label requirement, apart from the Staff’s answers to some FAQs, although it has requested comments concerning Section 103 by April 27. 74 Fed. Reg. 8781 (Feb. 26, 2009). TIA submits these comments to ensure that, as its members prepare to comply, their understanding of CPSIA Section 103 is consistent with the Commission’s, and also in the hope that the Commission will find them helpful as it considers elaborating on Section 103’s requirements in light of this congressional intent. TIA asks that the Commission adopt a flexible, pragmatic approach, consistent with the statutory language and purpose, with respect to three broad issues: (a) the qualification that the manufacturer place marks on products only “to the extent practicable”; (b) the requirement that distinguishing marks be “permanent”; and (c) the content of the required “distinguishing marks.”

I. Reasonably Interpreting “To the Extent Practicable”

In determining “the extent” to which a tracking label is “practicable,” the Commission should, given the purpose of Section 103, ask whether the extent of marking would suffice to enable a consumer easily to determine whether a recall affects his product. In answering this question, the Commission should embrace a flexible approach that will allow manufacturers in certain circumstances, because of issues of practicability, to just mark the product packaging or tagging. In some products a manufacturer should also be permitted in its discretion to designate one part of the product in a set of products. As explained below, very real considerations of practicability inform these positions, and the congressional committees that developed Section 103 expressly embraced them, but the Commission’s FAQs to date do not do so as clearly as they could.

A. For Some Products, Practicability Only Requires Marking the Packaging.

TIA’s related concern regarding “to the extent practicable” in Section 103(a) involves products consisting entirely of small pieces, such as a deck of cards, a box of building-block products, toy arts and crafts set, a tube of plastic animals, construction sets, play sets or a game of jacks. TIA’s members have concluded that, at least ordinarily, it will be sufficient under Section 103(a) to place an appropriate mark just on the packaging—such as the cardboard sleeve of a deck of cards, or the plastic carrying case that might be provided with a toy arts and crafts set. For the reasons discussed above, it would be impracticable to include a tracking label, for these kinds of products, on the individual product components, such as the playing cards, building blocks, plastic animals, or jacks. Similar considerations apply to small accessories for dolls or action figures, sold separately from the primary toy.

This understanding is consistent not only with an assessment of what is practicable but also, TIA believes, with the first paragraph of the Staff's Basic Summary of Section 103 on the Commission's website, which draws on the Conference Report and the Senate Report in stating: "Congress modified the requirement for tracking labels with the phrase 'to the extent practicable' recognizing that it may not be practical for permanent distinguishing marks to be printed on small toys and other small products that are manufactured and shipped without individual packaging." The Conference Report states, in part (p. 67): "To the extent that small toys and other small products are manufactured and shipped without individual packaging, the Conferees recognize that it may not be practical for a label to be printed on each item."¹ While these explanations focus on products that consist of a single small item and are not separately packaged, it logically follows from them that it is not practicable to include Section 103 labeling information on products that are individually packaged yet consist of small parts.

The permissibility of marking only the packaging in such circumstance also is confirmed by the House Report, which states that, under Section 103, "the Committee would require a tracking label on the container for children's building blocks, but not on the building blocks themselves." H. Rep. 110-501, at 32. Related precedents also exist in the Commission's product-specific regulations under Section 2063. *See* 16 CFR §§ 1204.5 (warnings for certain antennas to be only in instructions); 1209.9 (certification label for cellulose insulation to be only on containers).

B. For Other Products, Only One Part Needs to be Marked.

TIA also has a concern regarding the details of how the Commission will interpret "to the extent practicable" for products consisting of a "main body," typically the principal component that a consumer or user is most likely to retain, as well as smaller parts. Examples are board games with cards and playing pieces; dolls and action figures that include accessories; and play sets that include figures, furniture, and play pieces.

TIA's members have concluded that it will not be practicable to include a tracking label on the small parts of such a product, for a number of reasons. Among other things, direct printing on the small parts could be impracticable due to their size or shape, the complexity of the marking process, or the timing of the manufacturing process. With small plastic parts, for example, it would be impracticable to add date wheels to every cavity of the production molds. Moreover, marking the small parts serves no purpose in facilitating a recall, because the marking on the principal component will provide the necessary information. It thus should be sufficient under Section 103(a) for manufacturers to place an appropriate mark on the main component of the toy if one exists, the most practicable large component, or the component that the manufacturer believes a consumer would look to in the event of a recall. For example, it would be sufficient to

¹ It goes on to say: "The packaging of the bulk shipment of those items, however, would be required to be labeled so that retailers and vendors would be able to easily identify products that are recalled." All of this comes essentially verbatim from the Senate Report (p. 32).

mark the box of a board game (and not the playing pieces, dice, and cards), any container that the consumer would normally keep, an electronic component of a building set (and not each block or stick), or the body of a doll (and not each accessory or accompanying play set). It is generally recognized that many board games, puzzles, play sets and construction sets include instructions sheets and may stay with their original packages. In this regard the packaging or instructions sheets should also be considered part of the “product”.

This understanding not only comes from the text’s focus on, and TIA’s experience with, what is practicable but also is confirmed by the legislative history. The House Report on H.R. 4040, in discussing Section 103, states the Committee’s expectation “that manufacturers will give primary consideration to the product’s size,” and provides as an example that, “for a board game, the manufacturer should put labels on the box and the board, but usually not on all the small pieces or cards that are part of the game.” H. Rep. 110-501, at 32.

The text of Section 103 as adopted by the House of Representatives did use the phrase “to the extent feasible,” rather than “to the extent practicable.” *See id.* at 5 (text of Section 103 as adopted by House). But that does not weaken the force of the House Report’s explanation. Rather, “feasible” and “practicable” are synonyms in this context, both meaning “reasonably capable of being accomplished.” *Black’s Law Dictionary* 1191 (7th ed. 1999) (defining “practicable” as “reasonably capable of being accomplished; feasible.”). The Conference Committee language suggests that it presumably just used “practicable,” from the otherwise essentially identical Senate version of Section 103, because of the longstanding use of that word in 15 U.S.C. § 2063(c). *See* S. Rep. 110-265, at 55; H. Rep. 110-787, at 67 (2008) (“The Conference agreed to modified language that is similar to the provisions in the House bill and the Senate amendment.”). The position we have explained is based on what is “reasonably capable of being accomplished,” as opposed to any strict technologically feasible requirement and that is all that Section 103 requires. In our view Congress intended to adopt a reasonable common sense approach to marking packages or product, and clearly recognized that a unilateral approach could not and should not be made to apply to all products.

The TIA’s understanding of “to the extent practicable” also is confirmed by an existing FAQ, although the TIA would appreciate clarification of it. The FAQ is the last one posted on December 4, 2008, which states: “The label must be on the product (*only once*) and on the packaging” (emphasis added). We agree with this answer, but the Staff provided it to a question involving a product that apparently would be a single piece once assembled. It would help if the Commission or Staff would clarify the answer’s broader applicability.

C. *CPSC Should Recognize Existing Government Required Marking Systems& Exemptions as “Practicable”*

In terms of CPSIA Section 103 requirements for marking enabling of "the ultimate purchaser to ascertain the manufacturer or private labeler, location of production of the product" it seems reasonable and clear that coding may be employed. Since the purpose of Section 103 is to ensure that consumers can ascertain if their product is included in a corrective action, details such as where or when a product was manufactured is of little value outside of recall or safety advisories, so a coded system should be sufficient for purposes of meeting section 103. Furthermore, industry, the CPSC and Trade Associations can work together to create a passive look-up data-base systems (similar to the Registered Number Database already in place for apparel products) that further facilitate an ability for Consumers to identify (using whatever tracking code is employed by Manufacturers) any actual recalled products.

In the meantime, the CPSC should issue guidance as soon as possible to address how the labeling requirement will be applied. First and foremost, the CPSC needs to publicly clarify with flexibility to avoid redundancy (similar to the approach taken on Certificates of Compliance) which of any several parties may qualify as the "manufacturer" as that term is used in this section. The CPSIA requirement reads that the ultimate purchaser must be able to ascertain either the manufacturer *or* the private labeler, so duplication should be avoided. Furthermore, the Consumer Product Safety Improvement Act (CPSIA) defines the manufacturer as "any person who manufactures or imports a consumer product." Additional guidance is required to avoid conflicting interpretations on which party will legally qualify. We submit the greatest amount of flexibility should be permitted, as long as a consumer has a relatively easy way to correlate the coding used with the ability to find out whether their product is subject to Recall. As with the Certificates of Compliance, many companies are concerned that the label not require business confidential information (such as confidential factory information) to be disclosed to competitors.

Guidance must also begin to exempt products that are not practicable to label. In making an initial determination for products that are not practically labeled, the CPSC should consider the following factors: Whether products are exempt from tracking labels under the Federal Trade Commission's (FTC) Textile and Wool Act; some products do not have tags, labels, or markings due to the product function, design or size of the product and are individually sold without packaging or in bulk. To the extent that the U.S. department of Homeland Security, Customs and Border Protection's (CBP) Country of Origin Marking requirement recognizes these exemptions, CPSC should also create a "safe harbor" and recognize marking schemes already enacted in its own standards. For example 16 CFR 1203 [Bicycle Helmets at 1203.34], 16 CFR 1210, 1212 [Childproof Cigarette Lighters at 1210.12(c) and 1212.12(c)], 16 CFR 1213, 1513 [Bunk Beds at 1213.5 and 1513.5], 16 CFR 1508 [Full Size Cribs at 1508.9], 16 CFR 1509 [Non-Full Size Cribs at 1509.11], and 16 CFR 1615, 1616 [Children's Sleepwear at 1615.31 and 1616.31] each contain marking requirements that merit recognition and suggest that a variety of flexible coding systems are appropriate.

It would be helpful if the Commission would, at a minimum, issue guidance regarding these concerns that reiterates the examples in the House Report. Beyond confirming the TIA's understanding, the Commission also should consider broadly recognizing that, for certain products, a marking on the product in addition to the packaging may not be practicable.

II. Reasonably Interpreting "Permanent"

Section 103(a) requires that a manufacturer place "permanent" distinguishing marks on its children's products to the extent practicable. With respect to distinguishing marks placed on the *packaging*, we believe based on both common experience and existing regulations that ordinary adhesive labels satisfy the statute. *Cf.* 16 CFR § 1211.15 (field-installed warning labels for garage door openers, intended for "permanent installation," may be "secured by adhesive" if the adhesive will adhere to the surface); § 1211.16 ("permanent" markings under standard can include "[i]nk printed and stenciled markings, decalomania labels, and pressure sensitive labels . . . if they are acceptably applied and are of good quality.").

We nevertheless have some concern based on the following staff FAQ: "*Could hangtags and adhesive labels be used as tracking labels for textile-type items?* No. The law requires that markings with the specific information be permanent. Hangtags and adhesive labels are not permanent." We believe the staff should make it clear that this response is limited to textiles and other products where the label is designed to be removed. Adhesive labels on textiles are designed to be easily removed upon purchase of the product, without damaging the textile. By contrast, ordinary adhesive labels on packaging are designed to be permanent in the sense of lasting as long as the packaging itself; and they are in fact permanent, absent a special effort by an adult purchaser to tear them off, which usually would damage the packaging. However, in either case the packaging may be disposable. The fact remains that there exist an enormous array of product packaging and labeling used. Given the FAQ, however, we would appreciate clarification and assurance on this question, at least in an additional FAQ.

More generally, we suggest that the Commission consider defining "permanent" in 15 U.S.C. § 2063(a) (5) as, in substance, "reasonably expected to remain on the packaging or product during the period that the packaging or product is capable of being used." This definition paraphrases the Commission's requirement for certificates for walk-behind lawn mowers at 16 CFR § 1205.35; *see also* § 1209.9 (labeling on container for cellulose to "remain attached to the container for the expected time interval between the manufacture of the product and its installation"). More simply, given that no packaging or product is "permanent" in the literal sense of lasting forever, a shorthand definition may be to require that the tracking label be "durable," in the sense that the Commission used that word in requiring "durable labeling" on bicycle helmets, containing warnings and a model designation. 16 CFR § 1203.6.

III.

Reasonable Content for “Distinguishing Marks”

Both the Commission’s request for comments and statements by Staff at public meetings raise questions concerning the content of the “distinguishing marks” that Section 103 requires. As noted above, the overriding concern of Section 103 is that manufacturers and purchasers are able quickly to accomplish a thorough recall, and the Commission accordingly should focus on whether the marking would suffice to enable a consumer easily to determine that a recall does or does not affect his product. Consistent with that purpose, Section 103 does not require any specific content for the marks. Instead, the marks must simply “enable” the manufacturer and purchaser to ascertain the critical information for initiating and responding to a recall. The Commission should leave manufacturers with the flexibility that the statutory text allows, enabling them to comply while taking into account business considerations specific to their products and brands and with the logistics of recalling a given product. In particular, the TIA wishes to respond to two of the questions that the Commission and Staff have raised, and to provide a further suggestion.

First, one consequence of this understanding of Section 103 is that the Commission should not mandate uniformity in the content, appearance, or arrangement of distinguishing marks. Section 103 does not require this, and it is not necessary to accomplish Section 103’s purpose. Moreover, due to the length of design and production cycles, many of our members already have invested significant time and money into retooling manufacturing processes to be able to comply as of August 14, 2009. Absent a statutory command, it makes no sense to require manufacturers to do so again. The Commission may instead wish to identify what sorts of marks definitely would satisfy Section 103, without requiring conformity to such guidelines. Such an approach may prove helpful in some areas and could test the Commission’s assumptions, in its request for comments, regarding the desirability of “a uniform approach.” 74 Fed. Reg. at 8782.

Similarly, nothing in the statute requires or suggests that manufacturers need to maintain an accessible online database of information on all marked children’s products. Instead, if a recall occurs, a manufacturer can readily—on its existing website and otherwise—provide customers the necessary information so that they might then determine, based on the product’s mark, its location and date of production and cohort information. Even more unwieldy, and farther afield from the statute, would be a centralized, quasi-governmental database of the sort envisioned in the Feasibility Study of the EU-China Trade Project, to which the Commission’s request for comments refers.

Finally, given the flexibility that Section 103 allows and the statute’s concern for practicability, the Commission should allow manufacturers in some cases simply to mark children’s products with a “maker’s mark” such as a trademarked logo. Such an approach could be especially useful for (a) smaller products, on which a full mark is not practicable for reasons discussed above, and (b) products (such as a unique doll’s clothing) that, in addition to presenting practicability issues,

are made in limited, short production runs and so are distinctive that a single picture will enable consumers to determine whether they are subject to a recall. A manufacturer in choosing this course would knowingly accept the risk that if any cohort of a product required a recall, it would have to recall the entire product. For many small companies flexibility in defining what constitutes "production batches" is essential and they should be allowed the option of recalling all products made of a particular product in lieu of costly small batch marking requirements. This likely applies to many smaller TIA members that may have extremely limited production runs. It is essential to allow this flexibility. Because this "caveat vendor" approach leaves the risk of a recall on the manufacturer, the Commission should allow this flexibility.

Thank you for considering these comments. As noted, we would appreciate if the Commission could at least address these concerns in additional staff FAQs or in whatever regulations it may issue subsequent to the deadline for receiving comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Carter Keithley". The signature is written in a cursive style with a large initial 'C' and 'K'.

Carter Keithley,
President
Toy Industry Association, Inc

Stevenson, Todd

2009-0010-0068

From: Robert Stack [rstack@tdlp.com]
Sent: Tuesday, April 21, 2009 2:57 PM
To: Tracking Labels
Subject: Tracking Labels for Children's Products under Section 103 of CPSIA- Socks Should be Exempt
Attachments: Tracking Labels for Children's Products under Section 103 of the Consumer Product Safety Improvement Act.pdf

Dear Mr. Stevenson:

Please see attached comments on the status of socks under CPSIA Section 103. We are seeking that any labeling for tracking purposes be limited to the packaging.

Sincerely,

Robert Stack, Esq,

TOMPKINS & DAVIDSON, LLP
5 Hanover Square, 15th Floor
New York, NY 10004
PH: (212)-944-6611, ext. 130
FAX: (212)-944-9779

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TOMPKINS & DAVIDSON, LLP
Counselors At Law

5 Hanover Square
15th Floor
New York, N.Y. 10004

Phone: (212) 944-6611
Fax: (212) 944-9779
e-mail: customs@tdllp.com
internet: <http://www.tdllp.com>

April 21, 2009

Via e-mail

Todd A. Stevenson, Secretary
Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland 20814

**RE: Tracking Labels for Children's Products under Section 103 of
the Consumer Product Safety Improvement Act:
Socks Should Be Exempt from Tracking Label Requirement**

Dear Secretary Stevenson:

The following comments are submitted with respect to Section 103 of the Consumer Product Safety Improvement Act of 2008. These comments concern questions raised by the Commission Staff in the *Federal Register*, Vol. 74, No. 37 of February 26, 2009, and seek to demonstrate that for reasons of practicability, factoring in congruity with existing federal regulations and international practices and standards, as well as economic feasibility, socks should be made exempt from the labeling requirement of Section 103 of the Consumer Product Safety Improvement Act. We do not oppose application of the labeling requirement to the socks' packaging. We sincerely thank you for the opportunity to express comments on the Commission staff proposals.

Section 103 of the Consumer Product Safety Improvement Act of 2008 states that “the manufacturer of a children’s product shall place permanent, distinguishing marks on the product and its packaging, **to the extent practicable,**” for the purpose of facilitating manufacturers’ ability to track their manufactured products, as well as to provide the ultimate purchaser with information on that product. Section 235(a) of The Consumer Product Safety Improvement Act defines “children’s product” as “a consumer product designed or intended primarily for children 12 years of age or younger.” This would apply Section 103 to a significant portion of the hosiery/sock market.

Existing Agency Regulations on Sock Labeling

The underlying goal of Section 103 – to allow the manufacturer to track and to trace their product and to provide sufficient product information to the consumer – is already satisfied by existing agency regulations authorizing the use of packaging for marking purposes. While the Federal Trade Commission (“FTC”) and Customs and Border Protection (“CBP”) currently require labeling on products, laws enforced by both agencies also explicitly create a labeling exception for socks, differentiating between socks and other apparel/accessory articles, whereby required labeling is affixed to sock packages and not to the socks themselves.¹

¹ *The Miscellaneous Trade and Technical Corrections Act of 2004*, Public Law No. 108-429, amended the Textile Fiber Products Identification Act by adding a new subsection, 15 USC 70b(k), which imposes special requirements for the country of origin labeling of various socks, requiring the country of origin marking always be placed on the front of the package in which socks are sold. If the size information appears on the back of the package, the country of origin marking must still be placed on the front of the package. Section 134.44 of the Customs Regulations (19 CFR 134.44), generally provides that any origin marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable. The CBP origin marking information is available in “*What Every Member of the Trade Community Should Know About: Marking Requirements for Wearing Apparel*” Informed Compliance Publication 039, references Public Law 108-429 concerning sock marking.

In light of 2004 amendments to the Textile Fiber Products Identification Act, dealing with the acceptable location for origin marking on packaging for socks, it appears clear that Congress has recognized a significant difference in the practicability or effectiveness of label placement on socks as compared to other apparel/accessory articles. Any CPSIA labeling requirements that exceed those mandated by other agencies, as those requirements apply to socks, would increase manufacturing cost while not correspondingly increasing effectiveness.

Practicability

The sock manufacturing process is very different from how other garments and clothes products are manufactured. While many garments are produced by joining pieces of fabric which can be labeled before they are cut, socks are generally produced by cylindrical knitting – “directly from yarn to garment.”² Such a process prevents a mass pre-marking, whether it be printing with methods such as impact hot stamping or fusion bonding, or attaching a label.

Any post-production mass addition of labels in or onto socks would be cost prohibitive, ineffective, and would cause significant discomfort for the wearer. On the first point, attaching sock labels post-production through tools such as a mechanical or vacuum gripper or a “turn so turn” device requires substantial manual labor on each and every sock. In light of this fact, label

² EILEEN APPELBAUM, ANNETTE BERNHARDT & RICHARD J. MURNANE, *LOW-WAGE AMERICA: HOW EMPLOYERS ARE RESHAPING OPPORTUNITY IN THE WORKPLACE* 410 (Russell Sage Foundation) (2006).

attachment would be extremely expensive; such labeling could add a cost of \$1.00 – at a minimum – to a set of one dozen socks. If one considers that a generic pair of children’s socks can cost \$5.00, the impact is enormous – a 20% increase in cost, which one can expect would be passed on to the consumer. Second, as the individual wears the sock, the constant rubbing of the individual’s foot against the label will quickly separate the label from the front sock’s front seam – the only place where the label could feasibly be attached. Last, any label, no matter how soft, will cause serious discomfort for the individual wearing the sock. Aside from a free-floating tag, one must consider that label’s attachment will increase thickness on the seam where that label is sewn, leading to greater irritation to the toe or toes rubbing against that attachment.

Label discomfort should be given special attention considering that children’s sock sizes can be a fraction of adult sizes. While an 8 year old child’s sock length may be as much as 10 inches from heel to toe, a 2 year old child’s sock length may be almost half that length – frequently as small as 4.5 to 5.5 inches heel to toe.³ If one considers sock size relative to legible label size, then applying Section 103’s labeling requirement to socks will create greater discomfort and greater health problems for the most vulnerable age groups – thus obviating the overall goal of the CPSIA.

For more general information on the sock manufacturing process, please see the following links: http://www.export-japan.com/users/zucoco/okamoto/english/okamoto_story/openfactory/index.html and http://www.metacafe.com/watch/544385/socks_how_its_made/

³ For reference, please see various web sites with sock sizing, examples found being: <http://www.fibergypsy.com/common/socksize.shtml>, <http://www.absolutsocks.com/sockssizechart.html>, and <http://www.pedoodles.com/page.php?xPage=extra/sizingcare.html>

Due to the sock's cylindrical creation, there is no existing practicable method to print, such as hot stamp or fusion bond, the label on the inside of the sock. External sock printing would also be difficult and expensive, and, depending on the sock's texture, may not appear clearly.

Regardless, stamping the label into or on the sock would be sufficiently ineffective in satisfying both goals of Section 103 as not to justify a per-sock labeling requirement. As the foot absorbs the entire weight of the body, in combination with persistent rubbing of the foot against the interior of the sock and the rubbing of the exterior of the sock against the shoe, label stamping either in the interior or on the exterior of the sock would rapidly fade to illegibility. Hence, this short-lived marking is neither efficient, nor is it effective enough to justify the additional manufacturing costs.

National Standards and International Considerations

The Commission's Notice of Inquiry states that the Commission "is aware of the potential public interest in implementing a tracking label approach in close consultation with other national and regional jurisdictions." As previously mentioned in this letter, the FTC and CBP both carve out an exception for hosiery from their respective labeling requirements, mandating per package rather than per sock labeling.

The Commission also seeks comment on "[w]hether successful models for adequate tracking labels already exist in other jurisdictions." International practices can be regarded for the depth of alternate labeling requirements, and can serve as evidence of what is feasible and practicable. The recognition by other jurisdictions as to the impracticability of requiring

permanent labeling for otherwise required information in the textile and apparel industries are particularly important in light of the United States Government's efforts, demonstrated in a variety of forums, to harmonize labeling and symbol systems for apparel and footwear.⁴ These considerations, detailed below, warrant that individual socks should be exempt from the reach of Section 103's labeling requirement.

Clear indications of feasibility and international trends are evident in recent regulations adopted by trading blocs – and national rules of countries within our own trading bloc of NAFTA. In early 2008, MERCOSUR adopted labeling regulations for apparel and textiles. These regulations required that all apparel and textile articles be clearly marked with product information including, but not limited to, the product's producer, country of origin, fiber content, and size and dimensions. Significantly, it was reported that under these regulations, certain articles that are sold in packages “are allowed to bear the required information on or inside their packaging instead of on the article itself if that information can be seen from the outside.”⁵ Such articles include socks.

In 2008, implementing regulations issued in Mexico, *RTCR 415: 2008. “Commercial Information – Labelling of Textile Products, Clothing and Accessories,”* developed in accordance with Official Mexican Standard NOM-004-SCFI-2006, and country obligations under international commercial treaties, recognized an exemption from the trademark, origin fiber content and care labeling requirements for the following articles:

⁴ For example, see the WTO's Negotiating Group on Market Access, Communication from the European Communities and the United States (<http://docsonline.wto.org/D/DFDocuments/t/tn/ma/W93.doc>)

6.1.3 The information required in point 5.1.1 may be shown on the box, container, packaging or wrapper in which the product is sold in the following cases:

- a) Pantyhose;
- b) Stockings and ankle-length popsocks;
- c) Socks and knee-length socks;
- d) Other products which are delicate so that their use or appearance would be adversely affected and their value would be reduced if the label were affixed directly to them.

Both of these rules are congruent with existing FTC and CBP regulations on socks; these rule making authorities recognize that requiring manufacturers to label individual socks is not practicable.

Similarly, under the Canadian Textile Labelling Act, the section on forms and manner of labeling reads:⁶

FORM OF LABEL AND MANNER OF APPLICATION

15. (1) Subject to subsection (2), a disclosure label shall be applied to a consumer textile article in such manner that the article will bear the label at the time that it is sold to the consumer.

(2) The disclosure label applied to a consumer textile article included in Schedule I and not included in Schedule III shall be of such material and applied in such a manner that it can be reasonably expected to withstand and be legible throughout 10 cleanings of the article.

SOR/87-247, s. 7.

Hosiery is generally exempt from meeting the requirement in Section 15(2) that there be a permanently affixed disclosure label that can withstand ten washing by virtue of inclusion within Schedule III, such that there only be a disclosure label with the article at time of sale under Section 15(1), as follows:

⁵ See "MERCOSUR Adopts New Labelling Regulations for Textiles and Apparel (hktdc.com)" http://info.hktdc.com/alert/us0801h.htm?w_sid=194&w_pid=668&w_nid=&w_cid=&w_idt=1900-01-01&w_oid=167&w_jid= (last visited April 21, 2009).

SCHEDULE I

(s. 4)

The following consumer textile articles are prescribed for the purposes of paragraph 3(a) of the Act:

1. Subject to Schedule II, consumer textile articles worn by or carried on a person, including wigs, toupees, switches and other pieces for the head.

SCHEDULE III

(ss. 14, 15, 21 and 31.1)

1. Headwear, wigs, toupees, switches and other hair pieces, undergarments, sleepwear, peignoirs, swimwear, hosiery, diapers, handkerchiefs, scarves, gloves, mittens, gaiters, aprons, bibs, neckties, bow ties, dickies and detachable collars and cuffs.

In other instances of foreign country exemptions of socks from permanent marking requirements for apparel products, a 2002 European Union study, "*In-depth analysis of trade and investment barriers in certain third country markets in the area of labelling and marking requirements: Final Report*" lists, on page 157, wool socks as among exempt articles under China's regulations and, on page 290, that, with respect to the usual Korean requirements for permanent labels on textiles and apparel, "*Yarns, fabrics, wadding, foundations, undershirts, panties, socks, gloves, swimwear, gymnastic wear, scarves, muffles, handkerchiefs can be labelled with paper labels, tags or stickers if labels are not detached or removed until distributed to the end users. When products are sold to the end users in packages containing 2 more units (excl. pairs) of the same product, labelling on the package is sufficient.*"

The various country exemptions for socks support our position that it is not practicable to attach or imprint a permanent label in the case of hosiery, and we accordingly urge the Commission to follow the lead of Congress, other government agencies and international

⁶ See "Department of Justice - Textile Labelling and Advertising Regulations"
<http://lois.justice.gc.ca/en/ShowFullDoc/cr/C.R.C.-c.1551///en> (last visited April 21, 2009).

Office of the Secretary
Consumer Product Safety Commission
April 21, 2009
Page 9 of 9

regulators, in exempting socks from the requirements for a permanent tracking label for children's products under Section 103 of the Consumer Product Safety Improvement Act.

Thank you for your consideration of these comments.

Sincerely,

TOMPKINS & DAVIDSON, LLP

Robert T. Stack

Robert T. Stack, Esq.

Craig C. Briess

Craig C. Briess, Esq.

Stevenson, Todd

2009 - 0010 - 0069

From: stephen snyder [ssnyder@fdn.com]
Sent: Tuesday, April 21, 2009 11:56 AM
To: Tracking Labels
Subject: Tracking labels

We are a very small business that manufactures Backyard play accessories.
We have always had our Company name and address on our products and packaging.
Our products contain many parts that are purchased from many suppliers in different quantities depending on the cost and /or lead time. These parts are placed in a box for assembly by the consumer. This process is completed in small quantities, almost to order. We cannot produce in batches.
We have always had our products tested by independent labs and have always been in compliance.
We are confused and dismayed by this requirement. We are not sure how to interpret it, or how we could possible implement it beyond what is being done now. Our products have not changed in many years.

Sincerely,
Spring Swings, LLC
Stephen Snyder
Presiding Member

Stevenson, Todd

2009-0010-0070

From: Jenny Yelin [jyelin@berkeley.edu]
Sent: Tuesday, April 21, 2009 12:34 AM
To: Tracking Labels
Subject: Comment: Tracking Labels for Children's Products Under Section 103 of the CPSIA

Jenny Yelin
473 Alcatraz Ave., Apt. B
Oakland, CA 94609

April 17, 2009

Office of the Secretary

Consumer Product Safety Commission
Room 502, 4330 East West Highway
Bethesda, MD 20814

RE: Tracking Labels for Children's Products Under Section 103 of the CPSIA

Dear Mr. Secretary,

I am writing in response to your request for comments and information regarding the implementation of the tracking labels program required by the Consumer Product Safety Improvement Act of 2008. I am merely a member of the consuming public, and therefore lack any expertise or specialized knowledge regarding the manufacturing of "children's products." However, I have chosen to submit a comment because I believe that the success and reliability of a tracking label program will depend on its accessibility to consumers, and that it is therefore crucial that your agency hear from members of the public that are not affiliated with the suppliers, manufacturers, and retailers of the products to be labeled.

Congress's adoption of the CPSIA was an important and necessary step toward increasing the safety and reliability of products designed for children. Given the still large number of product recalls that occur every year, as well as the complicated supply chain that is involved in bringing most products to market in today's globalized economy, it is imperative that the CPSC quickly implement an effective tracking label program to fulfill Congress's mandate by the August 14, 2009 deadline. I therefore urge you to issue guidelines for the program as soon after the end of this comment period as possible; if manufacturers are left to interpret the statutory requirements themselves, the tracking label system will be – at least initially – inconsistent and ineffective, and consumers will be left with fewer protections in the event of a product recall.

Because the health and safety of children is at stake, I urge you to interpret the statute's language "to the extent practicable" in favor of requiring tracking labels on more, rather than fewer, products. Whenever possible, labels should be placed directly on the smallest components of products, as well as on product packaging. For instance, when a consumer purchases a box filled with small plastic blocks (such as "Legos"), some tracking information should be printed on each individual block, so that if the consumer misplaces the original packaging, he or she will still be able to ascertain whether the product in question has been recalled. Manufacturers should only be exempted from printing tracking information on component pieces when the additional cost of adding the label would render the product unmarketable (assuming the cost is passed onto consumers in a price increase) or when the component is so small that a tracking number printed in a reasonably readable font would not physically fit on the piece.

To facilitate my suggested broad interpretation of what is “practicable,” I think the agency should consider employing a dual labeling system. Labels on children’s products themselves should simply contain a number or alpha-numeric code that can be entered into a centralized on-line database or toll free phone line to determine a product’s source and whether the product has been recalled. However, labels on product packaging should include more detailed information – in English and any other languages the agency deems necessary to meet the needs of American consumers – about the manufacturer of the product, the date of production, any other identifying characteristics for the product, and directions for how to access further information on the internet and by phone.

If manufacturers are all required to enter complete source information into a centralized database that is tied to individual product identification numbers, and all products designated as “children’s products” under the statute come in packaging that includes information about how to access the database, it will be much easier for consumers to quickly access the necessary information in the event of a recall. Even if a consumer has lost the packaging corresponding to the product in question, he or she will be able to reference the packaging of any other “children’s product” to find out where to go to enter the product number. If a parent believes that his or her child may have been exposed to a dangerous product, he or she will want to be able to access reliable, thorough information about the product as easily and quickly as possible.

Finally, I want to urge you to adopt a system with uniform rules for all manufacturers of “children’s products.” While I cannot comment on the feasibility of using the exact same labeling or imprinting technology, I know that it is imperative that the labels be located in the same general place on products, so that consumers can easily find them. For items of clothing and other sewn products (such as stuffed animals), for example, the label can simply be sewn-in where a tag is normally located; in all likelihood, a consumer would look there first.

Furthermore, all manufacturers should be required to utilize a standardized numbering or coding system, so that all relevant information about children’s products can be made accessible in a single database, which would be accessible by both phone and internet. If manufacturers were allowed to comply with the statutory requirement without using an universal system, they could (either intentionally or not) make it much more difficult for consumers to find out whether their products are tainted. Such a system would be chaotic and inefficient, and would ultimately result in less protection for children from unsafe products.

If the European Union proceeds with a similar tracking label program, the coding system should conform to that of the United States. Manufacturers would likely prefer to only have to comply with one set of regulations, and would be able to lower production costs by creating a single product for both markets, which would then lower the price of the products for consumers.

Furthermore, in the event of a serious health or safety risk in a product that is distributed worldwide (such as a toy contaminated with lead), an universal system would allow the public to get information and regulators to identify the source of the problem as quickly as possible, and widespread harm to children could be more easily prevented.

Thank you for taking the time to read my comment. Given the importance of protecting children from dangerous products, and the ability of a proper tracking label program to quickly and effectively disseminate information to consumers to prevent harm, I urge you to issue guidance as to the program’s requirements well before the August 14, 2009 deadline.

Sincerely,

Jenny Yelin

Jenny Yelin
UC Berkeley, School of Law (Boalt Hall)
JD Candidate, 2010
jyelin@berkeley.edu

2009-0010-0071



American Recreation Products
111 Industrial Dr
New Haven, MO 63068
P) 573-237-4360
F) 573-237-4343

April 22, 2009

United States Consumer Product Safety Commission
Office of the Secretary
Room 502
4330 East West Highway
Bethesda, Maryland 20814

RE: Tracking Labels for Children's Products Under Section 103 of the CPSIA;
Notice of Inquiry: Request for Comments

To the Commission:

American Recreation Products ("ARP"), an importer and distributor of recreational camping goods, including some children's camping products, welcomes the opportunity to submit comments to the Consumer Product Safety Commission ("CPSC" or the "Commission") regarding the requirement under Section 103 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") that tracking labels be placed on children's products and packaging. ARP's comments, set forth below, address the feasibility of implementing the new tracking label requirements by August 14, 2009 in the absence of further guidance from the Commission on the issue, as well as the "practicality" of requiring tracking labels to appear on certain types of products and packaging. In addition, as indicated below, ARP specifically seeks clarification from the Commission

regarding certain elements that are required to appear on the labels (*e.g.*, what constitutes a “batch” and “manufacture date”).

I. The Tracking Label Requirement Should be Stayed Until the Commission Has Published Clear Guidance Regarding Its Implementation

Consistent with many other comments submitted to the Commission regarding Section 103, ARP is respectfully requesting that the Commission stay enforcement of the provision as the Commission works with industry to study relevant data and develop meaningful guidance on a systematic and effective approach to the new tracking label requirement. Absent specific guidance from the Commission, the approach to this new requirement will be of such a varied and haphazard nature that the resultant tracking labels will undermine the benefits resulting from other new requirements under the CPSIA; will result in a system that is ineffective in providing manufacturers, consumers, and the Commission with any useful safety tool; and may create confusion among consumers which will have to be actively resolved once a uniform system has been implemented.

The intent of the tracking label requirement is clear—to more easily enable manufacturers and consumers to identify products potentially affected by safety concerns and recalls. However, as the Commission notes in its request for comments, there is a broad “spectrum of options available to CPSC to implement the tracking label requirement for children’s products.” 74 Fed. Reg. 8782 (Feb. 26, 2009). As the Commission is aware, the manufacturers and importers affected by the new tracking label requirement are extremely diverse, ranging from large scale manufacturers of electronic and/or motorized products (such as children’s ATVs) to handmade toy and textile

craftsmen and artisans. Each subset of manufacturers will necessarily interpret and implement the requirements differently.

The resultant varied approaches and interpretations will not result in a system that fulfills the Congressional intent of providing a meaningful and uniform tracking system. Even if manufacturers attempt to implement the new requirement at some levels, the information being provided will not be provided in a format that is recognizable by, or useful to, consumers, potentially making it more difficult for manufacturers, consumers, and CPSC to detect and distinguish products that are affected by safety issues. The Commission has determined, for instance, that, with respect to implementation of consumer product recalls, uniform recall notices are more effective in conveying the safety and contact information to consumers, because the uniformity of the notices allows consumers to identify and more easily find the relevant components of the message. Similarly, the tracking label system will be useful and effective only to the extent that consumers can easily identify and understand the relevant information.

The Commission recently reported that implementation of the CPSIA has impacted the Commission's ongoing safety mission by delaying and deferring work in many other areas. Expenditure of Commission time and resources on addressing the incorrect application or interpretation of the tracking label requirement stands to compound this stated concern without any immediate safety benefit and potential detriment to consumers. A stay of enforcement of the new tracking label requirement would provide the Commission the necessary time to review comments submitted on the issue and complete its dialogue with industry to determine the most effective and precise implementation scheme for the new tracking label requirement.

II. Tracking Labels Are Not “Practicable” for All Types of Packaging

Section 103 requires that, to the extent practicable, permanent and distinguishing marks be placed on children’s products and packaging. The inclusion of the phrase “to the extent practicable” reflects an acknowledgement by Congress that some types of products (for instance products smaller than a certain size or displayed without the benefit of individualized packaging), contain limited or no packaging materials, thus the ability to apply permanent and distinguishing marks may not be practicable.

Product packaging is often purchased, ordered, received, stored, and assembled separate and apart from the products themselves. Artwork and any printed information included on product packaging is determined at the beginning of a production season. As a result, it is often impracticable, if not impossible, to ascertain unique “cohort” information at that time. The intent of permanent tracking labels to appear on packaging which will reflect, with the same level of precision, the information required on the product, or that it will match up with the product, cannot always be ensured. ARP believes that the inclusion of incorrect or imprecise tracking label information on the packaging would further compound the confusion surrounding the new tracking label requirement, and would more likely hinder the identification of products for which safety issues have been identified than assist in the process.

Accordingly, ARP requests that the Commission provide clear and specific guidance concerning how to implement the tracking label requirement on product packaging (where such labeling is practicable and possible). Even to the extent that products are in fact “packaged” in the most conventional sense (*i.e.*, are sold on a shelf in a box), ARP believes that the types of tracking labels that would be appropriate for such packages

would differ from the types of labels appropriate for the actual children's products contained in those packages.

ARP urges the Commission to consider permitting the use of printed adhesive tracking labels on product packaging, despite the fact that the Commission has indicated (in FAQs), that “[t]he law requires that markings with the specified information be permanent. Hangtags and adhesive labels are not permanent.” Although ARP understands and appreciates that, in order for the tracking labels to be effective, the information must remain accessible to the consumer, “permanency” in the context of product packaging is distinguishable from permanency in the context of the product itself.

Most product packages will be discarded soon after the product is purchased, if not immediately. Although ARP understands how adhesive labels may not be viewed by the Commission as being easily removed and thus not adequately permanent for the children's products enclosed in the packaging, adhesive labels on paper or cardboard packages are generally difficult to remove. Similarly, although the permanency of tracking labels in the context of products means that the label must outlast the product's foreseeable use and abuse, packaging is not handled in the same manner; indeed, adhesive labeling is adequate to survive shipment, storage, and delivery of products. Moreover, adhesive warning labels are acknowledged as being adequately enduring for routine use in the medical field (*e.g.*, to convey allergen warnings as well as special medical concerns to patients and caretakers using drugs or devices), a highly regulated area that arguably can present greater safety concerns than consumer products.

Regardless of their ability to be removed easily or ability to survive through transport and delivery, adhesive labels on product packaging are likely to last and be legible for at least as long as the packaging itself.

In addition to the above concerns, although nearly all of ARP's products include some form of packaging, a significant amount packaging is discarded before it reaches the retail level. Packaging of this type should be excluded entirely excluded from the tracking label requirement.

III. Clarification Concerning Certain Aspects of the Tracking Label Requirement Is Necessary

Section 103 requires that the tracking label provide, "to the extent practicable," marks that will enable the ultimate purchaser to ascertain the manufacturer or private labeler, the location and date of production of the product and cohort information. The Commission has indicated, in its FAQs, that "[a] label stating only the date of distribution, a production date and trademark information would not satisfy the requirements of section 103." Although ARP understands that, in order for the tracking labels to be effective, certain minimum elements, including information about the manufacture date, must be provided. However, the "cohort" information may vary significantly by product depending upon the manner and scale of production. For instance, where a product is made of a variety of components (potentially derived from various manufacturers), or where a batch may be manufactured over several days, weeks, or months, a precise "manufacture date" is not possible to determine. In those cases, the manufacturer bears the risk of the larger universe of products being recalled as a result of using less precise cohort identification.

Similarly, depending on the scale of manufacture and the internal processes of each manufacturer, the interpretation or understanding of a “batch” or “run” may vary significantly. A craftsman making only individual products may generate one item in the time that a large-scale, international toy manufacturer has completed several thousand production runs. Similarly, for ARP, like other companies that source products for retail stores, a “batch” may include more than one model, or slight variations on the same product. Or a product made several months from now may be considered being part of the same “batch” as products ordered today, by virtue of being the same design and listed on the same purchase order.

Additionally, although the statute provides that tracking labels must appear on children’s products and on “packaging,” no clear definition has been provided concerning what constitutes “packaging.” For instance, where a backpack is sold only with a small paper-stock hang tag and is hung on a retail display rack, it is unclear whether the Commission would view the hang tag as “packaging.”

Moreover, where products are packaged as a set (*i.e.*, several products in one box) it is unclear how or whether the tracking label requirement is intended to be implemented for each product. Products sold in sets are often manufactured in separate batches and by different manufacturers.

Accordingly, ARP respectfully requests that the Commission’s guidance incorporate adequate flexibility in the determination of the components that must be included in order for the intent of the tracking label requirement under CPSIA Section 103 to be fulfilled, and additionally provide a clear consensus and direction as to the formatting of the

tracking label itself, and the manner and extent to which “packaging” or items sold in a set must comply.

Sincerely,

Linda Wilson
Contractor Compliance Manager
American Recreation Products

Cc: Geoff O’Keeffe, Vice President Operations
David McCatty, Vice President Fulfillment and Safety

Of Counsel:

Kathleen M. Sanzo, Esq.
Alexis Reisin Miller, Esq.
Morgan, Lewis & Bockius LLP
Washington, D.C.

Stevenson, Todd

From: lwilson@americanrec.com
Sent: Wednesday, April 22, 2009 11:57 AM
To: Tracking Labels
Cc: DMcCatty@americanrec.com; gokeeffe@americanrec.com; ksanzo@morganlewis.com; alexis.miller@morganlewis.com
Subject: Tracking Labels_Request for Comments_CPSC
Attachments: CPSC Letter_Tracking Label_Request for Comments_4.22.2009.DOC

To the Commission: Attention -- Tracking Labels

In response to the Commission's request for comments regarding a Tracking Label requirement of the CPSIA, please review the attached letter.

(See attached file: CPSC Letter_Tracking Label_Request for Comments_4.22.2009.DOC)

Sincerely,

Linda Wilson
Contractor Compliance Manager
American Recreation Products
Ph: 573 237 4365
lwilson@americanrec.com

From: Kathleen McHugh [kmchugh@astratoy.org]
Sent: Wednesday, April 22, 2009 4:08 PM
To: Tracking Labels
Subject: Tracking Labels - Request for Comments
Attachments: fnlltertracking.doc

Office of the Secretary
Consumer Product Safety Commission
4330 East-West Hwy.
Bethesda, MD 20814

Re: Request for Comments on Tracking Label Requirement

The American Toy Specialty Retailing Association (ASTRA) is an organization of 1,000 smaller retailers and manufacturers. Most of our manufacturing members are relatively small businesses that have already been greatly affected by the Consumer Product Safety Improvement Act of 2008 (CPSIA). ASTRA appreciates this opportunity to comment on the tracking label requirement on behalf of its members. To prepare our comments, we have surveyed our members and attempted to gather practical insight for the Commission. While we will respond to the questions specifically asked by the Consumer Product Safety Commission in the *Federal Register* notice of February 26, 2009 (74 FR 8781-8782), in doing so we will try to provide some sense of the experiences, concerns, and issues raised by our members. Following our response to the listed questions we will address a few additional tracking label issues important to our members.

At the outset, we need to point out that the tracking label provision seems to have been written with large manufacturers in mind. Its requirements anticipate multiple factories, and many lots of products, possibly being manufactured during the same time. As you will see from the comments below, like other parts of the CPSIA, this provision is not a good fit for many of our members who are small businesses or have much smaller operations.

Here are our responses to CPSC's questions:

1. The conditions and circumstances that should be considered in determining whether it is "practicable" to have tracking labels on children's products and the extent to which different factors apply to including labels on packaging.

Our members manufacture a broad range of products, in different shapes and sizes, manufactured out of a range of materials using numerous processes. All of these factors affect the practicality of labeling the product.

For example, many toys and games have numerous small components. Marking each of these components in some way may not only be difficult, but in some cases may impair the ability of the product to function. Obviously, getting all of the required information on a very small component in some readable form could be almost impossible. It could also be very expensive. Besides, many small components might come from different batches and only become part of a final product upon packaging. Similarly, any marking of many small components with the packaging date could be very expensive and may or may not greatly help identify a defective component that could have been manufactured months before. Some of these same concerns apply to very small products, especially with readable tracking information.

Another issue affecting the practicality of labeling is the definition of “permanent.” Products are made out of various materials including metals, woods, plastics, fabrics, rock, and other materials of varying hardness and textures. While sticker or tag labeling is relatively easy and might work with some materials, would this be accepted as a “permanent” solution? In some molded parts, a permanent marking might be achieved by altering the molds to mold in distinguishing information, but that is very expensive. Other methods of marking materials could be very expensive.

For some products, it should be sufficient to label the packaging and perhaps a container the parts are kept in (the package might be kept for storing games or other items). On other products, labeling the packaging and a larger component could assist identification.

Of course, some products are packaged in bulk and sold in bins. There is sometimes no “package” to label, and depending on the size of the item, a permanent marking may be nearly impossible. For some of these items, labeling the shipping carton may be the only alternative.

2. How permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information would affect: a. Manufacturers’ ability to ascertain the location and date of production of the product; and b. Other business considerations relevant to tracking label policy.

The apparent goal of this provision is to make it possible for people to identify a product that should be or is being recalled. To do so, there needs to be some way for people who know how to do so, to identify particular products, or production periods that are of concern. Ironically, by insisting on both date codes and “cohort” or lot information, the legislation may be requiring many small manufacturers who only have occasional runs of products, to do this twice. (Many of our members currently use date codes and a few use some type of lot or production identifier. Very few have manufacturer, date, and lot or “cohort” information.) As written, the tracking provision seems to apply more to larger manufacturers with fairly regular production and possibly multiple manufacturing locations for whom having both a date and lot information might be more useful.

Standardized nomenclature is not necessary to allow either manufacturers or consumers to identify products as long as there is some internal consistency in the labeling approach and the symbols or codes can be interpreted easily with minimal explanation. Standardizing date codes is easier than standardizing other markings. Many firms use different approaches to production and, therefore, to identifying production. For example, among small businesses, production date is often all that is required to identify products. Some of our manufacturers do not produce many lots or use more than one factory for a particular product. Other manufacturers make products to order only.

While giving clear guidance as to what might be acceptable is useful, flexibility is beneficial because every product and production scheme is different. Particularly with products manufactured in other countries, our members may have little control over the manufacturing approaches. Any labeling scheme, therefore, needs to adapt to a wide range of products, manufacturers, and practices.

3. How consumers’ ability to identify recalled items would be affected by permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information.

As long as consumers can relatively easily identify a product as being involved in a recall, it does not matter what system a manufacturer uses. Manufacturers need only create a system that includes either a date or lot-based identifier for each unique production period, maintain a record of such identifiers, and be able to describe where to find the information in the event of a recall and how to determine if the product is part of the corrective action program.

4. How, and to what extent, the tracking information should be presented with some information in English or other languages, or whether presentation should be without the use of language (e.g., by alpha-numeric code with a reference key available to the public).

It is hard to generalize, but most of our members label their products in English. Some use numerical systems for date codes. Beyond those simple requirements, providing labels in other languages, or using a system of symbols, could be too complex and costly for our members.

5. Whether there would be a substantial benefit to consumers if products were to contain tracking information in electronically readable form (to include optical data and other forms requiring supplemental technology), and if so, in which cases this would be most beneficial and in which electronic form.

At this point, we see little value to providing the information in electronically readable form. Such approaches would be very costly for our members and of almost no value to consumers who lack the equipment to read them. A limited number of sophisticated distributors and retailers might have the technology to track products electronically, but currently, even that ability is limited and there is insufficient uniformity of systems beyond the UPC code system. Such a system would be extraordinarily expensive to start, and these costs are especially significant to our members who do not benefit from the economies of scale of larger firms.

6. In cases where the product is privately labeled, by what means the manufacturer information should be made available by the seller to a consumer upon request, e.g.: Electronically via Internet, or toll-free number, or at point of sale.

If the product is private labeled, and the lot and/or date information is sufficient to identify the product, why is there a need to identify a manufacturer? From a recall perspective, this information seems to have no additional value and just makes labeling or other systems more complex. If for policy reasons having nothing to do with identification of products in recalls the Commission wishes to institute such a labeling scheme, this information potentially impacts on confidential commercial information. Many private labelers consider their manufacturers to be proprietary information. Absent some real benefit to consumers, there is no reason to make this information public.

7. The amount of lead time needed to comply with marking requirements if the format is prescribed.

It would be useful to give firms a **year** in which to bring products into compliance with these requirements. Many of these products are manufactured on a seasonal basis in foreign countries. Other products have a fairly extended development and manufacturing cycle. Changing systems requires educating people about the changes and giving them sufficient time to implement them. However, we re-emphasize that while providing clear guidance to our members on what they need to do is a good thing, a one-size fits all approach is likely to put many of our members at a competitive disadvantage and to favor larger firms that have greater capabilities and systems in place.

8. Whether successful models for adequate tracking labels already exist in other jurisdictions.

We are unaware of any systems we could recommend.

Other Comments:

As noted above, the statutory requirement seems to have been created with only large manufacturers in mind. Our members are smaller, may not manufacture products in batches, are likely to have less control over their source of supply (unless they manufacture items themselves here in the United States), and do not have the economies of scale of larger manufacturers. (This labeling scheme could be cost prohibitive for smaller

volumes of low cost, competitively priced items upon which our members' margin is already small. Our members do not have the option of amortizing the cost over millions of products.) This leads us to suggest that the Commission give more flexibility to smaller manufacturers, particularly those with 500 products or fewer, or perhaps decide not to enforce the requirements against such small manufacturers at all.

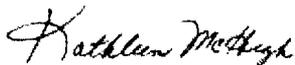
The Commission should also consider exempting lower risk products, or products that historically are rarely involved in recalls, or providing more flexibility for labeling of such products. This too would help bring the costs down and create a system that is more "risk based." While imposing costs on the marketplace can be justified in some cases, where there is very little safety pay-off, the agency should hesitate to impose unnecessary costs.

The Commission should also consider allowing the use of stickers or other less permanent methods of labeling for certain kinds of products or materials, and for smaller manufacturers for whom another more "permanent" process might be too expensive. For plastic parts and other materials with uneven or other challenging textures, permanently labeling products is difficult and probably unfeasible economically. Labeling only the box and or inserting the identifying information in packing literature might be the only viable option for some products.

The CPSIA has created many challenges for our members. We have already suffered the losses caused by the retroactive application of the lead and phthalate bans. We have had to either absorb the additional costs for product testing and certification or choose not to sell certain products at all. These changes have had a devastating impact on our members, already reeling from the economic problems facing the world economy. While we want clear guidance, we request that the Commission provide some flexibility in crafting these regulations, and show understanding of the vast range of firms and products regulated. Further, we request that the agency provide a reasonable amount of time for firms to comply with these requirements after they are published.

Please feel free to call on me with any questions about the comments we have provided.

Sincerely,



Kathleen McHugh

President

American Specialty Toy Retailing Association

Kathleen McHugh, CAE

President

American Specialty Toy Retailing Association

432 N Clark St., Suite 401, Chicago, IL 60654

p 312-222-0984 f 312-222-0986

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Office of the Secretary
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Re: Request for Comments on Tracking Label Requirement

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For example, many toys and games have numerous small components. Marking each of these components in some way may not only be difficult, but in some cases may impair the ability of the product to function. Obviously, getting all of the required information on a very small component in some readable form could be almost impossible. It could also be very expensive. Besides, many small components might come from different batches and only become part of a final product upon packaging. Similarly, any marking of many small

AMERICAN SPECIALTY TOY RETAILING ASSOCIATION

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components with the packaging date could be very expensive and may or may not greatly help identify a defective component that could have been manufactured months before. Some of these same concerns apply to very small products, especially with readable tracking information.

Another issue affecting the practicality of labeling is the definition of “permanent.” Products are made out of various materials including metals, woods, plastics, fabrics, rock, and other materials of varying hardness and textures. While sticker or tag labeling is relatively easy and might work with some materials, would this be accepted as a “permanent” solution? In some molded parts, a permanent marking might be achieved by altering the molds to mold in distinguishing information, but that is very expensive. Other methods of marking materials could be very expensive.

For some products, it should be sufficient to label the packaging and perhaps a container the parts are kept in (the package might be kept for storing games or other items). On other products, labeling the packaging and a larger component could assist identification. Of course, some products are packaged in bulk and sold in bins. There is sometimes no “package” to label, and depending on the size of the item, a permanent marking may be nearly impossible. For some of these items, labeling the shipping carton may be the only alternative.

2. How permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information would affect: a. Manufacturers’ ability to ascertain the location and date of production of the product; and b. Other business considerations relevant to tracking label policy.

The apparent goal of this provision is to make it possible for people to identify a product that should be or is being recalled. To do so, there needs to be some way for people who know how to do so, to identify particular products, or production periods that are of concern. Ironically, by insisting on both date codes and “cohort” or lot information, the legislation may be requiring many small manufacturers who only have occasional runs of products, to do this twice. (Many of our members currently use date codes and a few use some type of lot or production identifier. Very few have manufacturer, date, and lot or “cohort” information.) As written, the tracking provision seems to apply more to larger manufacturers with fairly regular production and possibly multiple manufacturing locations for whom having both a date and lot information might be more useful.

Standardized nomenclature is not necessary to allow either manufacturers or consumers to identify products as long as there is some internal consistency in the labeling approach and the symbols or codes can be interpreted easily with minimal explanation. Standardizing date codes is easier than standardizing other markings. Many firms use different approaches to production and, therefore, to identifying production. For example, among small businesses, production date is often all that is required to identify products. Some of our manufacturers do not produce many lots or use more than one factory for a particular product. Other manufacturers make products to order only.

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While giving clear guidance as to what might be acceptable is useful, flexibility is beneficial because every product and production scheme is different. Particularly with products manufactured in other countries, our members may have little control over the manufacturing approaches. Any labeling scheme, therefore, needs to adapt to a wide range of products, manufacturers, and practices.

3. How consumers' ability to identify recalled items would be affected by permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information.

As long as consumers can relatively easily identify a product as being involved in a recall, it does not matter what system a manufacturer uses. Manufacturers need only create a system that includes either a date or lot-based identifier for each unique production period, maintain a record of such identifiers, and be able to describe where to find the information in the event of a recall and how to determine if the product is part of the corrective action program.

4. How, and to what extent, the tracking information should be presented with some information in English or other languages, or whether presentation should be without the use of language (e.g., by alpha-numeric code with a reference key available to the public).

It is hard to generalize, but most of our members label their products in English. Some use numerical systems for date codes. Beyond those simple requirements, providing labels in other languages, or using a system of symbols, could be too complex and costly for our members.

5. Whether there would be a substantial benefit to consumers if products were to contain tracking information in electronically readable form (to include optical data and other forms requiring supplemental technology), and if so, in which cases this would be most beneficial and in which electronic form.

At this point, we see little value to providing the information in electronically readable form. Such approaches would be very costly for our members and of almost no value to consumers who lack the equipment to read them. A limited number of sophisticated distributors and retailers might have the technology to track products electronically, but currently, even that ability is limited and there is insufficient uniformity of systems beyond the UPC code system. Such a system would be extraordinarily expensive to start, and these costs are especially significant to our members who do not benefit from the economies of scale of larger firms.

6. In cases where the product is privately labeled, by what means the manufacturer information should be made available by the seller to a consumer upon request, e.g.: Electronically via Internet, or toll-free number, or at point of sale.

If the product is private labeled, and the lot and/or date information is sufficient to identify the product, why is there a need to identify a manufacturer? From a recall perspective, this information seems to have no additional value and just makes labeling or other systems more

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complex. If for policy reasons having nothing to do with identification of products in recalls the Commission wishes to institute such a labeling scheme, this information potentially impacts on confidential commercial information. Many private labelers consider their manufacturers to be proprietary information. Absent some real benefit to consumers, there is no reason to make this information public.

7. The amount of lead time needed to comply with marking requirements if the format is prescribed.

It would be useful to give firms a **year** in which to bring products into compliance with these requirements. Many of these products are manufactured on a seasonal basis in foreign countries. Other products have a fairly extended development and manufacturing cycle. Changing systems requires educating people about the changes and giving them sufficient time to implement them. However, we re-emphasize that while providing clear guidance to our members on what they need to do is a good thing, a one-size fits all approach is likely to put many of our members at a competitive disadvantage and to favor larger firms that have greater capabilities and systems in place.

8. Whether successful models for adequate tracking labels already exist in other jurisdictions.

We are unaware of any systems we could recommend.

Other Comments:

As noted above, the statutory requirement seems to have been created with only large manufacturers in mind. Our members are smaller, may not manufacture products in batches, are likely to have less control over their source of supply (unless they manufacture items themselves here in the United States), and do not have the economies of scale of larger manufacturers. (This labeling scheme could be cost prohibitive for smaller volumes of low cost, competitively priced items upon which our members' margin is already small. Our members do not have the option of amortizing the cost over millions of products.) This leads us to suggest that the Commission give more flexibility to smaller manufacturers, particularly those with 500 products or fewer, or perhaps decide not to enforce the requirements against such small manufacturers at all.

The Commission should also consider exempting lower risk products, or products that historically are rarely involved in recalls, or providing more flexibility for labeling of such products. This too would help bring the costs down and create a system that is more "risk based." While imposing costs on the marketplace can be justified in some cases, where there is very little safety pay-off, the agency should hesitate to impose unnecessary costs.

The Commission should also consider allowing the use of stickers or other less permanent methods of labeling for certain kinds of products or materials, and for smaller manufacturers for whom another more "permanent" process might be too expensive. For plastic parts and other materials with uneven or other challenging textures, permanently labeling products is difficult and probably unfeasible economically. Labeling only the box and or inserting the

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identifying information in packing literature might be the only viable option for some products.

The CPSIA has created many challenges for our members. We have already suffered the losses caused by the retroactive application of the lead and phthalate bans. We have had to either absorb the additional costs for product testing and certification or choose not to sell certain products at all. These changes have had a devastating impact on our members, already reeling from the economic problems facing the world economy. While we want clear guidance, we request that the Commission provide some flexibility in crafting these regulations, and show understanding of the vast range of firms and products regulated. Further, we request that the agency provide a reasonable amount of time for firms to comply with these requirements after they are published.

Please feel free to call on me with any questions about the comments we have provided.

Sincerely,



Kathleen McHugh

President

American Specialty Toy Retailing Association

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2009-0010-0073

Cowan, Liebowitz & Latman, P.C.

Law Offices

1133 Avenue of the Americas • New York, NY 10036-6799

(212) 790-9200 • www.cll.com • Fax (212) 575-0671

C.J. Erickson
Direct (212) 790-9274
cje@cll.com

April 22, 2009

Via Email <TrackingLabels@cpsc.gov>
and Federal Express

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, Maryland 20814

Re: Tracking labels for Children's Products Under Section 103 of the
Consumer Product Safety Improvement Act of 2008 ("CPSIA")

Dear Mr. Stevenson:

On behalf of our client, United Legwear, Inc. ("United Legwear") we hereby submit the following comments regarding tracking label requirements under the CPSIA. These comments are submitted in quintuplicate in accordance with Federal Register notice Vol. 74, No. 37, page 8781 dated February 26, 2009.

United Legwear is an importer and wholesale distributor of hosiery products including children's socks. These items are subject to section 103 of the CPSIA which requires tracking labels on children's products and packaging. The CPSIA amends existing section 14(c) of the Consumer Product Safety Act ("CPSA"). In order to carry out the stated intent of the CPSIA, it is important to read the language in context together with CPSA section 14(c). The statutory language is as follows:

Section 103 of the CPSIA requires, *to the extent practicable*, the placement of permanent, distinguishing marks on children's products and packaging to enable:

(A) The manufacturer to ascertain the location and date of production of the product, cohort information (including the batch, run number, or other identifying characteristic), and any other information determined by the manufacturer to facilitate ascertaining the specific source of the product by reference to those marks; and

(B) The ultimate purchaser to ascertain the manufacturer or private labeler, location and date of production of the product, and cohort information (including batch, run number, or other identifying characteristic).

Section 103 of the CPSIA amends section 14(c) of the CPSA which:

authorizes the use of traceability labels (including permanent labels), *where practicable*, on any consumer product. ...where traceability labels are required by rule under CPSA section 14(c) and a covered product is privately labeled, the product must carry a code mark permitting the seller to identify the manufacturer upon a purchaser's request.

As stated in the cited Federal Register notice, the overriding intent of the Act is to balance controls on manufacturing and consumer costs with the interests of consumers in being better informed in the event of a recall and manufacturers/importers in having greater certainty in identifying affected products. The text of both CPSIA section 103 and the CPSA section 14(c) unambiguously include the limiting language: "to the extent practicable" and "where practicable," respectively. This language clearly indicates congressional understanding that the characteristics of certain products significantly affect the feasibility of labeling. Hosiery is such a product as children's items simply have no feasible way of being permanently marked on the product itself.

The labeling of imported merchandise has long been within the purview of U.S. Customs and Border Protection ("CBP"), specifically under Part 134, Customs regulations (19 CFR Part 134) and the Marking statute, section 304, tariff Act of 1930, as amended (19 U.S.C. 1304). Although these provisions relate to country of origin marking, CBP is also charged with enforcing the laws and regulations of approximately 40 other government agencies including the Consumer Product Safety Commission ("CPSC"). The CPSIA also empowers CBP with authority to monitor and control the admissibility of imported merchandise for compliance with CPSIA standards, including tracking labels. Accordingly, CBP determinations on the feasibility of hosiery marking should be afforded precedential value.

CBP has traditionally exempted hosiery from the statutory requirement that: "every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article will permit, in such a manner to indicate to the ultimate purchaser in the United States the English name of the country of origin

of the article.” Articles of apparel require a sewn in labels containing this information. The congressional intent of this provision is to ensure that certain information actually gets to the ultimate purchaser of the product. The same rationale applies to the tracking label requirement of CPSIA section 103. The following published rulings, copies of which are attached, demonstrate CBP’s position that based, in part, on the nature of the article, hosiery is exempt from individual marking requirements:

HQ 563148 dated November 19, 2004

NY R00789 dated September 21, 2004

NY F82417 dated February 10, 2000

Each of these rulings confirms that articles of hosiery are exempt from the sewn in permanent labeling requirements, and the statute is satisfied through marking of the packaging or paper inserts. The rationale for this decision is rooted in the physical construction and use of the product. Hosiery is, for the most part, skin tight apparel of limited thickness. The abrasiveness of a sewn in label cannot be tolerated by the user as it would result in irritation to the skin. In addition, the average diameter of the opening of a children’s sock is 4 cm. which makes it virtually impossible to mark the interior of the item. Hosiery also bears an aesthetic value precluding indelible ink marking which would destroy marketability. Finally, socks are sold in pairs and often multiple sets of pairs. The individual marking of every sock is not only physically and commercially impossible, as mentioned above, but prohibitively expensive.

For the same reasons we request that for hosiery the CPSC adhere to this long standing Customs principle and authorize compliance with CPSIA section 103 tracking label requirements through the marking of packaging. This methodology has been proven to satisfy the conspicuous, legible and permanent criteria of the marking statute and will similarly fulfill the express conditions and intent of the CPSIA.

With regard to identifying information required under the CPSIA, imported apparel is already subject to the interim regulation requiring the manufacturer identification (“MID”) code of the factory where the articles were produced. *See Federal Register* Notice of October 5, 2005 (70 Fed. Reg. 58009). This information is currently provided to CBP at the time of entry of imported apparel. In addition, the Federal Trade Commission (“FTC”) requires that imported apparel contain the name or unique Registered Number (“RN”) of the importer, wholesaler, retailer, or distributor, for labeling products under the Textile, Wool, and/or Fur Acts. As stated by the FTC, the RN number:

- let buyers easily identify and find a company by using an RN directory or the RN look-up service on the Internet;
- usually takes up less space on the label than the company name; and

Cowan, Liebowitz & Latman, P.C.

April 22, 2009

Page 4

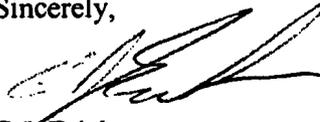
- facilitates record-keeping and helps you keep track of who's who in the textile trade.

The RN number will similarly provide consumers with a vehicle by which it can contact a responsible corporation in the supply chain. That company will have access to a wide range of manufacturer and product details contemplated by CPSIA section 103.

Based on the foregoing, we request that the Commission take into consideration the current procedures and safeguards of CBP and the FTC in confirming compliance with CPSIA section 103 for imported hosiery products through the use of the existing MID, RN and package labeling.

Thank you for your consideration, and should you have any questions or require additional information, please do not hesitate to contact our office.

Sincerely,



C.J. Erickson

CJE/kmn

Enclosures

cc: United Legwear, Inc.

28446/000/1104639.1

HQ 563148

November 19, 2004 MAR-2-05 RR:CR:SM 563148 EAC

CATEGORY: Marking

Port Director Dallas/Fort Worth Airport U.S. Customs and Border Protection 1205 Royal Lane, P.O. Box 619050 Dallas/Fort Worth Airport, TX 75261 RE: Request for Internal Advice; 19 U.S.C. §1304; 19 CFR Part 134; revocation of **NY R00789**

Dear Port Director:

This is in response to a request for internal advice dated November 2, 2004, concerning the country of origin marking requirements applicable to hosiery imported in bulk. We note that the request for internal advice has been initiated in response to New York Ruling Letter ("NY") R00789 dated September 21, 2004, issued to Skyline Hosiery, LLC (hereinafter "Skyline"), regarding such marking requirements. We have reconsidered **NY R00789**.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of proposed revocation of **NY R00789** is not necessary as it has not been in effect for at least 60 days.

FACTS:

We are advised that Skyline intends to import ladies sheer hosiery in bulk. Upon entry into the United States, the hosiery will not contain sewn-in labels indicating the country of origin of the merchandise. Rather than individually marking the hosiery, Skyline proposes to import the merchandise in sealed poly-bags which, along with the shipping containers, will be properly marked with country of origin information.

At Skyline's Texas facility, the hosiery will be packaged into rectangular shaped tubes using a patented process. One side of the tubes will contain the statement "Distributed by Skyline Hosiery, Dallas, Texas" in white letters on a dark background. On the same side of the container and at a 90-degree angle is the statement "Made in China". The hosiery will remain packaged until procured by the ultimate purchaser.

In **NY R00789**, Customs and Border Protection ("CBP") determined that the hosiery may be repacked subject to the procedures set forth in 19 CFR 134.34.

ISSUE:

Whether the marking scheme proposed above satisfies the applicable marking requirements.

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930 (19 U.S.C. §1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. §1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. "The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlander & Co.*, 27 C.C.P.A. 297 at 302 (1940).

Part 134 of the Customs Regulations implements the country of origin marking requirements and exceptions of 19 U.S.C. §1304. Section 134.41(b), mandates that the ultimate purchaser in the United

States must be able to find the marking easily and read it without strain. Articles for which the marking of the containers will reasonably indicate the origin of the article are excepted from marking under 19 U.S.C. §1304(a)(3)(D). For an exception to be granted under 19 U.S.C. §1304(a)(3)(D), the article must generally be imported in a marked retail container that will reach the ultimate purchaser. See also, 19 CFR 134.32(d).

Section 134.34, Customs Regulations (19 CFR 134.34), provides that, at the discretion of the port director, an exception from individual marking may be authorized for imported articles which are to be repacked after release from CBP custody when: (1) the containers in which the articles are repacked will indicate the origin of the articles to the ultimate purchaser in the U.S. and (2) the importer arranges for supervision of the marking of the containers by CBP officers at the importer's expense or secures such verification, as may be necessary, by certification and the submission of a sample or otherwise, of the marking prior to the liquidation of the entry. However, we note that section 134.26, Customs Regulations (19 CFR 134.26), may also be applicable where imported articles will be repackaged in the United States, such as in the present case. Section 134.26(a) provides that if an article subject to country of origin marking is intended to be repacked after its release from CBP custody, or the port director having custody of the article has reason to believe that the article will be repacked after its release, the importer shall certify to the port director that: (1) if the importer does the repacking, "he shall not obscure or conceal the country of origin marking appearing on the article, or else the new container shall be marked to indicate the country of origin of the article..." [emphasis added]; or (2) that if he does not repack the article he will give notice to subsequent purchasers or repackers of their obligations under section 19 U.S.C. §1304 and Part 134, Customs Regulations. The procedures set forth at 19 CFR 134.26 apply only to articles that are legally marked at the time of importation. See, for example, Headquarters Ruling Letter ("HRL") 561269 dated February 29, 2000. In **HRL 561269**, certain unmarked firearm parts were imported into the United States in bulk, commingled with other parts, repackaged into sealed plastic containers and sold at retail in properly marked containers as spare parts. In determining what marking requirements were applicable to the imported parts, we noted that the procedures set forth at 19 CFR 134.26 apply only to articles that are legally marked at the time of importation. If the articles are not legally marked at the time of importation, the presentation to CBP of the certification and notice to subsequent purchasers or repackers specified in 19 CFR 134.26 will not serve to satisfy the importer's obligations under 19 U.S.C. §1304 and 19 CFR Part 134. Therefore, individually unmarked gun parts whose outermost containers were also unmarked were not within the scope of 19 CFR 134.26. Rather, it was stated that the separate procedures of 19 CFR 134.34 were to be utilized in such situations. However, where the outermost container of the gun parts to be repacked in the U.S. was correctly marked with the country of origin of the articles contained within, the certification procedures of 19 CFR 134.26 were to be utilized, provided that the containers in which the repackaged spare parts reached the retail purchasers were marked in accordance with the requirements of 19 U.S.C. §1304 and 19 CFR Part 134.

Applying the forgoing to the instant case, in situations where the outermost container of the hosiery to be repacked in the United States is correctly marked with country of origin information at the time of importation, the certification procedures of 19 CFR 134.26 may be utilized, provided the retail containers in which the repackaged merchandise reaches the ultimate purchaser are marked in accordance with the above-referenced requirements of 19 U.S.C. §1304 and 19 CFR Part 134. Concerning the non-origin reference "Distributed by Skyline Hosiery, Dallas, Texas" which will be placed upon the retail containers, please be advised that 19 CFR 134.46 requires that, in instances where the name of any city or locality in the United States, or the name of any foreign country or locality other than the name of the country or locality in which the article was manufactured or produced, appears on an imported article or its container, and those words or name may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear,

legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning. CBP has ruled that in order to satisfy the close proximity requirement, the country of origin marking must appear on the same side(s) or surface(s) in which the name of the locality other than the country of origin appears. See, **HRL 708994** dated April 24, 1978. The requirements of 19 CFR 134.46 are designed to alleviate the possibility of misleading an ultimate purchaser with regard to the country of origin of an imported article, if such article or its container includes language which may suggest a U.S. origin (or other foreign locality not the correct country of origin).

HOLDING:

Based upon the information provided, it is our opinion that the imported hosiery may be excepted from individual marking pursuant to 19 CFR 134.32(d), provided the merchandise's outer containers are properly marked with country of origin information, CBP officials at the port of entry are satisfied that the merchandise will reach the ultimate purchaser in properly marked containers, and the certification requirements of 19 CFR 134.26 are executed. **NY R00789** is hereby revoked.

You are to mail this decision to the internal advice applicant no later than 60 days from the date of this letter. On that date, the Office of Regulations and Rulings will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at www.cbp.gov by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

Myles B. Harmon, Director

Commercial

Rulings Division

NY R00789

September 21, 2004

MAR-2 RR:NC:3:353 R00789

CATEGORY: MARKING

Mr. James Robert Francis Skyline Hosiery, LLC 1212 Dolton Drive Suite 301 Dallas, TX 75207
RE: COUNTRY OF ORIGIN MARKING OF IMPORTED HOSIERY

Dear Mr. Francis:

This is in response to your letter dated September 2, 2004 requesting a ruling on whether it is acceptable to mark the container in which imported hosiery is repackaged in the U.S. with the country of origin in lieu of marking the article itself when no other markings appear on the article itself. A photograph of the marked sample container was submitted with your letter for review.

You are planning to import ladies sheer hosiery in bulk to be packaged using a patented process and labeled with the country of origin after it arrives in your Dallas, Texas facility. The hosiery will be imported without a sewn-in country of origin label and will be packed into a rectangular-shaped tube. The tube will be labeled with all required information. The product package containing the hosiery will be delivered for retail sale and will remain intact until the ultimate purchaser buys it.

You request permission to import the hosiery in sealed poly-bags. The bags and shipping containers will be marked with the country of origin.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.41(b), Customs Regulations (19 CFR 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. Section 134.1(d), defines the ultimate purchaser as generally the last person in the U.S. who will receive the article in the form in which it was imported. If an imported article is to be sold at retail in its imported form, the purchaser at retail is the ultimate purchaser. In this case, the ultimate purchaser of the hosiery is the consumer who purchases the product at retail.

An article is excepted from marking under 19 U.S.C. 1304 (a)(3)(D) and section 134.32(d), Customs regulations (19 CFR 134.32(d)), if the marking of a container of such article will reasonably indicate the origin of such article. However, since the hosiery is not imported in its marked retail container, whether the subject articles are excepted from individual marking under 19 CFR 134.32(d) is for the port director to decide. In this regard section 134.34, Customs Regulations (19 CFR 134.34), provides that an exception may be authorized at the discretion of the port director under 19 CFR 134.32(d) for imported articles which are to be repacked after release from Customs custody under the following conditions: (1) The containers in which the articles are repacked will indicate the origin of the articles to an ultimate purchaser in the U.S.; (2) The importer arranges for supervision of the marking of the containers by Customs officers at the importer's expense or secures such verification, as may be necessary, by certification and the submission of a sample or otherwise, of the marking prior to the liquidation of the entry.

Please note that on one side of the container in which the hosiery will be packaged there is the statement "Distributed by Skyline Hosiery, Dallas, Texas" at the edge of the container in white letters

NY F82417

February 10, 2000

MAR-2 RR:NC:3:353 F82417

CATEGORY: MARKING

Mr. Edward N. Jordan Expeditors International of Washington, Inc.

5200 W. Century Blvd.

6th floor Los Angeles, CA 90045

RE: COUNTRY OF ORIGIN MARKING OF IMPORTED SOCKS

Dear Mr. Jordan:

This is in response to your letter dated January 27, 2000, on behalf of Uni Hosiery Co., requesting a ruling on whether the proposed marking "Made in Pakistan" is an acceptable country of origin marking for imported socks if another marking "USA" and an American flag appear on the article. A marked sample was submitted with your letter for review.

The submitted sample is crew socks made from knit 80% ring spun cotton/20% polyester fabric. Each sock has the term "USA" and a representation of the American flag on the legging. The socks will be packaged in a cellophane enclosed three-pack with a paper insert that wraps around three pairs of socks. The socks' country of origin is Pakistan.

Printed on one side of the paper insert are a photograph of the socks with a sport shoe, the name of the socks, the size information, and a brief description of the socks. Printed on the reverse side of the paper insert are the material construction information, the country of origin marking, the item number, the UPC code, the Federal Trade Commission washing and drying instructions and symbols, and a cotton symbol.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Section 134.46, Customs Regulations (19 CFR 134.46), deals with cases in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appears on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin. In such a case, there shall appear, legibly and permanently, in close proximity to such words, letters, or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

The issue is whether the socks, marked as described above, satisfy 19 CFR 134.46. Customs has held on numerous occasions that the term "USA" used in circumstances like that outlined above is a symbol or decoration; it has also ruled that the a representation of the American flag used in similar circumstances is likewise considered a symbol or decoration. The printed term "USA" and the representation of the American flag will not reasonably be construed as indicating the country of origin of the article on which it appears. Therefore, the requirements of 19 CFR 134.46 are not applicable.

Stevenson, Todd

From: Natale, Kristine M. [KMN@c11.com]
Sent: Wednesday, April 22, 2009 4:23 PM
To: Tracking Labels
Cc: Erickson, C. J.
Subject: United Legwear, Inc. - Tracking Labels for Children's Products Under Section 103 of the CPSIA
Attachments: 042209155112-r.pdf

Please see the attached correspondence.

Kristine M. Natale
Assistant to C.J. Erickson
Cowan, Liebowitz & Latman, P.C.
212.790.9200 ext. 528
kmn@c11.com
www.c11.com

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2009-0010-0074



A Division of Spectrum Educational Supplies Ltd.

2009 04 22

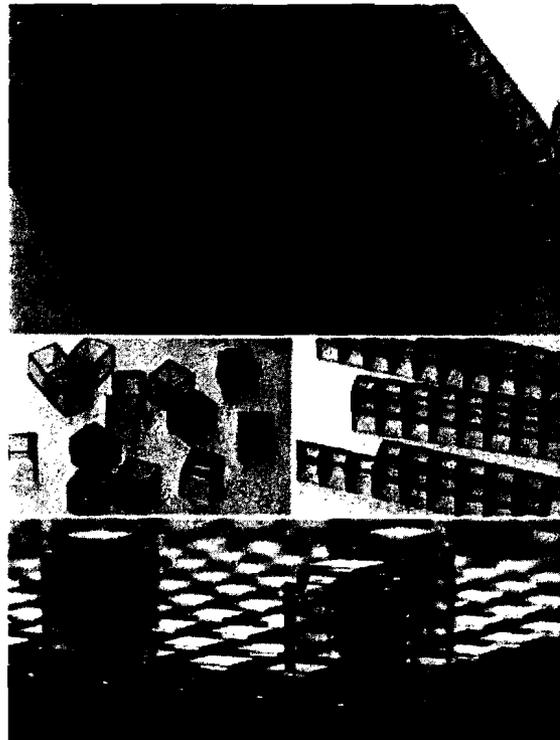
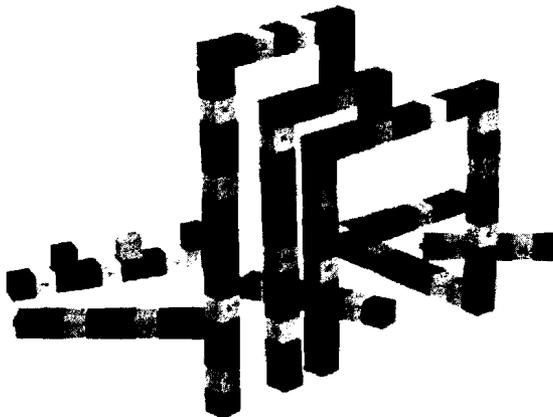
Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland
20814

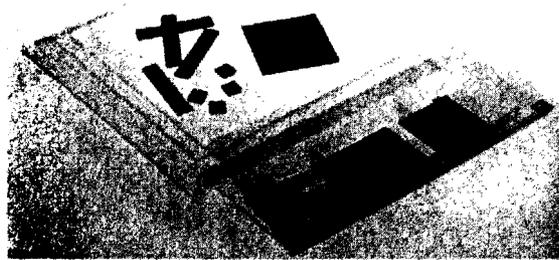
Dear Sirs:

Re: Tracking Labels

Our company (SI Manufacturing) manufactures educational teaching aids that are used by students and teachers in schools across North America. We are writing to express our concerns about the newly proposed/implemented toy safety legislation as it relates to the tracking of products designed for use by children. Our concerns are summarized as follows:

1. We produce many products that are very small – some as small as the 1 cm cubes (pictured below) that are sold in bulk packages of up to 1,000 pieces. Below we have provided photos of some of these products.





As you can see, due to the small size of these items, permanent markings resident on the product itself is not practical. The information would need to be microscopic in size and would therefore be of no use to the consumer as it would be illegible.

2. SI also produces products that are designed for use on the overhead projector. We are concerned that marking the face of these products will cause them to be confusing to the students and therefore unusable. They are designed to reflect on the overhead, only information relevant to the topic being taught.

3. We believe that the labelling requirements should allow wholesale suppliers, such as ourselves, to protect the privacy of our sourcing information. Your new legislation requires the disclosure of the original manufacturer of the product which, once disclosed, would allow our customers to bypass us and deal directly with the known source. We feel that the information required to be disclosed on the labels should be limited to allow for confidentiality.

4. We respectfully request that the CPSC allow manufacturers to continue to sell existing stock without adding the tracking labels after the August 14, 2009 deadline (with all products manufactured after this date complying.) High minimum order quantities will mean that many manufacturers and distributors will have lots of stock on August 14th. In many cases, this stock was produced years in advance of this deadline and has been on hand in North America the entire time that the particulars of this law were developing. If product labelling is required for these items, all of pre-existing stock will no longer be legal for sale. If packaging labels are required as an alternative, the cost to adding these to existing stock will be high.

This legislation includes so many different products, each with their own challenges. Thank you for considering our concerns.

Sincerely,

Kelly Smirlies
Purchasing

Stevenson, Todd

From: Kelly Smirlies [KSmirlies@spectrumed.com]
Sent: Wednesday, April 22, 2009 5:27 PM
To: Tracking Labels
Subject: Tracking Labels
Attachments: CPSC - Tracking labels letter.doc

Good Afternoon,

Thank you for taking the time to review comments and concerns about the tracking labels in the CPSIA. Please find attached my letter addressing issues that we believe need to be considered.

Kind regards,

Kelly Smirlies

Purchasing
SI Manufacturing
150 Pony Drive
Newmarket, Ontario
L3Y 7B6
Direct Line# 905-954-4922
www.si-manufacturing.com



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2009-0010-0075

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April 23, 2009

Todd A. Stevenson
Office of the Secretary
Consumer Product Safety Commission
4330 East-West Highway
Bethesda, Maryland 20814

RE: Comments in Response to the Notice of Inquiry on Tracking Labels

I am submitting these Comments on behalf of the Association of American Publishers (AAP), the Book Manufacturers' Institute, Inc. (BMI), and the Printing Industries of America (PIA) in response to the Notice of Inquiry that was published by the Consumer Product Safety Commission (CPSC) in the Federal Register, 74 FR 8781 (daily edition, February 26, 2009), concerning Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act of 2008 (CPSIA).

AAP is the principal national trade association of the U.S. book publishing industry, representing some 300 member companies and organizations that include most of the major commercial book and journal publishers in the United States, as well as many small and non-profit publishers, university presses and scholarly societies. AAP members publish literary works in hardcover and paperback formats in every field of human interest, including trade books of fiction and non-fiction; textbooks and other instructional materials for the elementary, secondary, and postsecondary educational markets; reference works; and scientific, technical, medical, professional and scholarly books and journals. In addition to publishing in print formats, AAP members are active in the ebook and audiobook markets, and also produce computer programs, databases, Web sites and a variety of multimedia works for use in online and other digital formats.

BMI is a leading nationally recognized trade organization whose members are book manufacturers and companies that provide materials, equipment, and services to that industry. Our member companies produce the great majority of the books ordered by the U.S. publishing industry.

PIA is the world's largest graphic arts trade association, representing an industry with approximately one million employees. It serves the interests of more than 10,000 member companies involved in every stage of the printing industry from materials to equipment to production to fulfillment. General commercial printing--magazines, books, brochures, advertisements, and more--comprises the largest segment of the printing and graphic communications industry. Packaging printing, ancillary services, and digital printing also round out the industry's diverse product line.

Introduction

AAP's member publishers include the leading U.S. publishers of children's books, which constitute "children's products" for purposes of the CPSIA. Based on discussions with these member publishers, it is our understanding that the kind of tracking information that is required by Section 103 of the CPSIA to be placed on children's products in the form of "permanent, distinguishing marks" typically is already provided by children's book publishers on the "copyright page" of each book. Book manufacturers and/or component (e.g. cover) printers will reproduce this information as it is provided by the publishers and included in the digital file from which the book or component is being printed. The provision of this information is a well-established practice among children's book publishers and, for that reason, AAP, BMI and PIA strongly urge that the CPSC not impose any new requirement for standardized nomenclature, appearance or arrangement of the information on tracking labels for children's books. Prescriptions of specific labels for children's books are not necessary to achieve the purpose of the Section 103 requirement, and the CPSC should encourage and allow manufacturers and importers to establish and employ reasonable methods for marking their products, provided that the information required by Section 103 can be easily ascertained by the public in the event of a product recall, thereby meeting the objectives of the tracking label requirement.

Discussion

1. AAP, BMI and PIA Support Continuance of 2-Step Traceability Process

First, AAP, BMI and PIA fully support the two-step process for ascertaining manufacturing information that is currently in place under Section 14(c) of the Consumer Product Safety Act (CPSA), as amended by CPSIA, and urge its continuing application to children's books. Specifically, as it is referenced by the CPSC in the Notice of Inquiry, this requirement is that, "where traceability labels are required by rule under CPSA section 14(c) and a covered product is privately labeled, the product must carry a code mark permitting the seller to identify the manufacturer upon a purchaser's request." This process is currently in use within the U.S. book publishing industry, ensuring that sufficient information to satisfy the requirements of Section 103 of the CPSIA already appears in children's books (as discussed more fully in the next subhead below). In addition, book publishers generally are private labelers of the products manufactured for them by third party manufacturers, and consumers have access to the type of information required by Section 103 and even more detailed information through publishers' toll free telephone numbers and Internet websites.

AAP, BMI and PIA do not read the Section 103 requirement for “permanent, distinguishing marks on the product and its packaging, to the extent practicable” as requiring all of the information referenced in Section 103 to be included in such marks. If the labeling on a children’s book identifies the manufacturer or private labeler; allows the manufacturer or private labeler to identify the manufacturer and batch number for the particular book; and, provides the consumer and reseller with the publisher’s readily accessible contact information, such labeling achieves the labeling requirement’s purpose, *i.e.*, to aid in the identification of products that have been recalled. In the event of such a recall, the responsible company and the CPSC will be able to provide information to the consumer and resellers to identify the particular manufacturing run(s) of the product that are being recalled. It is not necessary for that purpose to require that these labeling details be visible at the point of sale. While choking hazard warning labels, for example, are intended to be seen by consumers before buying a toy that might be inappropriate for a young child, the information that is mandated by Section 103 for tracking labels is not intended to ordinarily influence the consumer’s initial purchasing decision.

2. *Book Publishers Already Have a System in Place that Allows Consumers and Sellers to Ascertain Manufacturing Information Required by CPSIA Section 103*

In the case of children’s books, it is noteworthy that consumers are both able and encouraged to open and “sample” the product before buying. As a result, important information about children’s books (including the tracking information that Section 103 requires) has long been printed inside the book on what has come to be known as the “copyright page,” which is typically on the reverse side of the title page at the beginning of the book, in the end pages at the back of the book, or on the outside of the book’s back cover. Parents, librarians, booksellers and other purchasers of children’s books have come to know that this important information is available in these places in the book. AAP members who publish children’s books believe any change to this long-standing practice – including, for example, requiring that such information be placed on the front covers of books instead of the copyright page – would be confusing to consumers, as well as impractical for book publishers, who specifically design and market children’s book covers to appeal to and be read by children. Moreover, it would be challenging for publishers to place, and difficult for consumers to read, such important technical information on the covers of certain types of children’s books, such as miniature books, books shaped and illustrated to resemble vehicles or animals, books with highly decorative covers, and so on.

The information printed on the copyright page includes, at a minimum, the name and contact information (address or website or telephone number) of the publisher, the country of manufacture, and information to identify the “printing” of the book (which would correspond to the “batch, run number or other identifying characteristic” required by Section 103). Publishers use a generally uniform system for identifying the printing of a particular book, which is a series of numbers that are generally set off and conspicuous. The lowest number in the sequence (irrespective of the order of the numbers in the series) identifies the print run number, or “printing,” of that copy of the book, which is the

“batch” or “cohort” for CPSIA purposes. (Sample copyright pages are attached to these Comments to illustrate this information. To determine which printing, batch or cohort a particular copy of a book derived from, see the sequence of numbers in those examples and identify the lowest number in each sequence. If the lowest number is 1, the book in question is from the first printing; if 2, it is from the second printing and so on.)

As with other important information about books, consumers can use the identifying information in the book and the contact information for the publisher to obtain book production data and product safety information from the book publisher’s customer service department, often via a toll-free telephone number. A publisher’s contact information can also be easily found on the Internet. Some publishers also include the name of the manufacturer of that printing or a code number for the manufacturer. (The attached sample copyright pages include examples of these variations.) However, even knowing just the title, author, and print-run number of a book, a publisher is able to easily and quickly ascertain the date of production, the manufacturer’s contact information and other relevant information in the event of a product recall, and provide such information to the public.

For children’s book publishers, depending on the specific requirements, a uniform approach might increase costs rather than facilitate economies that can be passed along to consumers in the form of pricing benefits. Given that the existing practices of the publishing industry fully satisfy the requirements of Section 103 of the CPSIA, the CPSC should not mandate any uniform labeling standards or other changes to current practices for children’s books.

Respectfully Submitted,



Allan R. Adler
Vice President for Legal & Government Affairs
Association of American Publishers
50 F Street, NW
Suite 400
Washington, DC 20001-1530
(phone) 202/220-4544
(fax) 202/347-3690
(email) adler@publishers.org

Attachments

GRADE 5

Grammar and Writing Handbook

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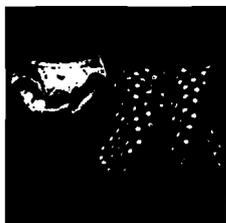
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[1. Easter—Fiction. 2. Picture puzzles. 3. Stories in rhyme.] I. Title.

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Stevenson, Todd

From: Allan R. Adler [aadler@publishers.org]
Sent: Thursday, April 23, 2009 4:20 PM
To: Tracking Labels
Subject: Comments of AAP-BMI-PIA on Tracking Labels Under Section 103 of the CPSIA
Attachments: Comments of AAP-BMI-PIA on Tracking Labels 4-23-09final.pdf

Please accept as timely and correctly submitted the attached comments in response to the CPSC Notice of Inquiry on Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act.

If there are any questions or concerns regarding this submission, please contact me by reply email.

Sincerely,

Allan Adler

Allan Robert Adler

Vice President for Legal & Government Affairs
Association of American Publishers
50 F Street, NW 4th Floor
Washington, D.C. 20001-1530
(phone) 202/220-4544
(fax) 202/347-3690
(email) aadler@publishers.org

Stevenson, Todd

2009-0010-0076

From: karaline/tumbleweed/grasshopper [karaline@hevanet.com]
Sent: Thursday, April 23, 2009 5:06 PM
To: Tracking Labels
Subject: Labels.

I am writing you today to request that you amend the Tracking Labels for small batch production.

It is a costly ineffective way to solve any kind of problem.

This law will ruin the entire childrens clothing industry.

Plus kids hate labels...my son has every single label removed from his clothes.

Please reconsider this unnecessary, unreasonable law.

People need to take responsibility for what they purchase.

--

Thank you kindly

Kara

Grasshopper

1816 ne alberta st.

Portland, Or. 97211

503.335.3131

www.grasshopperstore.com

Toys clothes books fun!!

Stevenson, Todd

2009-0010-0077

From: Milagros [milagros@milagrosboutique.com]
Sent: Friday, April 24, 2009 12:15 AM
To: Tracking Labels
Subject: Comment

I request that the CPSC adopt rules that allow for manufactures to have the flexibility to comply with labeling based upon their unique production methods. Labeling compliance for US-based crafters and related "cottage industries" that produce unique or small batch items should be completely voluntary.

Thank you,

Tony Fuentes
Milagros, LLC
5433 NE 30th Avenue
Portland, OR 97211

Stevenson, Todd

2009-0010-0078

From: Caryn Stockwell [info@secondstardesigns.com]
Sent: Friday, April 24, 2009 1:08 AM
To: Tracking Labels
Subject: Tracking Labels for Children's Products Under Section 103 of the CPSIA - COMMENT

To Whom It May Concern:

It is with my understanding that the Consumer Product Safety Improvement Act of 2008 will be requiring children's clothing manufacturers to begin labeling their garments with detailed tracking information, effective August 14, 2009. As a small manufacturer of children's clothing, I request that the CPSC adopt rules that allow for manufactures to have the flexibility to comply with labeling based upon their unique production methods. Additionally, labeling compliance for US-based crafters and related "cottage industries" that produce unique or small batch items should be completely voluntary. As a manufacturer of small batch items, I typically only create one or two garments in any particular fabric design, in only two or three sizes. It is this method of production that allows for individuality of the garment and justifies the prices of each piece. I am not a mass producer of children's clothing, nor do I have intentions of doing so at any point in my company's future. My niche market is one-of-a-kind garments for children. Please consider my comments as they apply to and speak on behalf of all cottage industry crafters.

Sincerely,

Caryn Stockwell
Owner
Second Star Designs

www.secondstardesigns.com

2009-0010-0079

Stevenson, Todd

From: Thandose Kalinda [guavamama@gmail.com]
Sent: Friday, April 24, 2009 1:18 AM
To: Tracking Labels
Subject: Formal Comment on Labeling Standards

To Whom this may concern,

As an indie designer and manufacturer of one of the kind as well as limited edition US made textiles, this law has placed great hardship on my business and in essence made it all but impossible for me to make a living. In these hard economic times it is absolutely unfair for home grown businesses to struggle against the larger more capable, and sometimes problem causing companies that acquire their raw or finished materials and goods from less reputable and managed overseas sources.

It is for this reason that I join fellow independent US business owners and request that the CPSC adopt rules that allow for manufactures to have the flexibility to comply with labeling based upon their unique production methods. Labeling compliance for US-based crafters and related "cottage industries" that produce unique or small batch items should be completely voluntary."

I hope that you will look kindly upon our request and act in good faith towards US owned and run business especially those of us who use 100% natural materials.

Thank you.

Thandose Kalinda

Stevenson, Todd

2009-0010-0080

From: charlotte [roundandround@mac.com]
Sent: Friday, April 24, 2009 2:36 AM
To: Tracking Labels
Subject: Labeling Standards for CPSIA

Dear Sirs,

As a small manufacturer of Children's clothing, I am following closely the CPSIA legislation. My company focuses on sustainable materials and uses many limited runs of materials to create re-manufactured/ recycled goods.

I request that the CPSC adopt rules that allow for manufactures to have the flexibility to comply with labeling based upon their unique production methods. Labeling compliance for US-based crafters and related small businesses that produce unique or small batch items should be completely voluntary.

Sincerely,

Charlotte MacDonald
Wheee!
Everyday Play Gear
503-206-7863

Stevenson, Todd

2009-0010-0081

From: Yarissa Reyes [yreyes@ahint.com]
Sent: Friday, April 24, 2009 8:35 AM
To: Tracking Labels
Subject: Tracking Labels for Children's Products Under Section 103 of the CPSIA
Attachments: CPSIA Section 103 Comments-Tracking Labels.pdf

To Whom It May Concern:

The Consumer Product Safety Commission invited comments on implementation of Section 103 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Tracking Labels for Children's Products. The Juvenile Products Manufacturers Association on behalf its more than 250 member companies, submits the attached comments.

Respectfully submitted,

The Juvenile Products Manufacturers Association (JPMA)
15000 Commerce Pkwy, Suite C
Mount Laurel, NJ 08054
Tel: 856-638-0420
www.jpma.org



April 24, 2009

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, MD 20814

RE: JPMA Comments on Section 103 – Tracking Labels

The Juvenile Products Manufacturers Association (JPMA) is a national trade organization of more than 250 companies in the United States, Canada and Mexico. JPMA exists to advance the interests, growth and well-being of North American prenatal to preschool product manufacturers, importers, and distributors marketing under their own brands to consumers. It does so through advocacy, public relations, information sharing, product performance certification, and business development assistance conducted with appreciation for the needs of parents, children, and retailers.

In response to the request by the CPSC for comments on implementation of Section 103 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Tracking Labels for Children's Products, JPMA on behalf its more than 250 member companies, submits the following comments. Our members' products include but are not limited to a broad range as follows: cribs, play yards, car seats, strollers, stationary activity centers, infant carriers, walkers, changing tables and other nursery furniture, high chairs, infant bedding, bath seats and bath tubs, feeding products and bassinets and cradles. JPMA wishes to ensure that the new requirements for marking an enormous array of vastly different children's products and/or packaging with tracking information as mandated under the CPSIA is implemented in a reasonable fashion.

JPMA recognizes the challenges faced by the Commission in recognizing that flexible marking solution may be required and that this may have to be an evolving process for the Commission. This is why JPMA supported the National Association of Manufacturers' Request for a Stay of Enforcement and why it believes that great care must be employed, so as not to unduly burden small manufacturers and importers when imposing such regulatory requirements. JPMA accordingly reserves the right to supplement or amend its comments concerning implementation of these subsections, as appropriate.

Section 103 of the CPSIA requires tracking labels on children's products beginning in August 2009. More specifically, CPSIA Section 103(a), entitled "Tracking Labels for Children's Products," requires the manufacturer of a children's product to "place permanent, distinguishing marks on the product and its packaging, *to the extent practicable*, that will enable" the manufacturer and ultimate purchaser to ascertain certain information regarding the product's source (emphasis supplied). The purpose of this requirement is simply to ensure that manufacturers and consumers have sufficient information to easily "enable" a consumer to ascertain whether the product they possess is subject to a Recall [CPSIA § 103(a)]. That is plain

Juvenile Products Manufacturers Association, Inc.

15000 Commerce Parkway, Suite C • Mt. Laurel, NJ 08054 • 856.638.0420 • 856.439.0525

Email: jpma@jpma.org • Web site: www.jpma.org

from the specific requirements in the new Section 2063(a) (5) which outline the purposes of such marking and the legislative history of the statutory provisions. As long as the labels on a children's product identify the manufacturer or private labeler, allow that manufacturer or private labeler to identify the manufacturer and batch number for the particular products, and provide the consumer with a reasonable way to make contact, the purposes of the labeling requirement relating to reasonably being able to ascertain "recalled product" is achieved¹.

The Commission has not issued any definitive complete guidance on the tracking-label requirement and has requested comments concerning Section 103 by April 27.² We submit these comments to assist our members in obtaining a clear understanding of CPSIA Section 103 that is consistent with the Commission's in light of the congressional intent to allow flexibility as regards product marking. JPMA urges the Commission to adopt a pragmatic approach, consistent with the statutory language and purpose. We suggest that the Commission acknowledge in its regulations that manufacturers need place marks on products only "to the extent practicable;" better define "permanent" marking to allow for broadly different types for product, packaging and tagging systems; and allow flexibility for "distinguishing marks," with full recognition of extensive existing marking systems.

I. "To the Extent Practicable" Provides For Flexible Solutions

CPSC has requested comment on conditions and circumstances that should be considered in determining whether it is "practicable" to have tracking labels on children's products and the extent to which different factors apply to including labels on packaging. In considering "the extent" to which a tracking label is "practicable," the Commission should simply question whether the extent of marking would suffice to enable a consumer easily to determine whether a recall affects his or her product. In answering this question, the Commission should necessarily recognize a flexible approach that allows manufacturers to just mark the product packaging or tagging when appropriate for product categories. In some products a manufacturer should also be permitted in its discretion to designate one part of the product in a set of products. Finally the Commission needs to recognize existing tracking information in form and substance, as is currently required under existing mandatory and voluntary (consensus) standards as compatible with the statutory requirements.

A. Practicability on Small Product Only Requires Marking the Packaging

JPMA's related concern involves products consisting entirely of small pieces, such as socks, hair clips, bottle nipples, pacifiers, ribbons, eating utensils, etc. JPMA's members have concluded that, at least ordinarily, it will be sufficient under Section 103(a) to place an appropriate mark just on the packaging — such as the cardboard header card, or the carrying case that might be provided with an arts and crafts set, craft activity sets, sets of apparel, hair care accessories,

¹ The House Report explains that Section 103 aims to "aid in determining the origin of the product and the cause of the recall." H. Rep. 110-501, at 32 (2007). The Senate Report similarly states that Section 103 addresses "the necessity to identify and remove these products from the stream of commerce as soon as possible after the notice of a voluntary or mandatory recall." S. Rep. 110-265, at 13 (2008); *see id.* At 31 (tracking label requirement would "facilitate recalls").

² 74 Fed. Reg. 8781 (Feb. 26, 2009).

novelties, bin and counter top product racks, product end caps, bulk vended products, jewelry and novelties. For the reasons discussed above, it would be impracticable to include a tracking label, for these kinds of products, on the individual product components, such as the play-sets, building blocks, plastic animals, or hair bands, sock sets, and costume jewelry. Similar considerations apply to small accessories for electronics (i.e., ear phones for baby monitors), books where the packaging and content are the same, CDs, DVDs, or other novelties sold as accessory products.

This understanding is consistent not only with an assessment of what is practicable but also, we believe, with the first paragraph of the Staff's Basic Summary of Section 103 on the Commission's Web site, which draws on the Conference Report and the Senate Report.³ As the conferees noted: "To the extent that small toys and other small products are manufactured and shipped without individual packaging, the Conferees recognize that it may not be practical for a label to be printed on each item."⁴ It logically follows from this discussion that it is not practicable to include Section 103 labeling information on products that are individually packaged yet consist of small parts or components which do not inherently provide for easy labeling of the product itself. Similarly, the House Report under Section 103 confirms this approach when it states that, "the Committee would require a tracking label on the container for children's building blocks, but not on the building blocks themselves." H. Rep. 110-501, at 32.⁵

Therefore, JPMA, upon surveying its members, has concluded that it is simply not practicable to include a tracking label on the small parts of such products, for a number of reasons. Direct printing on the small parts could be impracticable due to their size or shape, the complexity of the marking process, or the timing of the manufacturing process. With small plastic, textile or metal parts or decorative adornments, it would be impracticable to add date wheels to production molds or pre-printed textile goods (especially generic sourced textile goods).

B. For Some Other Products, Only One Part Needs to be Marked

It should be sufficient under Section 103(a) for manufacturers to place an appropriate mark on the main component if one exists, the most practicable large component, or the component that the manufacturer believes a consumer would look to in the event of a recall. For example, it would be sufficient to mark any container that the consumer would normally keep, an electronic component or other singular part of a product set (and not each part). It is generally recognized that many products may stay with their original packages. In this regard the packaging should also be considered part of the "product."

³ "Congress modified the requirement for tracking labels with the phrase 'to the extent practicable' recognizing that it may not be practical for permanent distinguishing marks to be printed on small toys and other small products that are manufactured and shipped without individual packaging." (p. 67)

⁴ It goes on to say: "The packaging of the bulk shipment of those items, however, would be required to be labeled so that retailers and vendors would be able to easily identify products that are recalled." All of this comes essentially verbatim from the Senate Report (p. 32).

⁵ See also product-specific regulations under Section 2063. See 16 CFR §§ 1204.5 (warnings for certain antennas to be only in instructions); 1209.9 (certification label for cellulose insulation to be only on containers).

This understanding is consistent with JPMA's experience with products and the need for a common sense practicable approach as confirmed by the legislative history. The House Report on H.R. 4040, in discussing Section 103, states the Committee's expectation "that manufacturers will give primary consideration to the product's size," and provides as an example that, "for a board game, the manufacturer should put labels on the box and the board, but usually not on all the small pieces or cards that are part of the game." H. Rep. 110-501, at 32.

Black's Law Dictionary 1191 (7th ed. 1999) (defining "practicable" as "reasonably capable of being accomplished; feasible."). The Conference Committee language suggests that it presumably just used "practicable," from the otherwise essentially identical Senate version of Section 103, because of the longstanding use of that word in 15 U.S.C. § 2063(c). *See* S. Rep. 110-265, at 55; H. Rep. 110-787, at 67 (2008) ("The Conference agreed to modified language that is similar to the provisions in the House bill and the Senate amendment."). The position we have explained is based on what is "reasonably capable of being accomplished," as opposed to any strict technologically feasible requirement. This is all that Section 103 requires. In our view Congress intended to adopt a reasonable common sense approach to marking packages or product, and clearly recognized that a unilateral approach could not and should not be made to ally to all products. Moreover, marking these parts serves no purpose in facilitating a recall, because the marking on the principal component will provide the necessary information.

C. *Existing Government Required Marking Systems & Exemptions Should be Recognized*

In terms of CPSIA Section 103 requirements for marking enabling of "the ultimate purchaser to ascertain the manufacturer or private labeler, location of production of the product" it is reasonable and clear that coding may be employed. Since the purpose of Section 103 is to ensure that consumers can ascertain if their product is included in a corrective action, details such as where or when a product was manufactured is of little value outside of recall or safety advisories, so a coded system should be sufficient for purposes of meeting section 103. Furthermore, industry, the CPSC and associations can work together to create a passive look-up data-base systems (similar to the Registered Number Database already in place for apparel products) that further facilitate an ability for consumers to identify (using whichever tracking code is employed by manufacturers) any actual recalled products.

In the meantime, the CPSC should issue guidance as soon as possible to address how the labeling requirement will be applied. CPSC needs to publicly avoid redundancy and accept a similar tracking approach already taken for Certificates of Compliance to be required. CPSC should continue to recognize that any several parties may qualify as the "manufacturer" as that term is used in this section. The CPSIA requirement indicates that the ultimate purchaser must be able to ascertain either the manufacturer *or* the private labeler, so it's reasonable that duplication be avoided. Furthermore, CPSA defines the manufacturer as "any person who manufactures or imports a consumer product." Additional guidance is required to avoid conflicting interpretations on which party will legally qualify. We suggest the greatest amount of flexibility should be permitted, as long as a consumer has a relatively easy way to correlate the coding used with the ability to find out whether their product is subject to recall. As with the Certificates of Compliance, many companies are concerned that the label not require business confidential information (such as confidential factory information) to be disclosed to competitors.

Guidance must also begin to exempt products that are not practicable to label. In making an initial determination for products that are not practicably labeled, the CPSC should consider the following factors: Whether products are exempt from tracking labels under the Federal Trade Commission's (FTC) Textile and Wool Act; some products do not have tags, labels, or markings due to the product function, design or size of the product and are individually sold without packaging or in bulk. To the extent that the U.S. department of Homeland Security, Customs and Border Protection's (CBP) Country of Origin Marking requirement recognizes these exemptions. Similarly CPSC should also create a "safe harbor" and recognize marking schemes already enacted in its own standards. For example 16 CFR 1203 [Bicycle Helmets at 1203.34], 16 CFR 1210, 1212 [Childproof Cigarette Lighters at 1210.12(c) and 1212.12(c)], 16 CFR 1213, 1513 [Bunk Beds at 1213.5 and 1513.5], 16 CFR 1508 [Full Size Cribs at 1508.9], 16 CFR 1509 [Non-Full Size Cribs at 1509.11], and 16 CFR 1615, 1616 [Children's Sleepwear at 1615.31 and 1616.31]. In addition, all of the Juvenile Product ASTM Standards are already subject to omnibus marking regimes that provide for traceability back to product production. Each contains marking requirements that merit recognition and suggest that a variety of flexible coding systems are appropriate. CPSC should recognize such markings as suitable and provide a "safe harbor" for products subject to and in compliance with such requirements.

Beyond confirming JPMA's understanding, the Commission also should consider broadly recognizing that, for certain products, a marking on the product in addition to the packaging may not be practicable.

II. Reasonably Interpreting "Permanent"

Section 103(a) requires that a manufacturer place "permanent" distinguishing marks on its children's products to the extent practicable. With respect to distinguishing marks placed on the *packaging*, we believe based on both common experience and existing regulations that ordinary adhesive labels satisfy the statute. *Cf.* 16 CFR § 1211.15 (field-installed warning labels for garage door openers, intended for "permanent installation," may be "secured by adhesive" if the adhesive will adhere to the surface); § 1211.16 ("permanent" markings under standard can include "[i]nk printed and stenciled markings, decalomania labels, and pressure sensitive labels . . . if they are acceptably applied and are of good quality.").

We also believe the staff should reconsider making it clear that for products where package labeling is permitted, in lieu of product labeling, that adhesive and hangtag labels be deemed suitable, since these are no different than disposable packaging on such products. Adhesive labels on textiles are designed to be easily removed upon purchase of the product, without damaging the textile. By contrast, ordinary adhesive labels on packaging are designed to be permanent in the sense of lasting as long as the packaging itself; and they are in fact permanent, absent a special effort by an adult purchaser to tear them off, which usually would damage the packaging. However, in either case the packaging may be disposable. The fact remains that there exist an enormous array of product packaging and labeling used.

More generally, we suggest that the Commission consider defining "permanent" in 15 U.S.C. § 2063(a) (5) as, in substance, "reasonably expected to remain on the packaging (including

adhesive and hangtag labels) or product during the period that the packaging or product is capable of being used.”⁶

III. Reasonable Content for “Distinguishing Marks”

The Commission’s request for comments raise questions concerning the content of the “distinguishing marks” that Section 103 requires. As noted above, the overriding concern of Section 103 is that manufacturers and purchasers are able quickly to accomplish a thorough recall. Therefore the Commission should focus on whether the marking would suffice to enable a consumer easily to determine that a recall does or does not affect his product. Consistent with that purpose, Section 103 does not require any specific content for the marks. Instead, the marks must simply “enable” the manufacturer and purchaser to ascertain the critical information for initiating and responding to a recall. The Commission should leave manufacturers with the flexibility that the statutory text allows, enabling them to comply while taking into account business considerations specific to their products and brands and with the logistics of recalling a given product. In particular, JPMA wishes to respond to two of the questions that the Commission and Staff have raised, and to provide suggestions.

The CPSC should not mandate uniformity in the content, appearance, or arrangement of distinguishing marks. Section 103 contains no such requirement and it is unnecessary. Moreover, due to the length of design and production cycles, many of our members already have invested significant time and money into retooling manufacturing processes to be able to comply with their own systems as of August 14, 2009. Absent a statutory requirement, it makes no sense to require manufacturers to do otherwise. The Commission may instead wish to identify what sorts of marks definitely would satisfy Section 103, without requiring conformity to such guidelines. Such an approach may prove helpful in some areas and could test the Commission’s assumptions, in its request for comments, regarding the desirability of “a uniform approach.”

Similarly, nothing in the statute requires or suggests that manufacturers need to maintain an accessible online database of information on all marked children’s products. Instead, if a recall occurs, a manufacturer can readily — on its existing Web site and otherwise — provide customers the necessary information so that they might then determine, based on the product’s mark, its location and date of production and cohort information. Even more unwieldy, and farther afield from the statute, would be a centralized, quasi-governmental database of the sort envisioned in the Feasibility Study of the EU-China Trade Project, to which the Commission’s request for comments refers.

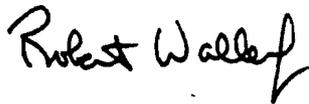
Finally, given the flexibility that Section 103 allows and the statute’s concern for practicability, the Commission should allow manufacturers in some cases simply to mark children’s products with a “maker’s mark” such as a trademarked logo. Such an approach could be especially useful for (a) smaller products, on which a full mark is not practicable for reasons discussed above, and (b) products that, in addition to presenting practicability issues, are made in limited, short production runs and so are distinctive that a single picture will enable consumers to determine

⁶ This definition paraphrases the Commission’s requirement for certificates for walk-behind lawn mowers at 16 CFR § 1205.35; *see also* § 1209.9 (labeling on container for cellulose to “remain attached to the container for the expected time interval between the manufacture of the product and its installation”).

whether they are subject to a recall. A manufacturer in choosing this course would knowingly accept the risk that, if any production of a product required a recall, it would have to recall the entire production if it couldn't provide a way for consumers to easily identify product subject to recall. For many small companies flexibility in defining what constitutes "production runs" is essential and they should be provided the option of recalling a broader array of product in lieu of costly small batch marking requirements. This likely applies to many of our smaller members that may have extremely limited production runs. The Commission should allow this flexibility.

Thank you for considering these comments.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert Waller, Jr." with a stylized, cursive script.

Robert Waller, Jr., CAE
President
(856) 642-4402



2009-0010-0082

Advocacy: the voice of small business in government

April 24, 2009

The Honorable Nancy A. Nord
Acting Chairwoman
U.S. Consumer Product Safety Commission
4330 East West Highway
Room 402
Bethesda, MD 20814

RE: Notice of inquiry, Implementation of Section 103 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), Tracking Labels for Children's Products

Dear Chairman Nord,

The Consumer Product Safety Commission ("CPSC") published a notice in the *Federal Register* on February 26, 2009 inviting comments and information on how the CPSC should implement the tracking label requirement of section 103 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA").¹ The Office of Advocacy ("Advocacy") applauds CPSC for using a Notice of Inquiry ("Inquiry") to gather information about industry practice, options for implementing the labeling requirement, and the benefits, limitations and impacts that options will have on manufacturers of children's products before issuing a proposed rule.

In 2007, several large toy manufacturers were forced to issue recalls of millions of Chinese-made toys due to safety risks of lead paint and small magnets.² Congress reacted to the massive recalls by passing the CPSIA, which was signed into law by President Bush on August 14, 2008. The CPSIA added many consumer safety provisions to the Consumer Product Safety Act³ ("Act"), including a requirement in Section 103, effective August 14, 2009, that manufacturers or importers of children's products "place

¹ 74 Fed. Reg. 8781 (February 26, 2009)

² "Mattel Recalls 9M Chinese-made Toys in the U.S." *USA Today*, Aug. 15, 2007. accessed online at http://www.usatoday.com/money/world/2007-08-13-china-products_N.htm on 4/15/09.

³ 15 U.S.C. § 2051 et seq.

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permanent, distinguishing marks on the product and its packaging, to the extent practicable.⁴ The labeling requirement is intended to give manufacturers and consumers the ability to ascertain the specific source of a children's product (such as location and date of production, cohort information, manufacturer name) in instances of a consumer safety recall.

The Act defines a "children's product" as a consumer product that is designed or intended for use by children 12 years old and under.⁵ Advocacy has been concerned about the regulatory effects of the CPSIA on small businesses, and that the overall impact of the CPSIA will impose a disproportionately high burden on small businesses. Ninety-nine percent of businesses manufacturing toys, dolls, and/or games are classified as small businesses.⁶ The Act's broad definition of children's products means any small businesses that produces a children's product, not just toy manufacturers, will have to comply with Section 103 labeling requirements, including manufacturers and importers⁷ of clothing, textiles, toiletries, furniture, and the like.

Advocacy has heard the opinions of small businesses that create or import children's products on the Section 103 labeling requirement. Advocacy urges CPSC to take care when issuing labeling requirements and compliance standards, and consider the practical effects of those regulations on small businesses before mandating a broad-based, one-size-fits all approach.

Office of Advocacy

Advocacy was established by Congress under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of SBA or the Administration. Section 612 of the Regulatory Flexibility Act (RFA) also requires Advocacy to monitor agency compliance with the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act.⁸ Based on our discussions with small businesses that will likely be affected by this regulation and our authority under the RFA, Advocacy submits the following comments on this rulemaking.

⁴ 15 U.S.C. § 2063(a), as amended August 14, 2008.

⁵ 15 U.S.C. § 2052(a)(2).

⁶ Out of 776 US firms that manufacture dolls, toys, and/or games (NAICS Code 33993), 763 have fewer than 500 employees. *Employer Firms, & Employment by Employment Size of Firm by NAICS Codes, 2006*. http://www.sba.gov/advo/research/us06_n6.pdf.

⁷ "Manufacturer" is defined as any person who manufactures or imports a children's product. 15 U.S.C. § 2052(a)(11).

⁸ Pub. L. No. 96-354, 94 Stat. 1164 (1981) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

I. Advocacy urges CPSC to complete a regulatory analysis in order to assess the impacts any labeling regulation would have on small businesses and to tailor their regulations to minimize adverse effects on small businesses.

Given the large number of small businesses that this regulation will likely impact, Advocacy encourages the CPSC to comply with the regulatory impact analysis requirements of the RFA. For all rules that are expected to have a significant economic impact on a substantial number of small entities, Federal agencies are required by the RFA, to assess the impact of the proposed rule on small businesses and consider less burdensome alternatives.⁹

Advocacy hopes that the information obtained from the CPSC's Inquiry will help the CPSC prepare an Initial Regulatory Flexibility Analysis ("IRFA"), as statutorily required by section 603 of the RFA. The IRFA, or a summary of it, must appear in the *Federal Register* at the same time the proposed rulemaking is published. The IRFA must describe the impact of the proposed rule on small entities and contain:

- a description of the reasons why the action by the agency is being considered;¹⁰
- a statement of the objectives of the proposed rule;¹¹
- a description and estimate of the number of small entities affected;¹²
- a description of all projected compliance requirements of proposed rule;¹³
- a description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and minimize the rule's impact on small entities;¹⁴ and
- a list of any duplicative, overlapping, and conflicting rules.¹⁵

Executive Order 13272 also requires the CPSC to notify Advocacy when the agency submits a draft proposed or final rule to the Office of Information and Regulatory Affairs or at a reasonable time prior to publication of the rule by the agency.¹⁶ Moreover, the earlier a copy of the IRFA is provided to Advocacy, the more opportunity exists for Advocacy to provide constructive involvement and feedback to the agency. This is especially important considering the short time-frame involved in issuing rules for Section 103.

⁹ 5 U.S.C. § 601 et seq.

¹⁰ *Id.* at § 603(b)(1).

¹¹ *Id.* at § 603(b)(2).

¹² *Id.* at § 603(b)(3).

¹³ *Id.* at § 601(3).

¹⁴ *Id.* at § 603(c).

¹⁵ *Id.* at § 603(b)(5).

¹⁶ Exec. Order No. 13,272 §3(b).

II. A mandatory, one-size-fits-all labeling requirement would be impractical, and would overly burden small business.

Advocacy has heard concerns from small businesses about the implementation of Section 103 labeling requirements. Detailed batch labeling may be economically efficient for some manufacturers, since it would allow manufacturers to limit losses in the event of a safety recall by allowing the manufacturer to identify and narrowly target those products subject to a recall. However, requiring *all* businesses to abide by the same labeling requirements, regardless of their size or methods of production, would burden the smallest businesses with significant production costs while yielding little to no benefits to that small business in the event of a safety recall.

Many small businesses are not factory operations, therefore a mandate that they track cohort information (such as batch number or run number) would be irrelevant for them in the context of their business operations. Batch and run information are only meaningful when products are created and assembled in factory settings. In fact, some large manufacturers already have detailed information on labels imprinted or molded into their products. It may not be difficult for them to adapt to any labeling requirements with minimal additional costs.

Small business manufacturers would be burdened, however, with regulations that require a particular method of marking (laser etching versus adhesive label, for instance), and by regulations mandating inclusion of information with constantly changing values. Similarly, if CPSC mandates the use of more permanent labeling methods, such as laser-etching, the dramatic increase in production costs coupled with the inability to pass these costs onto consumers, could put many small business owners out of business.

Small-scale importers of children's products may also encounter problems if CPSC mandates a one-size-fits-all labeling requirement. It would be impossible for small-scale importers to track cohort information if the foreign manufacturer does not provide them with such information; and since a small-scale importer's bargaining power is limited due to its small size, it is unlikely that these foreign manufacturers would go to the added expense and trouble to do so.

III. The CPSC should allow businesses to have flexibility in determining what is practical regarding the location, nomenclature, appearance and arrangement of information on labels.

Advocacy asks that the CPSC keep the different needs, constraints, character, and structure of small businesses in mind when drafting regulations. Advocacy asks that CPSC strive for flexibility when issuing rules regarding:

- *Cohort information.* Many small business manufacturers have a limited product range, so businesses should be allowed to decide whether or not cohort information should be included, and if so, what information to present and how to convey it.

- *Date & Location of production.* Allow small businesses to decide when a product is manufactured, and the format of the date (yearly, monthly, quarterly, weekly, etc.)
- *Nomenclature.* Allow businesses to determine whether to present some information via alphanumeric code or in English.

Small businesses that make custom-ordered children's products should be exempt from any strict labeling requirements. These items are often one-of-a-kind items, crafted to the specifications of a buyer, and component information is meaningless in this situation. In many instances, a label identifying the company and the year of production would be sufficient.

Many products (i.e. dollhouse furniture, beads) are too small to bear a legible imprint or permanent label on each piece. The surface material of other products may make it impossible to put a label directly on the item, and in other products, a permanent label would detract from the aesthetics and purpose of the product itself. In these cases, CPSC should allow exemptions for the permanent labeling requirement in circumstances where the nature of the children's product would make it impractical to require a permanent label.

In situations where a manufacturer makes a product consisting of component parts (such as blocks or craft kits), Advocacy believes that it would also be impractical to require every component part to bear a label. Advocacy urges CPSC to allow manufacturers to determine the location of the tracking label, and when feasible, only require a label on one component of the product set or on the container holding the component pieces.

IV. The CPSC should work with manufacturers in the implementation of the regulations to minimize economic losses.

Small businesses suggested to Advocacy that it would be impractical—and in some cases impossible—for many small businesses to comply with major regulatory mandates within the statutorily mandated enforcement date of August 14, 2009. To the extent that the CPSC has any flexibility in interpreting the CPSIA statute, small businesses request that the CPSC to consider the monetary costs and time needed to comply with regulations, and issue a stay of enforcement for at least a year in order to give businesses time to adapt to the final rule. To the extent that a stay of enforcement cannot be achieved, Advocacy refers the CPSC to Section 212 of the Small Business Regulatory Enforcement Fairness Act¹⁷ that requires, "that for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 605(b) of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule and shall entitle such publications 'small entity compliance guides.'" Advocacy asks that CPSC issue these compliance guides to assist small businesses in their compliance efforts especially since the enforcement date of the rule is less than five months away.

¹⁷ Pub. L. No. 96-354, 94 Stat. 1164 (1981) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

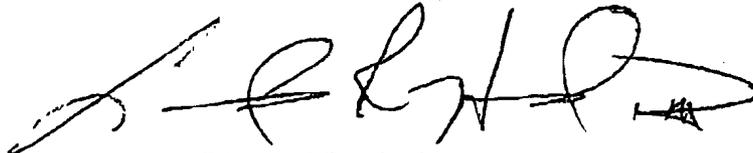
Conclusion

Advocacy thanks CPSC for the opportunity to provide suggestions on how the Agency should approach regulations for a labeling requirement under CPSIA. Advocacy hopes that the CPSC will take into account and analyze the costs and burdens any proposed rulemaking will have on small businesses and consider a broad range of regulatory alternatives that avoid imposing unfair burdens on small businesses. If you have any questions or concerns, please do not hesitate to contact me or Assistant Chief Counsel Linwood Rayford at (202) 401-6880, email at linwood.rayford@sba.gov.

Sincerely,



Shawne McGibbon
Acting Chief Counsel
Office of Advocacy



Linwood Rayford, III
Assistant Chief Counsel
Office of Advocacy



Anna Rittgers
Mercatus Fellow
Office of Advocacy

JEAN SCHMIDTMEMBER OF CONGRESS
SECOND DISTRICT, OHIOTRANSPORTATION AND
INFRASTRUCTURE COMMITTEE
AGRICULTURE COMMITTEE

2009-0010-0083

238 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3164
(800) 784-63668044 MONTGOMERY ROAD
CINCINNATI, OH 45236
(513) 791-0381601 CHILLICOTHE STREET
PORTSMOUTH, OH 45662
(740) 354-1440
(877) 354-1440www.house.gov/schmidt
jeanschmidt@mail.house.gov**Congress of the United States**
House of Representatives
Washington, DC 20515-3502

April 24, 2009

Acting Chairman Nancy Nord
Commissioner Thomas Moore
U.S. Consumer Products Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Acting Chairman Nord and Commissioner Moore:

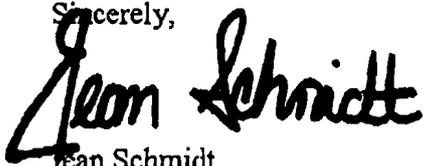
I am writing in response to the Consumer Product Safety Commission's (CPSC) invitation for comments regarding implementation of Section 103 of the Consumer Products Safety Improvement Act (CPSIA).

It is my understanding that many small natural products such as assortments of loose rocks and minerals, as well as other small manufactured items, are often displayed for sale in loose assortments, and without packaging, in bins located throughout stores and museum shops. The products' small sizes and low price points encourage consumers to purchase an assortment of products rather than a large number of one type of product, such as a specific rock or mineral. In such circumstances, it is virtually impossible, due to the individual item's size and lack of packaging, for a manufacturer to affix a permanent distinguishing mark that could be used by manufacturers and consumers to ascertain specific information.

As you are aware, Congress recognized that it might not be practical for permanent distinguishing marks to be placed on many small toys or products shipped without individual packaging. For this reason, Section 103 required tracking labels only "to the extent practicable." The small natural products and other small manufactured products manufactured and sold without packaging and at price points that encourage the purchase of loose assortments are clearly within the realm of products for which the language "to the extent practicable" was added to Section 103 of the CPSIA. I encourage the CPSC to consider exempting such products from the requirements of Section 103.

Thank you for your time and consideration of this matter.

Sincerely,


Jean Schmidt
MEMBER OF CONGRESS

JEAN SCHMIDT
MEMBER OF CONGRESS
SECOND DISTRICT, OHIO

TRANSPORTATION AND
INFRASTRUCTURE COMMITTEE
AGRICULTURE COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-3502

238 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3164
(800) 784-6366

8044 MONTGOMERY ROAD
CINCINNATI, OH 45236
(513) 791-0381

601 CHILlicoTHE STREET
PORTSMOUTH, OH 45662
(740) 354-1440
(877) 354-1440

www.house.gov/schmidt
jeanschmidt@mail.house.gov

Fax Cover Sheet

Congresswoman Jean Schmidt

238 Cannon House Office Building
Washington, D.C. 20515
Fax Number (202) 225-1992
Phone Number (202) 225-3164

DATE: April 27, 2009
TO: CPSC / Tracking Labels
FAX NO: (301) 504-0127
NO. OF PAGES INCLUDING THIS SHEET: 2

- FR: _____ **Jean Schmidt**
_____ **Barry Bennett, Chief of Staff**
_____ **Joe Jansen, Legislative Director**
_____ **Justin Louchheim, Senior Legislative Assistant**
_____ **Matthew Perin, Legislative Assistant**
_____ **James Langenderfer, Legislative Assistant**
_____ **Michael McQueary, Legislative Correspondent**
_____ **Nick Owens, Legislative Correspondent**
_____ **Jennifer Pielsticker, Scheduler**
_____ **Sam Grossman, Staff Assistant**

NOTES: _____

Stevenson, Todd

2009-0010-0084

From: Lidia Diaz [ldiaz@craftandhobby.org]
Sent: Friday, April 24, 2009 11:13 AM
To: Tracking Labels
Cc: Steve Berger; Jon R. Krance
Subject: SECTION 103 OF THE CPSIA: "TRACKING LABELS"

April 24, 2009

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway, Room 502
Bethesda, Maryland 20814,
TrackingLabels@cpsc.gov.

RE: SECTION 103 OF THE CPSIA: "TRACKING LABELS"

Pursuant to CPSC staff's request for comments on implementation of Section 103 of the Consumer Product Safety Improvement Act of 2008: Tracking Labels for Children's Products (74 Fed. Reg. 8781 (Feb. 26, 2009)), the Craft & Hobby Association Inc. ("CHA" or the "Association") submits these comments. Our members' products represent a broad array of craft materials and supplies. CHA's 4000 member companies represent twenty nine (29) Billion Dollars at Retail Value. The Association wishes to ensure that the wholly new federal requirements for "marking" an enormous array of vastly different children's craft products and/or packaging with tracking information is implemented in a reasonable fashion, that does not inadvertently regulate craft products not reasonably intended primarily for children 12 years of age or younger.

The Association recognizes the Commission is faced with a difficult task and urges that any process adopted provide for a flexible marking solution as part of a common sense process. Great care must be employed, so as not to unduly burden small manufacturers, importers and retailers when imposing such regulatory requirements. The Association reserves the right to supplement or amend its comments concerning implementation of these requirements by rulemaking.

General Comments

Section 103 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") requires tracking labels on children's products beginning in August 2009. More specifically, CPSIA Section 103(a), entitled "Tracking Labels for Children's Products," requires the manufacturer of a children's product to "*place permanent, distinguishing marks on the product and its packaging, to the extent practicable, that will enable*" the manufacturer and ultimate purchaser to ascertain certain information regarding the product's source (emphasis supplied). The purpose of this requirement is simply to ensure that manufacturers and consumers have sufficient information to easily "*enable*" a consumer to ascertain whether the product they possess is subject to a Recall [See: new Section 2063(a) (5) which outline the purposes of such marking and the legislative history of the statutory provisions]. Provided that markings on a children's product or its packaging identify by any reasonable means the manufacturer or private labeler, a way by which the manufacturer can identify its production, and a reasonable way for consumers to make contact, the purposes of the labeling requirement relating to reasonably being able to ascertain "recalled product" is achieved^{i[1]}.

The Commission has not issued any definitive complete guidance on the tracking-label requirement so we are providing these comments to promote Commission action that defines a clear understanding of CPSIA Section 103 that is consistent congressional intent to allow flexibility as regards product marking. The Association urges the Commission to adopt a practical approach, consistent with the statutory purpose and language.. We suggest that the Commission acknowledge in its regulations that manufacturers only need place marks on products “*to the extent practicable*”. Also we request that the Commission better define “*permanent*” marking to recognize vastly different types of product, packaging and labeling systems. Ultimately we believe great flexibility for “distinguishing marks”, with full recognition of the extensive variety of products regulated is required.

A. The Phrase “To the Extent Practicable” Requires Flexible Approach

In considering “*the extent*” to which a tracking label is “*practicable*,” the Commission should consider that any system that enables a consumer to reasonably determine whether a recall affects its product. The Commission should recognize a flexible approach that allows manufacturers to mark the product packaging, display or tagging as may be appropriate for particular product categories. In some products a manufacturers should be allowed discretion to designate one part of the product in a set of products. CPSC should also recognize existing tracking information, as is currently required under existing mandatory and voluntary (consensus) standards as compatible with the statutory requirements. The Association’s related concern involves products consisting entirely of small pieces, such as buttons, clips, decorations, ribbons, paper, etc. The Association’s members have concluded that, at least ordinarily, it will be sufficient under Section 103(a) to place an appropriate mark just on the packaging — such as the cardboard header card, the package case that might be provided with an arts and crafts set, craft activity sets, sets of materials, accessories, novelties, bin and counter top product racks, product end caps, bulk vended products, textiles, yarns, buttons, and jeweled or other adornments. For the reasons discussed above, it would be impracticable to include a tracking label, for these kinds of products, on the individual product components. Similar considerations apply to small accessories for electronics, paper books and packaging materials where the packaging and content are the same, CDs, DVDs or other novelties sold as accessory products This understanding is consistent with an assessment of what is reasonably practicable in the Conference Report and the Senate Report, as cited by the staff. As the conferees noted: “*To the extent that small toys and other small products are manufactured and shipped without individual packaging, the Conferees recognize that it may not be practical for a label to be printed on each item.*”ⁱⁱ[2] It logically follows it is simply not practicable to include Section 103 labeling information on products that are individually packaged yet consist of small parts or components (including but not limited to those “small parts” as defined by dimensional criteria as used in 16 CFR 1501, et seq.) which do not inherently provide for easy labeling of the product itself. Similarly, the House Report under Section 103 confirms this approach when it states that, “*the Committee would require a tracking label on the container for children’s building blocks, but not on the building blocks themselves.*” H. Rep. 110-501, at 32.

Therefore, the Association, has concluded that it is simply not practicable to include a tracking label on the small parts of such products. Direct printing on the small parts is impracticable due to their size or shape, the complexity of the marking process, the timing of the manufacturing process and the nature of product packaging (or lack thereof in our increasingly “Green” Society). With small plastic, paper, textile or metal parts or decorative adornments, it would be impracticable to add date coding to production molds or pre-printed textile goods (especially generic sourced goods). A de minimus level under which no product level marking is ever required, should clearly be delineated.

With regard to large sets it should be suffice for manufacturers to place an appropriate mark on the most practicable large component or the component that the manufacturer believes a consumer could review in the event of a recall. For example, it would be sufficient to mark any container that the consumer would normally keep, an electronic component or other singular part of a product set (and not each part), or the instructional manual in the set. In addition since the case packaging, may stay with the set, it should also be considered part of the “product” for marking purposes. For example a knitting kit may contain yarns, threads, decorative

adornments, patterns and instruction in a storage case. Therefore it should suffice to mark any component therein or the packaging to the extent intended to store the product . This understanding is consistent with our experience and the clear need for a common sense practicable approach as confirmed by the legislative history.

Permanent Marking

We also believe the staff should reconsider making it clear that for products where package labeling is permitted, in lieu of product labeling, that adhesive and hangtag labels be deemed suitable, since these are no different than disposable packaging on such products.

Adhesive labels on textiles are designed to be easily removed upon purchase of the product, without damaging the textile. By contrast, ordinary adhesive labels on packaging are designed to be permanent in the sense of lasting as long as the packaging itself; and they are in fact permanent, absent a special effort by an adult purchaser to tear them off, which usually would damage the packaging. However, in either case the packaging may be disposable. The fact remains that there exist an enormous array of product packaging and labeling used.

Content for “Distinguishing Marks”

As noted above, the overriding concern of Section 103 is that manufacturers and purchasers are able quickly to accomplish a thorough recall. Therefore the Commission should focus on whether the marking would suffice to enable a consumer easily to determine that a recall does or does not affect his product. Consistent with that purpose, Section 103 does not require any specific content for the marks. Instead, the marks must simply “enable” the manufacturer and purchaser to ascertain the critical information for initiating and responding to a recall. Manufacturers should be provided with the flexibility that the statutory language affords by enabling them to comply while taking into account business considerations specific to their products with the logistics of recalling a given product

The CPSC has requested comment on whether or not it should mandate uniformity in the content or appearance of distinguishing marks. We note that Section 103 does not contain this requirement. Without a statutory requirement, manufacturers should not be required to restrict themselves, given the array of products involved. The Commission can identify exemplar marks that would satisfy Section 103, without requiring conformity to such guidelines. Similarly, nothing in the statute requires that manufacturers need to maintain an accessible online database of information on all marked children’s products. All that is needed is for the Consumer to be able to ascertain a responsible party to handle a recall should one occur. Typically in the event of a recall, manufacturers provide customers the necessary information so that they can determine, based on the product’s mark or description, whether it’s involved. Per CPSC’s request we also note that a centralized, quasi-governmental, for-profit database of the sort envisioned in the *Feasibility Study of the EU-China Trade Project*, is not required and is undesirable at this time.

B. Existing Government Marking Schemes & Exemptions Should be Recognized

In terms of CPSIA Section 103 requirements for marking enabling of “the ultimate purchaser to ascertain the manufacturer or private labeler, location of production of the product” it is reasonable and clear that coding may be employed. Since the purpose of Section 103 is to ensure that consumers can ascertain if their product is included in a corrective action, details such as where or when a product was manufactured is of little value outside of recall or safety advisories, so a coded system should be sufficient for purposes of meeting section 103. Furthermore, industry, the CPSC and associations can work together to create a passive look-up data-base systems (similar to the Registered Number Database already in place for apparel products) that further facilitate

an ability for consumers to identify (using whichever tracking code is employed by manufacturers) any actual recalled products.

In the meantime, the CPSC should issue guidance as soon as possible to address how the labeling requirement will be applied. CPSC needs to publicly avoid redundancy and accept a similar tracking approach already taken for Certificates of Compliance to be required. CPSC should continue to recognize that anyone of several parties may qualify as the “manufacturer” as that term is used in this section. The CPSIA requirement indicates that the ultimate purchaser must be able to ascertain either the manufacturer *or* the private labeler, so it’s reasonable that duplication be avoided. Furthermore, CPSC defines the manufacturer as “*any person who manufactures or imports a consumer product.*” Additional guidance is required to avoid conflicting interpretations on which party will legally qualify. We suggest the greatest amount of flexibility should be permitted, as long as a consumer has a relatively easy way to correlate the coding used with the ability to find out whether their product is subject to recall. As with the Certificates of Compliance, many companies are concerned that the label not require business confidential information (such as confidential factory information) to be disclosed to competitors.

Guidance must also begin to exempt products that are not practicable to label. In making an initial determination for products that are not practicably labeled, the CPSC should consider the following factors: Whether products are exempt from tracking labels under the Federal Trade Commission’s (FTC) Textile and Wool Act; some products do not have tags, labels, or markings due to the product function, design or size of the product and are individually sold without packaging or in bulk. To the extent that the U.S. department of Homeland Security, Customs and Border Protection’s (CBP) Country of Origin Marking requirement recognizes these exemptions. Similarly CPSC should also create a “safe harbor” and recognize marking schemes already enacted in its own standards. For example 16 CFR 1203 [Bicycle Helmets at 1203.34], 16 CFR 1210, 1212 [Childproof Cigarette Lighters at 1210.12(c) and 1212.12(c)], 16 CFR 1213, 1513 [Bunk Beds at 1213.5 and 1513.5], 16 CFR 1508 [Full Size Cribs at 1508.9], 16 CFR 1509 [Non-Full Size Cribs at 1509.11], and 16 CFR 1615, 1616 [Children’s Sleepwear at 1615.31 and 1616.31]. Each contains marking requirements that merit recognition and suggest that a variety of flexible coding systems are appropriate. CPSC should recognize such markings as suitable and provide a “safe harbor” for products subject to and in compliance with such requirements. The Commission also should consider broadly recognizing that, for certain products, a marking on the product in addition to the packaging may not be practicable.

Finally, given the flexibility that Section 103 allows and the statute’s concern for practicability, manufacturers should also be permitted to mark children’s products with a “recognizable mark” such as a trademarked logo. This is useful for both smaller products and products that, in addition to presenting practicability issues, are made in limited production runs or are distinctive enough to enable consumers to determine whether they are subject to a recall. A manufacturer in choosing this option knowingly accepts the risk that a recall could extend to the entire production. For many small companies flexibility in defining what constitutes “production” is essential and the option of recalling a broader array of product in lieu of costly small batch marking requirements should be provided. The Commission should allow the range of flexibility, as enumerated above.

Thank you for the opportunity to comment.

Sincerely,

A rectangular box with a thin black border, containing a small square icon with an 'x' inside, indicating a redacted signature.

Steven Z. Berger
Chief Executive Officer

Craft & Hobby Association
201-835-1201 direct
sberger@craftandhobby.org



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^{i[1]} The House Report explains that Section 103 aims to “aid in determining the origin of the product and the cause of the recall.” H. Rep. 110-501, at 32 (2007). The Senate Report similarly states that Section 103 addresses “the necessity to identify and remove these products from the stream of commerce as soon as possible after the notice of a voluntary or mandatory recall.” S. Rep. 110-265, at 13 (2008); *see id.* At 31 (tracking label requirement would “facilitate recalls”).

^{ii[2]} It goes on to say: “The packaging of the bulk shipment of those items, however, would be required to be labeled so that retailers and vendors would be able to easily identify products that are recalled.” All of this comes essentially verbatim from the Senate Report (p. 32). “Congress modified the requirement for tracking labels with the phrase ‘to the extent practicable’ recognizing that it may not be practical for permanent distinguishing marks to be printed on small toys and other small products that are manufactured and shipped without individual packaging.” (CPSC Staff cite p. 67);

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SHELDON MAK ROSE & ANDERSON

A PROFESSIONAL CORPORATION

ATTORNEYS

100 EAST CORSON STREET, THIRD FLOOR
PASADENA, CALIFORNIA 91103-3842

FACSIMILE: (626) 795-6321

HOME PAGE: www.uslp.com

(626) 796-4000

OTHER CALIFORNIA OFFICES:

RIVERSIDE
UPLAND
VENTURA COUNTY

ROBERT A. SCHROEDER
OF COUNSEL

LES J WEINSTEIN
SENIOR COUNSEL

JEFFREY G. SHELDON
DANTON K. MAK
DENTON L. ANDERSON
DAVID A. FARAH, M.D.
DOUGLAS H. MORSEBURN
ROBERT J. ROSE
WILLIAM J. BRUTOCAO
DANIEL J. COPLAN
KRISTIN C. HIBNER, PH.D.
MARC A. KARISH
MICHAEL F. FEDRICK
A. ERIC BJOROUH
NORMAN R. VAN TREECK
MARGARET A. CHURCHILL, PH.D.

April 24, 2009

Office of the Secretary
Consumer Product Safety Commission
4330 East-West Highway – Room 502
Bethesda, Maryland 20814

Via Email ONLY
TrackingLabels@cpsc.gov

Re: **Tracking Labels**
SMRA Matter No. 19255.53

Dear Commission Staff:

We represent DEG: The Digital Entertainment Group (“DEG”). The DEG is a trade association comprised of the leading consumer electronics manufacturers, major movie studios and music companies, which include the following major entertainment companies: HBO Home Entertainment, Image Entertainment, Lionsgate Entertainment, MGM Home Entertainment, Paramount Home Entertainment, Sony Music Entertainment, Sony Pictures Home Entertainment, Summit Entertainment, Twentieth Century Fox Home Entertainment, Universal Studios Home Entertainment, Walt Disney Studios Home Entertainment and Warner Home Video; and major hardware manufacturers: D&M Holdings, JVC Company of America, LG Electronics, Meridian Audio, Microsoft, Panasonic Consumer Electronics, Philips Consumer Electronics, Pioneer Electronics, Sharp Electronics, Sony Electronics, and Toshiba America. Associate members of the DEG also include the following DVD/Blu-ray Disc/CD replicators: Arvato Digital Services, Cinram, Deluxe Digital, JVC Disc, Memory Tech, Sony DADC, and Technicolor. Accordingly, its members represent the majority of the entertainment, electronics, and disc manufacturers of home entertainment products in the United States.

On behalf of the DEG we submit the following responses to the Commission’s Request for Comments referenced above. First, we shall present some background information about the home entertainment disc industry and its manufacturing process; and, second, we shall present the specific responses to the Commission’s questions regarding Tracking Labels.

HOW HOME ENTERTAINMENT DISCS ARE MADE

GENERAL PROCESS

The overall process involves the formation and molding of plastic discs with digital information from a prerecorded master. Pure high optical quality polycarbonate is used for CDs, DVDs and Blu-ray discs, (“Discs”). The same process is used for each type of pre-recorded disc regardless of the content.

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Disc manufacturers produce hundreds of titles and several million discs each day using similar equipment and a limited number of common components and raw materials.¹

There are three processes involved in the transfer of content onto pre-recorded discs: mastering, electroplating and injection molding. Mastering is the process that transfers the edited source media information onto a coated glass substrate. The photoresist coating of the coated glass substrate is exposed by a modulated laser beam, which photochemically produces the digital pits which when read by a laser player provide the video, sound and data we enjoy from these products. As part of the electroplating process, nickel is next plated onto the glass master. This nickel plated part, once stripped from the glass master, provides a mirror image of the glass master which can then be used in an injection molding machine to replicate this information onto thousands of molded discs. The metal master and stamper mold also contains an alphanumeric identifier which is imprinted on the inner ring of the discs during the injection molding process. The entertainment information is molded onto the disc during the injection molding process. Mastering, electroplating, and injection molding all take place in clean rooms.

CD PROCESS

The injection molding process is where molten polycarbonate is forced into a cavity where the metal master or stamper with the pre-recorded information is mounted, creating the pattern on the surface of the disc. The molded discs are then coated with a reflective film predominantly with aluminum (although, at times, copper-aluminum gold or silver can be used) by a vacuum sputter deposition process. This provides the mirror coating that is seen on the discs. The purpose of the mirror coating is to make a reflective surface needed for the laser to read the CD. The sputtering process occurs in a high purity argon atmosphere of medium to high vacuum. A protective non-hazardous acrylic polymer solution, which is a lacquer, is then put onto the surface of the disc and is cured with ultraviolet light. The coating prevents the mirror coating from becoming oxidized or scratched over time and provides the surface onto which the disc artwork is printed. Discs are then inspected for physical defects and sent for printing (see Disc Printing section below for further explanation as to this process). The process up to now takes place either in a clean room or in an enclosed area that is HEPA filtered, preventing any contamination to the product.

DVD PROCESS

DVDs differ from CDs in that they are made up of two polycarbonate molded substrates, each with prerecorded information molded onto them. One substrate is sputter coated with a highly reflective coating and one with a semi-reflective coating. These coatings can be of aluminum, silver, gold or silicon. The two substrates are bonded together with a UV curable acrylic bonding material similar to what is used for CD protective coating. This is also accomplished in a clean room or enclosed area as

¹ The manufacturers in this study will be producing pre-recorded discs.

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described above to prevent contamination. The finished discs are inspected, stacked, and then sent for printing.

BLU-RAY PROCESS

Blu-ray discs (each a "BD") are similar to DVDs in that they have two layers of information, but unlike DVDs, where the two layers are found at the disc center between the substrates, for BDs additional coatings are applied to the surface of the discs and information is molded into these layers. The injection molding of the disc, the additional coatings, and molding of the information occurs on the same production line in a "clean room." As with the other products, both finished product and raw materials testing have been conducted to insure compliance with CPSC regulations.

DISC PRINTING

Both screen and offset printing are used to form the image that is found on the surface of the discs. The inks used in both processes are formulated especially for the disc replication industry and must be compatible with the substrates to which they are applied. All inks are UV curable and come from a handful of major ink companies, all of which also supply inks for food packaging, and therefore must adhere to those same high standards. After printing, the discs are sent for packaging.

DISC MANUFACTURING PROCESS SUMMARY

As can be seen from the description above, disc replicators may produce a large number of titles and hundreds of millions of discs annually, but use a limited number of similar processes utilizing common materials, components and suppliers. The process is highly automated and for the most part performed under clean air conditions. Except for UV curing there are no chemical reactions performed to produce the finished product. Production lines produce the same product from the same components and raw materials (only title and media content change) eliminating any chance for cross contamination. Lead and other heavy metals are not employed in any phase of manufacturing.

PACKAGING

The most common forms of disc packaging include printed paper graphic components, on paper or board, combined with plastic cases. The plastic cases typically include a hub or other disc-holding device. There are other common package variations using more paper or board and less plastic (e.g., Digipak®). These packaging components are made by the same small group of suppliers who make the standard packaging. Security tags are also employed and can be hidden or exposed. Most packaging uses highly automated equipment to combine all the components into a finished product. Once the disc and graphics are loaded into the case, the case is wrapped with a shrink or film wrap. The shrink or film is discarded by the customer when the product is opened. Some more specialized packages are loaded by hand. At times a unique box will be employed to hold the product. These special packages are generally hand packaged and also come from a limited number of suppliers common to the entire

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industry. Testing on each of these types of special packages has been conducted to insure compliance with CPSC regulations.

GRAPHIC COMPONENTS

The graphics that accompany the discs are preprinted by a small group of suppliers that cater to this industry. These are most commonly printed on paper or paperboard, though other substrates are used. The most common print methods include offset and flexo print. As with the disc inks, these graphics suppliers also supply products for the food and pharmaceutical industry and are familiar with these high standards.

PLASTIC CASES

The common cases used in the disc industry are made using the injection molding process. The audio (CD) industry tends to use the polystyrene jewel case. There are three separate parts that are assembled into a single case. Most of these components are clear, though black and white are also common and other colors are available. The video (DVD, BD) industry uses mostly "Amaray-style" cases made from polypropylene. The most common color is charcoal gray for standard DVD and translucent blue for BD. These can also be made in other colors. The standard video case also has a clear window welded to the case. This window is most commonly made of clear polypropylene, though other clear plastics are occasionally used. The plastic cases are made by a small group of suppliers common to the entire disc industry.

SPECIFIC RESPONSES TO USCPSC'S REQUEST FOR COMMENTS

The responses set forth below reflect the concerns of the home entertainment industry as the tracking label requirements under the CPSIA impact the members of the DEG.

Question: The conditions and circumstances that should be considered in determining whether it is "practicable" to have tracking labels on children's products and the extent to which different factors apply to including labels on packaging.

DEG'S RESPONSE:

At the outset, the DEG submits that the "practicability" analysis is clouded by the vagueness of the Act. In responding to these questions the DEG interprets the disc, the case, and the printed paper material as satisfying the "product" requirement. Any components that are discarded by the consumer, such as the shrink or "over wrap" of the case with the disc enclosed, as satisfying the "packaging requirement."

It is not practicable to put tracking labels or information on the discs themselves for at least three reasons.

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First, Home Entertainment Discs are each created through their own injection molding process and other than the alphanumeric identifiers of the metal master and stamper mold, the limitations of the molding process prevent unique physical serialized markings to be placed on each and every disc. Likewise, the disc molding process does not allow for a visual molded marking of the date of manufacture. Modifying the molding process to include additional information is not practicable.

The point here is that the molding process, described in the introduction section above, cannot allow for additional marking to take place during the actual manufacturing process. Notwithstanding this point, the DEG submits that the masters and molds that are used to make the discs do contain alpha numeric identifiers that are molded into the disc. These identifiers can be used to trace back the date/place/batch information of a disc. However, as discussed below, were it necessary to recall any Home Entertainment Disc product, that recall would be executed by "title" and UPC/ISBN/SKU information, and not by the identifiers on the disc.

Second, to affix a permanent adhesive label on a molded disc is not practicable because discs are designed to work optimally in a corresponding optical disc drive that was developed using an industry specification. Affixing a physical label to the disc itself would compromise its physical properties (such as balance, weight, etc.) and could lead to wide-scale issues in consumer playability.

Third, the discs are contained in a plastic case that is shrink or film-wrapped. On disc tracking information would not be accessible for the purpose of a recall without removing the shrink or film wrap, and thus taking apart the packaging (and thereby damaging the product for future resale prior to even determining if the product is subject to the recall). DEG submits that if the tracking information is to be used for product recalls, it would need to be on the outside packaging, since the discs are in a sealed case and not accessible without breaking down the product, thereby jeopardizing not only the intended product, but also many others in the search for the indicated discs.

When considering the labeling on the "packaging" versus the labeling on the "product," it is not practicable for our industry to affix a label on the packaging that contains tracking information which is consistent with the like information on the tracking label on the products and other sub-components used within that packaging. It would be extremely difficult to have a tracking label that accurately reflects all the corresponding tracking information of the product's components.

The DEG submits that other than the master and mold identifiers, title, and UPC information already included in Home Entertainment Discs, it is not practicable to add additional identical tracking information to either the packaging or the production for the following reasons.

First, it is common for product to be repackaged, or held in inventory long after the manufacturing process is completed. The owner of the inventory may elect to have all product retrieved, disassembled, and then reassembled into a new packaging configuration, with the possibly of new packaging components. In this situation, it would be impossible to re-label the packaging of the new product configuration with any of the cohort information that is called for by Section 103 of CPSIA.

Second, unsold product may be returned to the replicator/distributor from retail locations. This returned product may also be broken down to individual components and re-assembled. Once re-

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assembled, if re-labeled there would be no consistency or traceability from the new date of assembly to the manufacturing date of the included components.

Third, individual components, *i.e.*, the disc, or the case, the artwork, may be manufactured on a temporary basis by a sub-contractor for the replicator/distributor. Use of these components would make the correlation of the component's label information to the "final package" package assembly date impossible. (Please note that a distinction must be made between the "manufacturing date" of the disc, as opposed to the "manufacturing" date on the label of the package. The DEG is referring to the manufacturing date on the "final product package" as the "assembly date").

Further complicating matters would be bundled premium items, and the disclosure of the premium product's data on Home Entertainment Disc packaging, *i.e.*, what is the manufacture date of the "bundled" product?

For these reasons it is impracticable to have a tracking label that accurately reflects all the corresponding information of the product's components. When technical defects in disc products have resulted in a product recall, the industry practice has been to recall the entire SKU or UPC of the defective title. In the unlikely event that Home Entertainment Disc products were required to be recalled due to a CPSIA violation or otherwise, the recall would be done by title and SKU/UPC. Thus, Section 103 of CPSIA has no correlation whatsoever to the effectiveness of a Home Entertainment Disc recall.

Question: How permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information would affect:

- a. manufacturers' ability to ascertain the location and date of production of the product;
and
- b. other business considerations relevant to tracking label policy.

DEG'S RESPONSE:

a. The DEG responds that, without clarification from the CPSC on the points identified above in response to the first question, standardizing the nomenclature, appearance, and arrangement of labeling information will not help Home Entertainment Disc Manufacturers' ability to ascertain the location and production date of discs.

For example, without further CPSC clarification, standardized nomenclature, appearance, and arrangement of information would not eliminate the difficulties of labeling packaged product that is (i) the assembly of component elements made by different manufacturers, (ii) old components being reassembled with newly introduced components, or (iii) old components being repackaged in a new product configuration.

b. Standardizing the nomenclature, appearance, and arrangement of labeling information is necessary to make a difference in the challenges faced by the Home Entertainment Media

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Replication/Distribution Industry, but only if the above identified "practicability" labeling issues can be addressed in a manner that still satisfies the intent of the CPSIA.

Standardizing the nomenclature, appearance, and arrangement of labeling information would have to address the impracticability of placing tracking information onto a disc during the injection mold process.

The DEG submits that its members are open to implementing a standard tracking label policy for Home Entertainment Discs, but only if that policy recognizes the uniqueness of the Home Entertainment Disc industry and the manufacturing issues identified herein, which make the addition of any labeling information on discs and their packaging impractical.

Question: How consumers' ability to identify recalled items would be affected by permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information.

DEG'S RESPONSE:

With respect to the Home Entertainment Disc industry, the consumers' ability to identify recalled Home Entertainment Discs would not be affected with or without standardized nomenclature, appearance, or arrangement of information. As stated above, the Home Entertainment Disc industry would not conduct a recall based upon lot/batch/run information, but rather on UPC/SKU and title information. This information is already on all Home Entertainment Disc products and easily located by consumers and retailers. It is submitted that if the intent of the tracking label requirement is to facilitate the recall of product, the Home Entertainment Disc industry's use of UPC/SKU and title information meets the tracking label requirements of the CPSIA.

Question: How, and to what extent, the tracking information should be presented with some information in English or other languages, or whether presentation should be without the use of language (e.g., by alpha-numeric code with a reference key available to the public).

DEG'S RESPONSE:

As stated above, the Home Entertainment Disc Industry currently uses UPC, ISBN, numeric information, as well as SKU's, and unique product titles, and would use these identifiers to execute any product recall. From the DEG's perspective the use of an alpha-numeric code would be the most effective and efficient choice.

Question: Whether there would be a substantial benefit to consumers if products were to contain tracking information in electronically readable form (to include optical data and other forms requiring supplemental technology), and if so, in which cases this would be most beneficial and in which electronic form.

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DEG'S RESPONSE:

Even though it does not include an identifier to the replicator and/or assembler, and it does not give the date of manufacture, utilizing the already existing UPC code as a tracking method for CPSIA purposes would be most beneficial to the consumers since it is universally used by retailers and all the scanning equipment and software is already in place. Further, the unique SKU or Product Title would help as a quick reference as a consumer could have the UPC scanned at any retailer to determine the needed information. However, as stated above the industry practice on Disc recalls is to recall the entire inventory associated with the specific UPC. The numeric information on the UPC labels would be sufficient to advise the consumer of which product is subject to a recall.

Question: In cases where the product is privately labeled, by what means the manufacturer information should be made available by the seller to a consumer upon request, e.g.: electronically via Internet, or toll-free number, or at point of sale.

DEG'S RESPONSE:

In addition to the UPC codes, both the outside packaging of Home Entertainment Disc Product and the discs themselves, contain the name, logo, and copyright notice by which the private labeler is generally identifiable without recourse to any third party source of information, *i.e.*, Internet, toll-free number, or at point of sale. The DEG submits that any additional information that may be needed would be available via the Internet.

Question: The amount of lead time needed to comply with marking requirements if the format is prescribed.

DEG'S RESPONSE:

Assuming the use of the already existing UPC codes is not acceptable, the answer to this question cannot be given until the Home Entertainment Disc industry and the CPSC decide on how all of the above identified tracking labeling issues can be addressed. Assuming the practicability of these points is resolved, a lead time of 12-18 months would be needed, commencing after the CPSC prescribes the product and package marking requirements for the Home Entertainment Disc industry.

Question: Whether successful models for adequate tracking labels already exist in other jurisdictions.

DEG'S RESPONSE:

Other than the UPC model discussed above, research has not yielded any industry model that is similar to the tracking label issues identified by the Home Entertainment Disc industry.

SHELDON MAK ROSE & ANDERSON PC
Letter to Office of the Secretary
Consumer Product Safety Commission
April 24, 2009
Page 9

CONCLUSION

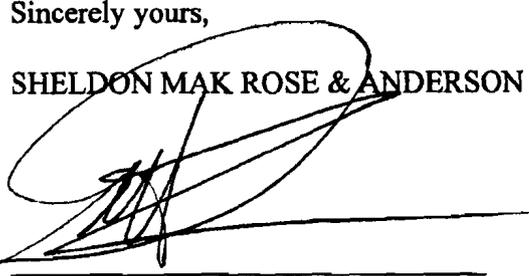
The DEG and its members are dedicated to making the safety of the public and our customers of the highest priority. Accordingly, the home entertainment industry understands the need for robust quality control to assure the safety of children's products, as well as the need to make effective recalls when required. The DEG's members, identified above, submit that their current recall procedures and tracking information will insure the safety of Home Entertainment Discs and provide for efficient recall of unsuitable products in the unlikely event that it is necessary.

It is important to note that on average Disc replicators produce four to five million discs from over a thousand different SKU's daily. Failing to allow the tracking/recall procedures proposed by these comments will create enormous logistical difficulties for the supply chain and increase financial burdens to both the public and the industry, with no commensurate public safety benefit.

Thank you for your consideration of the foregoing comments.

Sincerely yours,

SHELDON MAK ROSE & ANDERSON PC

By: 

Daniel J. Coplan

DJC/tlc

Stevenson, Todd

From: Daniel Coplan [daniel.coplan@smralaw.com]
Sent: Friday, April 24, 2009 6:04 PM
To: Tracking Labels
Cc: Amy Smith; Lyndsey Schaefer; Robert Rose; Trina Chamberlain
Subject: Tracking Labels
Attachments: Letter to CPSC re Tracking Labels (DEG 19255.53) 04-24-09.pdf

Re: Tracking Labels
SMRA Matter No. 19255.53

Dear Commission Staff:

We represent DEG: The Digital Entertainment Group ("DEG").

On behalf of the DEG we submit the attached PDF which contains the DEG's responses to the Commission's Request for Comments referenced above.

If you have any questions or comments, or need additional information please feel free to contact us. Please confirm your receipt of this email and the attachment.

Thank you for your consideration of the attached comments.

Sincerely yours,
Sheldon Mak Rose & Anderson PC

Daniel J. Coplan



Sheldon Mak Rose & Anderson PC
100 E. Corson Street
Third Floor
Pasadena, CA 91103-3842
626-796-4000 Fax 626-795-6321

daniel.coplan@usip.com

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prohibited. If you have received this communication in error, please notify us immediately via email at daniel.coplan@usip.com or by telephone at (626) 796-4000. Thank you.

2009-0010-0086

Stevenson, Todd

From: Katie Raetz [burdyflyaway@hotmail.com]
Sent: Friday, April 24, 2009 11:48 AM
To: Tracking Labels

I request that the CPSC adopt rules that allow for manufactures to have the flexibility to comply with labeling based upon their unique production methods.

I am a small company that uses organic cotton to produce childrens clothing, I do runs of about 15 items per style at a time. To label my already safe product that is sold in specialty stores is very time consuming, please think of us small businesses.

Labeling compliance for US-based crafters and related "cottage industries" that produce unique or small batch items should be completely voluntary.

Katie Meier-Raetz
burdyflyaway.etsy.com

Rediscover Hotmail®: Now available on your iPhone or BlackBerry [Check it out.](#)

2009-0010-0087



Travel Goods Association
5 Vaughn Drive, Suite 105 | Princeton, NJ 08540
PH: 609-720-1200 | FAX: 609-720-0620 | www.travel-goods.org

April 24, 2009

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland, 20814
trackinglabels@cpsc.gov

Dear Mr. Stevenson,

On behalf of the Travel Goods Association (TGA) – the national association of the manufacturers, distributors and retailers of backpacks, luggage, leather goods, business and travel accessories, business and computer cases, handbags and other products for people who travel – I am writing with regards to the request for comments on Section 103 of the *Consumer Product Safety Improvement Act* (CPSIA), Tracking Labels for Children’s Products.

On March 24, 2009, we joined with a broad swath of the business community in requesting an *immediate*, year-long delay of enforcement of the tracking label requirement. *We hereby renew that request.*

Such an action is necessary so the Consumer Product Safety Commission (CPSC) can use the time between now and August 14, 2009 (the date the tracking label requirement is scheduled to take effect) to work with industry, consumer groups, and other stakeholders to develop and issue guidance relating to these new requirements. The following year will be used to educate companies on proper compliance with Section 103 and provide companies the opportunity to integrate this labeling requirement with their supply chain. We strongly believe this delay of enforcement of the tracking label requirement is imperative to the proper implementation of this provision. Indeed, the tracking label requirement has already caused significant confusion and stakeholders have very different interpretations on how to best comply. Taking action now to approve and announce a delay will provide enough time for the product safety community – including those in the business community who will be tasked with incorporating these new rules into their supply chains – to develop, understand and integrate these new regulations.

The overall purpose of the Section 103 is to enhance recall effectiveness. The tracking label achieves this objective by providing information to help a manufacturer target the problem and initiate an effective corrective action program and help a consumer determine whether their product is subject to the recall. As the Senate Report to the CPSIA (S. Rept. 110-265) explained, Section 103 addresses “the necessity to identify and remove these products from the stream of commerce as soon as possible after the notice of a voluntary or mandatory recall.” Ideally, the manufacturer is the best judge on what information would be needed to most quickly identify which products are subject to a recall. After all, it is in the manufacturer’s interest to limit the impact of the recall as much as possible. Therefore, we believe the CPSC should issue flexible implementation guidance that explicitly accomplishes the purpose of Section 103 while

accommodating the wide variety of products and production processes covered by the new tracking label requirement.

We elaborate on this concept below in our answers to the 8 questions that were posed in the request for comment.

1. The conditions and circumstances that should be considered in determining whether it is “practicable” to have tracking labels on children’s products and the extent to which different factors apply to including labels on packaging.

In considering products that are not “practicably” labeled, the CPSC should take into account exemptions from current labeling requirements like the Federal Trade Commission’s (FTC) Textile and Wool Act and the Customs and Border Protection’s (CBP) Country of Origin Marking requirements. These exemptions cover both products that may not be practicably labeled as well as situations where labeling may not be appropriate.

The Textile and Wool Act states that the product should be labeled only once it is ready to be sold to consumers. Similarly, we believe the intermediary manufacturers and suppliers cannot “practicably” label the garment and the tracking label requirement should apply only to the final manufacturer. Keeping in mind that the intent of Section 103 is to help a consumer in the event of a recall, a product hazard can be introduced at any stage of production. The tracking label serves as a link back to that final stage of production where, through internal tracking systems, a company can further deduce origins of specific components, a process that is embedded into the general conformity certificate that is required by Section 102 of the CPSIA.

We believe the practicability of labeling the product should also reflect CBP’s Country of Origin Marking requirement exemptions for products that are too small to be labeled and for products that are cannot be labeled due to the function or design. Some examples include, but are not limited to, luggage locks, PDA cases and I-Pod cases.

Finally, in determining the practicability of labeling a product, the CPSC should also consider outside factors that eliminate an apparent need for a tracking label as a tool to aid recalls. For example, Companies that make a small number and variety of products, only source from one or two factories, and/or sell exclusively to one or two retailers should be exempt from the tracking label requirements. Tracing the required information is fairly easy in these situations, which obviates the need for tracking labels. In these cases, the characteristics of the product itself, or the location where it is sold, already provide enough data to enable the consumer to “ascertain” the statutorily required information. In fact, Congress appears to have recognized this concept by including the term “other identifying characteristics.”

The CPSC should also permit companies the flexibility to not include tracking label information on the disposable packaging. Although Section 103 requires a “permanent” label be placed on the packaging, it makes little sense to include such information when the packaging is disposed of shortly after the product is purchased. Such packaging might include (but is not limited to) plastic bags, hang tags and PDA case boxes. The purpose of the label is to assist the consumer in the case of a recall days, months, or years after the product is purchased. It plays no role at the point of sale. Hence, there seems to be little rationale for including this information on packaging – which aids the consumer at the point of sale but which is discarded shortly

thereafter. In contrast, if the product is sold with a container that is meant to permanently store the products, labeling the container would be appropriate if practicable.

2. (a) How permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information would affect: Manufacturer's ability to ascertain the location and date of production of the product; and

Section 103 does not require standardization of the tracking label and standardization is not necessary to accomplish the new requirement's purpose. Implementing a "one size fits all" labeling program across industries will not work as a label for a bicycle will be extremely different from a label for piece of luggage. Furthermore, production lines vary immensely even within industries. While one company may organize production by batches, another company may use purchase orders (PO) instead. A large company with many production lines may require both a date of manufacture and the cohort information while a small company with only one production line may just need to include the date to satisfy both requirements. As a result, companies will take different approaches to tracking products and we believe it is extremely important the CPSC remain flexible and allow manufacturers to adopt a tracking label system that works best for their company.

We would also like to note that many manufacturers have already begun sourcing and applying labels for products that will be manufactured on or after August 14, 2009. Standardizing the tracking label would unfairly penalize manufacturers who were doing their due diligence to comply with the ambiguous new regulation. While we welcome additional guidance and direction from the CPSC, additional requirements governing the content, size, appearance etc. of the tracking label would be costly to manufacturers and may ultimately hamper a company from effectively tracking the product.

2. (b)How permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information would affect: Other business considerations relevant to tracking label policy

The CPSC needs to provide guidance on the terms "location," "date of production," and "cohort," and clarify the definition of "manufacturer." In this regard, we have several recommendations.

Companies should be able to satisfy the statutory requirement for "location of manufacture" by including the country of origin. Providing any further information (province, city, etc.) does not help the consumer in the event of a recall and risks disclosure of information – such as the name or street address of an individual factory – that is business proprietary. CPSC recognized and addressed such a concern when issuing regulations on the General Conformity Certificate (GCC). We believe a similar approach is required here.

For "date of production," the CPSC should indicate that companies have the ability to refer to a range of potential production dates. Manufacturing is a fluid process that rarely occurs on a single date. Processes often span a period of time. While companies may want to include more detail and specific date information – which they may find to their advantage in efforts to help narrow the number of products that might be subject to a potential recall – it will be impossible

to provide that kind of precision on a cost effective basis in many cases. Companies are already exploring a range of options, including the use of codes or incorporating date information into PO or batch numbers, to help meet this requirement. The CPSC regulations should envision a flexible approach by companies to accommodate these many production scenarios and internal tracking processes.

With respect to “cohort,” it is clear that the CPSIA envisions a flexible approach to accommodate the many different kinds of production organization, internal databases and tracking systems that companies maintain. CPSC guidance should reflect the flexibility written into the statute in interpreting “cohort” and related terms (such as “batch, run number, or other identifying characteristics”). Moreover, the CPSC should confirm that provision of the cohort or similar information, does not require companies to disclose information they deem business confidential.

With regards to the definition of “manufacturer,” we urge the CPSC to rely also on the approach it took with the GCC, when it limited the application to the U.S. manufacturer or U.S. importer. Section 103 uses the word “manufacturer” twice – “...that will enable the ‘manufacturer’ to ascertain...” required information and “...the ultimate purchaser to ascertain ‘manufacturer’ or private labeler...” In either case, defining the term “manufacturer” to apply to the U.S. manufacturer or U.S. importer would eliminate uncertainty, remove business confidentiality concerns, and confine the requirement to the entity that is in the best position to have the required information. In support of this, we note that the Consumer Product Safety Improvement Act (CPSA) defines the manufacturer as “any person who manufactures or imports a consumer product.”

3. How consumers’ ability to identify recalled items would be affected by permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information.

Standardizing nomenclature, appearance and arrangement of information on the tracking label is not necessary to allow consumers or manufacturers to determine whether a product is covered by a recall. In initiating a recall, a manufacturer will include the relevant tracking information or other identifying characteristics on the recall notice. Consumers would then be able to compare the information provided with the tracking label itself.

4. How, and to what extent, the tracking information should be presented with some information in English or other languages, or whether presentation should be without the use of language (e.g., by alpha-numeric code with a reference key available to the public).

Section 103 envisions “distinguishing marks” that will enable the manufacturer or ultimate purchaser to ascertain the required tracking information. The language does not specify the content of the marks or even that the marks should be in English. Instead, the marks should supply the manufacturer and consumer with enough information so that they can appropriately initiate and respond to a recall. The statutory language gives manufacturers flexibility to use marks that suit their internal databases systems and tracking processes. Furthermore, for some very small products, a manufacturer may have to use specific codes to get the most amount of information on a small label.

5. Whether there would be a substantial benefit to consumers if products were to contain tracking information in electronically readable form (to include optical data and other forms requiring supplemental technology), and if so, in which cases would be most beneficial and in which electronic form.

Section 103 does not require that manufacturers maintain an online database to supplement the tracking label. Because the main purpose of the tracking label is to make recalls more effective, a database for day-to-day reference is unnecessary. As mentioned above, if a recall occurs, a manufacturer would be able to supply the necessary description and tracking label information for a consumer to determine, based on the product's mark, whether the product is covered in the recall. How a manufacturer organizes tracking information internally should be a business and not a regulatory decision.

6. In cases where the product is privately labeled, by what means the manufacturer information should be made available by the seller to a consumer upon request, e.g.: Electronically via Internet, or toll-free number, or at point of sale.

In the event of a recall of a privately labeled product, there is neither need nor a statutory requirement to provide manufacturer information. Section 103 uses the phrase "manufacturer or private labeler" reflecting an explicit Congressional direction that private labelers may suffice in such circumstances. Moreover, in such circumstances, provision of manufacturer information may only confuse consumers by providing too much information on how to take action on a recall. Finally, we note that manufacturer information — such as the names or addresses of factories — may be deemed business proprietary information and consumer access to such information does not serve the purpose of the tracking label requirement.

7. The amount of lead time needed to comply with marking requirements if the format is prescribed.

As mentioned in our comments submitted on March 26, the August 14 deadline does not give manufacturers enough time to react to any new guidance that may be issued by the CPSC. Apparel and footwear are manufactured many months in advance and components (like labels) are sourced even earlier. Even if the CPSC were to issue guidance today, companies would have only 3 ½ months to learn about and integrate the new requirements into their supply chains and undo any non-compliant labeling. This is simply not enough time. As a result, any further restrictions or changes to the tracking label requirement will be extremely damaging to manufacturers who have already made costly adjustments to their labeling schemes and internal tracking systems. Instead of hastily implementing a tracking label system, the CPSC should delay enforcement for a year to give all stakeholders time to work out an effective, yet flexible, program.

8. Whether successful models for adequate tracking labels already exist in other jurisdictions.

While we are not aware of similar tracking label programs that would satisfy the requirements and purpose of Section 103, we believe the CPSC should consider how the GCC system connects to tracking labels. The GCC requirement inherently requires companies to be able to track their products from sourcing to selling. If a product defect is discovered, a company should be able to trace certifications and test reports for all components back to the source of the problem. We

expect that, over time, the GCC system will play a big part in enabling a manufacturer to initiate an effective recall and corrective action program. Because the GCC complements a company's ability to track products and because the CPSC stayed enforcement of GCC for most standards, we believe the CPSC should likewise stay enforcement of tracking labels to give companies an opportunity to align how these processes will work.

Thank you for your time and consideration in this matter. Please contact Nate Herman on my staff at 703-797-9062 or nate@travel-goods.org if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink that reads "Michele Marini Pittenger". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

Michele Marini Pittenger
President

Stevenson, Todd

From: Nate Herman [nate@travel-goods.org]
Sent: Friday, April 24, 2009 3:29 PM
To: Tracking Labels
Subject: CPSIA Tracking Label Comments from TGA
Attachments: tgatrackinglabelcomments090424.pdf

To Whom It May Concern:

Please find attached comments submitted on behalf of Michele Marini Pittenger, President of the Travel Goods Association (TGA), in response to the CPSC's February 26, 2009 *Federal Register* notice requesting comments regarding the implementation of the tracking label provision (Section 103) of the *Consumer Product Safety Improvement Act* (CPSIA).

Thank you for your time and consideration in this matter. Please contact me if you have any questions or would like additional information.

Sincerely,

Nate Herman
Director of Government Relations
Travel Goods Association (TGA)
1601 N. Kent Street, Suite 1200
Arlington, VA 22209
P: 703-797-9062
F: 703-522-6741
E: nate@travel-goods.org
W: <http://www.travel-goods.org>

2009-0010-0088



April 24, 2009

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland, 20814
trackinglabels@cpsc.gov

Dear Mr. Stevenson,

On behalf of the Fashion Accessories Shippers Association, Inc. (FASA) – the national association of the fashion accessories – handbag, belt, small leather goods, glove, umbrella, luggage accessory, footwear and apparel – businesses. – I am writing with regards to the request for comments on Section 103 of the Consumer Product Safety Improvement Act (CPSIA), Tracking Labels for Children’s Products.

On March 24, 2009, we joined with a broad swath of the business community in requesting an *immediate*, year-long delay of enforcement of the tracking label requirement. *We hereby renew that request.*

Such an action is necessary so the Consumer Product Safety Commission (CPSC) can use the time between now and August 14, 2009 (the date the tracking label requirement is scheduled to take effect) to work with industry, consumer groups, and other stakeholders to develop and issue guidance relating to these new requirements. The following year will be used to educate companies on proper compliance with Section 103 and provide companies the opportunity to integrate this labeling requirement with their supply chain. We strongly believe this delay of enforcement of the tracking label requirement is imperative to the proper implementation of this provision. Indeed, the tracking label requirement has already caused significant confusion and stakeholders have very different interpretations on how to best comply. Taking action now to approve and announce a delay will provide enough time for the product safety community – including those in the business community who will be tasked with incorporating these new rules into their supply chains – to develop, understand and integrate these new regulations.

The overall purpose of the Section 103 is to enhance recall effectiveness. The tracking label achieves this objective by providing information to help a manufacturer target the problem and initiate an effective corrective action program and help a consumer determine whether their product is subject to the recall. As the Senate Report to the CPSIA (S. Rept. 110-265) explained, Section 103 addresses “the necessity to identify and remove these products from the stream of commerce as soon as possible after the notice of a voluntary or mandatory recall.” Ideally, the manufacturer is the best judge on what information would be needed to most quickly identify which products are subject to a recall. After all, it is in the manufacturer’s interest to limit the impact of the recall as much as possible. Therefore, we believe the CPSC should issue flexible

implementation guidance that explicitly accomplishes the purpose of Section 103 while accommodating the wide variety of products and production processes covered by the new tracking label requirement.

We elaborate on this concept below in our answers to the 8 questions that were posed in the request for comment.

1. The conditions and circumstances that should be considered in determining whether it is “practicable” to have tracking labels on children’s products and the extent to which different factors apply to including labels on packaging.

In considering products that are not “practicably” labeled, the CPSC should take into account exemptions from current labeling requirements like the Federal Trade Commission’s (FTC) Textile and Wool Act and the Customs and Border Protection’s (CBP) Country of Origin Marking requirements. These exemptions cover both products that may not be practicably labeled as well as situations where labeling may not be appropriate.

The Textile and Wool Act states that the product should be labeled only once it is ready to be sold to consumers. Similarly, we believe the intermediary manufacturers and suppliers cannot “practicably” label the garment and the tracking label requirement should apply only to the final manufacturer. Keeping in mind that the intent of Section 103 is to help a consumer in the event of a recall, a product hazard can be introduced at any stage of production. The tracking label serves as a link back to that final stage of production where, through internal tracking systems, a company can further deduce origins of specific components, a process that is embedded into the general conformity certificate that is required by Section 102 of the CPSIA.

We believe the practicability of labeling the product should also reflect CBP’s Country of Origin Marking requirement exemptions for products that are too small to be labeled and for products that are cannot be labeled due to the function or design. Some examples include, but are not limited to, socks, boys’ ties, reversible hats, luggage locks, PDA cases, children’s jewelry or hair accessories.

The CPSC must also consider products that are made up of multiple components – for example a pair of shoes or a girl’s two piece bathing suit. These products should only require tracking label information on one part of the set and the manufacturer should be allowed the flexibility to determine where the tracking label would be added. In the case of children’s footwear, it makes sense to only require a tracking label on one of the pair of shoes as the right shoe does not function without the left. Therefore, should one shoe be lost, a child cannot continue to use the product. We expect the CPSC would extend this rational past footwear to products that, while sold in sets, may still be used if one of the components is lost (like a two piece swimsuit). The statute reads that the “manufacturer of a children’s product shall place permanent, distinguishing marks on the *product* and its packaging.” One product may include multiple parts. As long as the components are sold as a single product – a single tracking label should suffice.

Finally, in determining the practicability of labeling a product, the CPSC should also consider outside factors that eliminate an apparent need for a tracking label as a tool to aid recalls. For

example, Companies that make a small number and variety of products, only source from one or two factories, and/or sell exclusively to one or two retailers should be exempt from the tracking label requirements. Tracing the required information is fairly easy in these situations, which obviates the need for tracking labels. In these cases, the characteristics of the product itself, or the location where it is sold, already provide enough data to enable the consumer to “ascertain” the statutorily required information. In fact, Congress appears to have recognized this concept by including the term “other identifying characteristics.” Furthermore, products that are low risk and already exempt from labeling requirements (like socks, shoe laces, boys’ neck ties, hats, diaper liners, arm bands etc.) should be exempt from the tracking label requirements as well.

The CPSC should also permit companies the flexibility to not include tracking label information on the disposable packaging. Although Section 103 requires a “permanent” label be placed on the packaging, it makes little sense to include such information when the packaging is disposed of shortly after the product is purchased. Such packaging might include (but is not limited to) plastic bags, hang tags and shoe boxes. The purpose of the label is to assist the consumer in the case of a recall days, months, or years after the product is purchased. It plays no role at the point of sale. Hence, there seems to be little rationale for including this information on packaging – which aids the consumer at the point of sale but which is discarded shortly thereafter. In contrast, if the product is sold with a container that is meant to permanently store the products, labeling the container would be appropriate if practicable.

2. **(a) How permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information would affect: Manufacturer’s ability to ascertain the location and date of production of the product; and**

Section 103 does not require standardization of the tracking label and standardization is not necessary to accomplish the new requirement’s purpose. Implementing a “one size fits all” labeling program across industries will not work as a label for a bicycle will be extremely different from a label for handbag. Furthermore, production lines vary immensely even within industries. While one company may organize production by batches, another company may use purchase orders (PO) instead. A large company with many production lines may require both a date of manufacture and the cohort information while a small company with only one production line may just need to include the date to satisfy both requirements. As a result, companies will take different approaches to tracking products and we believe it is extremely important the CPSC remain flexible and allow manufacturers to adopt a tracking label system that works best for their company.

We would also like to note that many manufacturers have already begun sourcing and applying labels for products that will be manufactured on or after August 14, 2009. Standardizing the tracking label would unfairly penalize manufacturers who were doing their due diligence to comply with the ambiguous new regulation. While we welcome additional guidance and direction from the CPSC, additional requirements governing the content, size, appearance etc. of the tracking label would be costly to manufacturers and may ultimately hamper a company from effectively tracking the product.

2. (b)How permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information would affect: Other business considerations relevant to tracking label policy

The CPSC needs to provide guidance on the terms “location,” “date of production,” and “cohort,” and clarify the definition of “manufacturer.” In this regard, we have several recommendations.

Companies should be able to satisfy the statutory requirement for “location of manufacture” by including the country of origin. Providing any further information (province, city, etc.) does not help the consumer in the event of a recall and risks disclosure of information – such as the name or street address of an individual factory – that is business proprietary. CPSC recognized and addressed such a concern when issuing regulations on the General Conformity Certificate (GCC). We believe a similar approach is required here.

For “date of production,” the CPSC should indicate that companies have the ability to refer to a range of potential production dates. Manufacturing is a fluid process that rarely occurs on a single date. Processes often span a period of time. While companies may want to include more detail and specific date information – which they may find to their advantage in efforts to help narrow the number of products that might be subject to a potential recall – it will be impossible to provide that kind of precision on a cost effective basis in many cases. Companies are already exploring a range of options, including the use of codes or incorporating date information into PO or batch numbers, to help meet this requirement. The CPSC regulations should envision a flexible approach by companies to accommodate these many production scenarios and internal tracking processes.

With respect to “cohort,” it is clear that the CPSIA envisions a flexible approach to accommodate the many different kinds of production organization, internal databases and tracking systems that companies maintain. CPSC guidance should reflect the flexibility written into the statute in interpreting “cohort” and related terms (such as “batch, run number, or other identifying characteristics”). Moreover, the CPSC should confirm that provision of the cohort or similar information, does not require companies to disclose information they deem business confidential.

With regards to the definition of “manufacturer,” we urge the CPSC to rely also on the approach it took with the GCC, when it limited the application to the U.S. manufacturer or U.S. importer. Section 103 uses the word “manufacturer” twice – “...that will enable the ‘manufacturer’ to ascertain...” required information and “...the ultimate purchaser to ascertain ‘manufacturer’ or private labeler...” In either case, defining the term “manufacturer” to apply to the U.S. manufacturer or U.S. importer would eliminate uncertainty, remove business confidentiality concerns, and confine the requirement to the entity that is in the best position to have the required information. In support of this, we note that the Consumer Product Safety Improvement Act (CPSA) defines the manufacturer as “any person who manufactures or imports a consumer product.”

3. How consumers' ability to identify recalled items would be affected by permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information.

Standardizing nomenclature, appearance and arrangement of information on the tracking label is not necessary to allow consumers or manufacturers to determine whether a product is covered by a recall. In initiating a recall, a manufacturer will include the relevant tracking information or other identifying characteristics on the recall notice. Consumers would then be able to compare the information provided with the tracking label itself.

4. How, and to what extent, the tracking information should be presented with some information in English or other languages, or whether presentation should be without the use of language (e.g., by alpha-numeric code with a reference key available to the public).

Section 103 envisions "distinguishing marks" that will enable the manufacturer or ultimate purchaser to ascertain the required tracking information. The language does not specify the content of the marks or even that the marks should be in English. Instead, the marks should supply the manufacturer and consumer with enough information so that they can appropriately initiate and respond to a recall. The statutory language gives manufacturers flexibility to use marks that suit their internal databases systems and tracking processes. Furthermore, for some very small products, a manufacturer may have to use specific codes to get the most amount of information on a small label.

5. Whether there would be a substantial benefit to consumers if products were to contain tracking information in electronically readable form (to include optical data and other forms requiring supplemental technology), and if so, in which cases would be most beneficial and in which electronic form.

Section 103 does not require that manufacturers maintain an online database to supplement the tracking label. Because the main purpose of the tracking label is to make recalls more effective, a database for day-to-day reference is unnecessary. As mentioned above, if a recall occurs, a manufacturer would be able to supply the necessary description and tracking label information for a consumer to determine, based on the product's mark, whether the product is covered in the recall. How a manufacturer organizes tracking information internally should be a business and not a regulatory decision.

6. In cases where the product is privately labeled, by what means the manufacturer information should be made available by the seller to a consumer upon request, e.g.: Electronically via Internet, or toll-free number, or at point of sale.

In the event of a recall of a privately labeled product, there is neither need nor a statutory requirement to provide manufacturer information. Section 103 uses the phrase "manufacturer or private labeler" reflecting an explicit Congressional direction that private labelers may suffice in such circumstances. Moreover, in such circumstances, provision of manufacturer information may only confuse consumers by providing too much information on how to take action on a

recall. Finally, we note that manufacturer information — such as the names or addresses of factories — may be deemed business proprietary information and consumer access to such information does not serve the purpose of the tracking label requirement.

7. The amount of lead time needed to comply with marking requirements if the format is prescribed.

As mentioned in our comments submitted on March 26, the August 14 deadline does not give manufacturers enough time to react to any new guidance that may be issued by the CPSC. Apparel and footwear are manufactured many months in advance and components (like labels) are sourced even earlier. Even if the CPSC were to issue guidance today, companies would have only 3 ½ months to learn about and integrate the new requirements into their supply chains and undo any non-compliant labeling. This is simply not enough time. As a result, any further restrictions or changes to the tracking label requirement will be extremely damaging to manufacturers who have already made costly adjustments to their labeling schemes and internal tracking systems. Instead of hastily implementing a tracking label system, the CPSC should delay enforcement for a year to give all stakeholders time to work out an effective, yet flexible, program.

8. Whether successful models for adequate tracking labels already exist in other jurisdictions.

While we are not aware of similar tracking label programs that would satisfy the requirements and purpose of Section 103, we believe the CPSC should consider how the GCC system connects to tracking labels. The GCC requirement inherently requires companies to be able to track their products from sourcing to selling. If a product defect is discovered, a company should be able to trace certifications and test reports for all components back to the source of the problem. We expect that, over time, the GCC system will play a big part in enabling a manufacturer to initiate an effective recall and corrective action program. Because the GCC complements a company's ability to track products and because the CPSC stayed enforcement of GCC for most standards, we believe the CPSC should likewise stay enforcement of tracking labels to give companies an opportunity to align how these processes will work.

Should you require additional information on this submission or in connection with these industries, please contact Nate Herman at 703-797-9062 or via email at nherman@geminishippers.com.

Sincerely,



Sara Mayes
President

Stevenson, Todd

From: Nate Herman [nherman@geminishippers.com]
Sent: Friday, April 24, 2009 3:30 PM
To: Tracking Labels
Subject: CPSIA Tracking Label Comments from FASA
Attachments: fasatrackinglabelcomments090424.pdf

To Whom It May Concern:

Please find attached comments submitted on behalf of Sara Mayes, President of the Fashion Accessories Shippers Association (FASA), in response to the CPSC's February 26, 2009 *Federal Register* notice requesting comments regarding the implementation of the tracking label provision (Section 103) of the *Consumer Product Safety Improvement Act* (CPSIA).

Thank you for your time and consideration in this matter. Please contact me if you have any questions or would like additional information.

Sincerely,

Nate Herman
Director of Government Relations
Fashion Accessories Shippers Association (FASA)
1601 N. Kent Street, Suite 1200
Arlington, VA 22209
P: 703-797-9062
F: 703-522-6741
E: nherman@geminishippers.com
W: <http://www.accessoryweb.com>

Stevenson, Todd

2009-0010-0089

From: Newton, John-Paul [John-Paul.Newton@smilemakers.com]
Sent: Friday, April 24, 2009 3:34 PM
To: Tracking Labels
Subject: Re: Tracking Labels

Re: The request for comments on Section 103 of the CPSIA, Tracking Labels for Children's Products, effective August 14, 2009.

The following is submitted in response to the invitation from the CPSC for comments on the implementation of Section 103 of the CPSIA, Tracking Labels for Children's Products, on the behalf of SmileMakers, a specialty toy supplier located in Spartanburg, South Carolina.

SmileMakers has been a supplier of promotional products, stickers and small novelty toys for dentists, doctors, teachers, restaurants and banks, as well as the everyday consumer, for over thirty years. The company grew out of Galloway Promotions, an independent mom-and-pop style supplier of promotional products to local businesses, founded in 1958 and operated from the basement of the home of Leon Galloway, Jr.

Our business model is built on customer satisfaction, with the customer standing at the front line of every decision made. A 100% guarantee is placed on every product sold, with supplementary replacement units sent to the customer without cost, contract or return of original purchase required for any product that doesn't meet top quality standards. This policy is integral to SmileMakers' increasing growth and ongoing success. As part of the company's continuing effort to ensure quality and customer satisfaction, SmileMakers began a diligent safety compliance program in early 2003, testing all products for compliance with safety standards before such testing was federally mandated. SmileMakers has made an earnest effort to stay abreast of all safety developments and new legislation and strives to only carry the best products, always with customer safety and satisfaction in mind.

The CPSIA has led manufacturers, vendors, importers and retailers to exponentially increase the resources devoted to product compliance, and has posed no small number of practical problems in execution. SmileMakers deals primarily in small and inexpensive items, sold mostly in bulk. On average, the company's cost per item is approximately \$0.25 or less. Some of these items are so small as to make impressing any kind of label into the material totally unfeasible. For instance, SmileMakers carries a variety of imitation jewelry items that would be impossible to label with all the information the CPSC is asking to have placed directly on the product itself.

SmileMakers seeks out manufacturers that can produce the items selected for its inventory at high quality, low cost and tailored to federally approved safety standards. Nothing comes through the warehouse door without a report on file proving it's viability as a safe, quality product. All inventory items are produced from molds designed by a toy manufacturer and purchased on request from a mold manufacturer. For every new toy designed and approved for the SmileMakers catalog, a new mold must be made. This is an expensive step in the process. Molds sourced for some of the items in the catalog have been quoted at up to \$20,000 to produce. Placing a permanent label on a toy requires that the label be part of the construction of the mold. The implementation of tracking labels permanently rendered in the body of a toy and specific to each production run would mean new molds would have to be created for every purchase order placed with a toy manufacturer, adding up to thousands of dollars a month in added cost, the expense of restocking the inventory notwithstanding. SmileMakers carries four thousand different items. This expenditure would be devastating and is an expense no company, save a few of the giants, can afford to bear in any economic climate.

The placement of a permanently impressed label, revised from order to order, is wholly impractical and lacks any basis in the reality of the industry's machinery. As costs increase, so would production times be drawn out several times over. SmileMakers and other companies like it provide a service to hundreds of businesses in various industries at low cost. The current economic climate is leading businesses all over the nation to institute mass lay-offs, often reducing their staff to the bare minimum needed to maintain their operation. Some companies, despite all their best efforts, still crumble. Trying to balance meeting the CPSIA's requirements with regard to tracking labels while still maintaining low cost, surviving the recession as a luxury supplier and staying dynamic as a business will be virtually impossible. We suspect the consequences would not be limited to a few lower-tier vendors, but could have dire effects for the whole industry, including foreign manufacturers that rely heavily on American retailers. Toys are not a necessity, they are a luxury. Necessity is the operative word in today's economy. Businesses offering mostly luxury items are folding every day. If the proposed method of tracking products goes into effect without due exploration of its repercussions, particularly in relation to the present state of the global economy, SmileMakers and like companies all over the nation and possibly other parts of the world could disappear in just a few months, eliminating highly valued diversity, convenience and service – values prized by both the consumer and the capitalist economy – as well as effectively smothering another source of economic stimulation.

The people at SmileMakers would like to emphasize their eagerness to cooperate with the CPSC and other manufacturers and retailers in devising a practical way to execute the details of CPSIA and continuing to ensure the safety of the nation's children. At this time, labels containing the manufacturing and cohort information proposed by the CPSC are being placed on the packaging of every product in inventory. We believe this is a practical solution to the problems inherent in the labeling requirements as we must interpret them in the absence of further guidance from the CPSC, and ask the CPSC to consider it as such.

We want to stress our support of the CPSC and its decisions. We have been proactive in the past with safety standards and we continue to strive for the same presently. The company is fully compliant with and supportive of the new limits on lead and phthalates, as well as the updates to F963, and clearly comprehends the need for accountability and traceability where children's products are concerned. We are eager to do everything within means to comply with the regulations put forward by the CPSC and other federal agencies. We have designated wholly unanticipated portions of our budget to meet the new standards, handicapping our physical expansion as a result. We continue to issue GCCs for every product on every PO even during the Stay of Enforcement as a sign of our dedication to this cause.

Despite the skyrocketing cost of testing inventory, the company has remained stable while others have teetered, but only barely. Resources are stretched thin, and the introduction of permanent tracking labels would easily mean the closing of SmileMakers and countless other companies. The SmileMakers staff, among many, must confront the peculiarities of the new standards head-on, and are thus qualified to respectfully request on behalf of all independent toy vendors and retailers that the CPSC give serious consideration to the problems listed in this comment as well as all other comments regarding this piece of legislation. The businesses that make up this industry are a valuable asset to our economy and are in grave danger of being shut out by requirements that test the limits of reason. We would like to thank the CPSC for portioning valuable time to review the comments and showing an interest in keeping both our children and our industry healthy.

Respectfully,

John-Paul Newton
Head of Product Compliance
SmileMakers

PO Box 2543
Spartanburg, SC 29304
John-Paul.Newton@SmileMakers.com
Phone: 864-583-2405 Ext. 6201
Fax: 864-327-1703

Stevenson, Todd

2009-0010-0090

From: Tara Chatterton [shop@generationsboutique.com]
Sent: Friday, April 24, 2009 5:22 PM
To: Tracking Labels
Subject: Comment on Labeling

Hi,

I request that the CPSC adopt rules that allow for manufactures to have the flexibility to comply with labeling based upon their unique production methods. Labeling compliance for US-based crafters and related "cottage industries" that produce unique or small batch items should be completely voluntary. It's unrealistic for smaller companies to comply and live up to the same standards set for larger manufacturers, who can easily pay these higher costs.

Thanks for your time,

Tara Chatterton

Tara Chatterton :: Owner

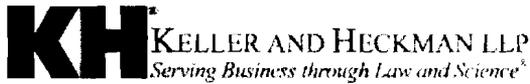
Mamababy
(GENERATIONS)

4029 SE Hawthorne Blvd.
Portland, OR 97214
503.233.8130 ph/fx
mamababyshop.com
shop@mamababyshop.com

Store Hours:

Monday - Saturday, 10 - 5:30

2009-0010-0091



1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
tel. 202.434.4100
fax 202.434.4646

Writer's Direct Access
Sheila A. Millar
(202) 434-4143
Millar@khlaw.com

April 24, 2009

Via Electronic Mail

TrackingLabels@cpsc.gov

Todd A. Stevenson
Director, Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East-West Highway
Room 502
Bethesda, MD 20814

Re: Tracking Labels: Notice of Inquiry and Request for Comments and Information on Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act

Dear Mr. Stevenson:

On behalf of The Fashion Jewelry Trade Association ("FJTA"),¹ we are pleased to submit these comments in response to the above-referenced Notice of Inquiry and Request for Comments and Information on Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act. ("CSPIA").² Tracking labels are only one of the suite of requirements set forth in the CPSIA. Tracking labels are in addition to certificates of conformity and other obligations that have turned out to be more difficult to implement than originally thought. FJTA notes that the obligation to include tracking label on products and packaging applies only where such labels are "practicable." We believe there are three principal criteria that affect the question of "practicability": size, aesthetics and cost. We urge the Commission to issue early guidance on circumstances where it is not practicable to include a tracking label on products and/or packaging. Further, considerable lead time may be needed to implement a tracking label requirement, particularly if the Commission is considering proposing a uniform system or format. If so, a stay of the requirement will be needed so there is adequate lead time to develop labels.

¹ FJTA members include approximately 255 suppliers and retailers of fashion or costume jewelry, many of whom are small businesses. FJTA does not represent the vending machine industry and its members do not make toy jewelry.

² 74 Fed. Reg. 8781 (February 26, 2009).

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Background

Section 103 of the CPSIA requires, effective on August 14, 2009, that the manufacturer of a children's product place:

...permanent, distinguishing marks on the product and its packaging, to the extent practicable, that will enable

- (A) the manufacturer to ascertain the location and date of production of the product, cohort information (including the batch, run number, or other identifying characteristics, and any other information determined by the manufacturer to facilitate ascertaining the specific source of the product by reference to those marks; and
- (B) the ultimate purchaser to ascertain the manufacturer or private labeler, location and date of production of the product, and cohort information (including the batch, run number, or other identifying characteristic).

Tracking labels are not required on products and/or packaging where it is not "practicable" to include them.

The purpose of this provision is to provide a means for manufacturers and consumers to identify products in the event of a recall. The provision imposes an obligation of identification similar to that in Section 102, which requires certificates of conformity evincing compliance with applicable standards, rules, bans and regulations of the CPSC, supported, in the case of children's products, by third party testing conducted by accredited third party laboratories.³

Criteria Affecting "Practicability"

Tracking labels are not required on products and/or packaging where it is not "practicable" to include them. The question of the "practicability" of applying tracking labels therefore must be evaluated separately as to products and to packaging. As we discussed at our meeting with CPSC staff on March 17, there are many complex issues of "practicability" associated with developing a system for tracking labels in general and children's jewelry in particular. The Commission has posed a series of questions about the conditions and circumstances that should be considered in determining whether it is "practicable" to have

³ Third party testing is currently required for paint and surface coatings and for metal components in children's jewelry. See 74 Fed. Reg. 6396 (February 9, 2009).

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tracking labels on children's products and the extent to which different factors apply to including tracking labels on packaging.

Size, aesthetics and price point are the three most important criteria. In turn, practicability is influenced by the content of the label itself, *e.g.*, whether "real" language or some type of alpha-numeric or other code is required on either or both products and packaging. Alpha-numeric or other codes are in effect the only option for most products, as they will take less space than language versions, but the space required for even a code will depend on the number of characters that may be required if the Commission mandates a format. We examine how these apply to jewelry products and their packaging separately below.

Based on product size and method of assembly, it is not practicable to include tracking labels on the actual jewelry products themselves. Most jewelry products do not have a place where a legible code, such as a UPC code, could be placed, much less an English language version, because of their size and type. Jewelry does not lend itself to printing, etching, embossing, molding or other means of permanently providing even an alpha-numeric label on the product. Many different components – often made of different materials – are used. Products are assembled from those different components, often on a mix and match basis, which would require tracking labels to be placed on products post-assembly. Aesthetics are also important; since jewelry is meant to be worn as an item of personal ornamentation, tracking labels, codes and marking cannot in effect destroy the aesthetic value of the product. Use of electronic product codes or radio frequency identification tags at the item level are not likely to be cost-effective for jewelry makers.

There may be some blurring as to when tags and labels constitute a label on the product or on the "package." Some jewelry products come only with a small price tag, typically attached through a cord or string to the item itself. These tags offer relatively small space for codes or other information, and are attached by a means that may not qualify as a "permanent" way to place a distinguishing mark because they are promptly removed after purchase so the item can be worn. Adhesive labels are not typical; again, it is unclear whether adhesive labels satisfy the "permanence" obligation on jewelry, as they would always be removed immediately after sale so the jewelry could be worn.

These same factors - size, aesthetics and price point - also apply to the question of whether tracking labels can be included on packaging or tags. The answer will again depend on issues of both practicability and format. Because jewelry products come in a wide array of sizes and shapes, from earrings, to rings, to bracelets, to necklaces, they are packaged, if at all, very differently. For example, some jewelry items may be sold in special displays or bins, and may not be individually tagged. Others are sold in a packaged form but the amount of space for a code may be relatively small. For example, bracelets and necklaces may be sold with only a small price tag, as noted above. Earrings may be sold attached to small earring cards. It may not

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always be feasible to include a tracking label even on packaging, particularly if the format required goes beyond normal UPC and other coding placed on packages currently.

There is an additional criteria that the Commission may also wish to consider in assessing the practicability of tracking labels on packaging: whether the package will be retained. Packaging for children's jewelry, if provided, is generally promptly discarded after purchase. Jewelry, unlike other products, typically does not come with instructions, another possible location for tracking labels for those products. Thus, the Commission should consider the value of post-sale tracking labels on packaging where the package will likely be promptly discarded.

Jewelry is identified through its shape, color and size. The product itself serves as the identifier in the event of a recall. It should be up to the manufacturer to determine if it is practicable to label products or packaging.

Content of Tracking Labels

Where it is feasible to include some type of tracking label on packaging, labels or tags, clear guidance is needed on the information that should be made available, consistent with the statute: the manufacturer or private labeler, location and date of production, "cohort" information (including the batch, run number, or other identifying characteristics). Location of manufacture logically is country of origin. The identity of the actual manufacturer is often highly sensitive commercial information and should be protected from indiscriminate disclosure through any type of tracking label system. For purposes of this requirement, the manufacturer or private labeler should be considered to be the U.S. manufacturer or domestic importer, rather than a foreign manufacturer, if one is involved. Country of origin information should be adequate. The Commission has allowed, in the case of Section 102 testing and certification procedures, protection for business confidential information. FJTA urges the Commission to similarly maintain confidentiality of sensitive commercial information, recognizing that tracking labels are related to Section 102 certificates.

"Cohort" information may vary depending on the sector involved. Many children's products, like jewelry, are made of a variety of components. Components may use different materials, made and sourced from different suppliers, and multiple items may then be packaged in a single package (for example, sets of several different types of earrings, combinations of different bracelets, etc.). The date of "manufacture" in this scenario can only be the date the package was assembled. FJTA does not understand Section 103 to require coding that identifies components.

The Commission should recognize current methods, such as UPC and other coding systems currently used by industry sectors for product identification purposes on packaging or labels, rather than attempt to impose a uniform format or system. RFID and EPC options are likely to be too expensive on jewelry products or packaging. In other words, flexibility is

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essential to assure that jewelry manufacturers, as well as manufacturers in the many other different children's product categories, can offer information useful in identifying products in the event of a recall, and a rigid, uniform standard is undesirable.

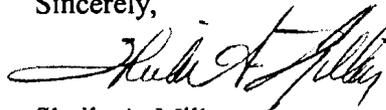
Conclusion

The jewelry industry recognizes the advantages of tracking labels. They can help to identify and narrow the scope of a recall should a recall be necessary. However, these advantages are possible only if placement of tracking labels is practicable, considering size, aesthetics and cost. Cost is a significant consideration in assessing practicability, particularly for small producers who may supply products in small lots. In instances where it is not practicable to include a tracking label on products and/or packaging, companies must accept the risk that a recall may be more expansive as a result. However, the determination as to when it is "practicable" to include a tracking label should be left to the discretion of the manufacturer.

It is also important to assure that any tracking label rule works within the framework of the certificates of conformity and other labeling obligations that affected industry members may face. Consequently, rather than prescribing a specific format, a tracking label system may be evolutionary in nature so that industry sectors can phase in tracking labels without unduly adding to costs and complexities by forcing major changes in existing codes. To the extent jewelry makers are incorporating tracking-type documentation in codes on packaging and in internal quality control documentation, these systems should be given recognition and deference. This would advance the objectives of Section 103 without imposing undue burdens on industry.

The jewelry industry asks the Commission to promptly issue guidance establishing that size, aesthetics and price point are among the factors to consider in assessing the "practicability" of tracking labels on products and packaging. It is obvious that it is not practicable to include a tracking label on jewelry items themselves and actual jewelry products should be excluded from the requirement. Jewelry products are small. There is limited room for even codes to appear, and adding a code will ruin the aesthetics of the item itself. RFID is cost-prohibitive at the price point at which jewelry is typically sold. Confidentiality and other sector-specific considerations must be addressed in developing guidance on items to include in tracking labels. If a single uniform system is proposed, a delay in the effective date will almost certainly be required to allow companies enough time to implement the new system.

Sincerely,



Sheila A. Millar

cc: Michael Gale

Stevenson, Todd

From: Millar, Sheila A. [Millar@khlaw.com]
Sent: Friday, April 24, 2009 5:34 PM
To: Tracking Labels
Cc: gmullan@cpsc.gov; Falvey, Cheryl; FJTA@aol.com
Subject: Tracking Labels
Attachments: 4.24.09 FJTA Tracking Label Comments.pdf

Attached please find comments on behalf of the Fashion Jewelry Trade Association in connection with the request for comments on tracking labels. Regards, Sheila

Sheila A. Millar
tel: 202.434.4143 | fax: 202.434.4646 |
millar@khlaw.com
1001 G Street, N.W., Suite 500 West |
Washington, D.C. 20001

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