

2009-0010-0111



April 27, 2009 – via email

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

Re: Section 103 Tracking Labels for Children's Products.

Please allow this to serve as our response to the CPSC request for comments and information regarding Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act; Notice of Inquiry, 74FR8781.

Kimberly-Clark manufactures disposable hygiene products including diapers and training pants. We appreciate the opportunity to comment on the following issues:

Request: 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

Comment: For disposable hygiene products where the intended use is to collect waste, it is practicable to have labeling on packages as it is a current practice used for disposable products. Due to product's disposable intended use and potential for hygienic concerns with retaining a product which contains waste, it is likely that consumers will quickly dispose of used products.

Request: 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

Comment: Current labeling practices allow the location, date of production and cohort information to be ascertained. Because systems for tracking currently exist, we support use of manufacturer's discretion to use existing nomenclature.

Request: 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.

Comment: In the event of recall, current practices allow for provision of pictures through electronic and written means to indicate the nomenclature, appearance and arrangement of tracking information that allows consumer to identify potentially recalled products.

Request: 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).

Comment: Alpha-numeric characters are in common use to track manufacturing information such as manufacturing date, location and cohort information. Because centralized call-in phone numbers or other electronic means are available to help provide interpretation of tracking information, this facilitates accurate understanding of tracking information without the use of additional language.

Request: 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.

Comment: For disposable products, it would not be beneficial to have the tracking information in an electronically readable format as this technology is not readily available to the general public for which disposable products are suited. As noted earlier, the intended use to be disposable and collect waste does not lend itself to making this information electronically readable, e.g. a soiled product, particularly where technology is not readily available to public.

Request: 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.

Comment: Existing tracking information is typically provided to and can be readily interpreted by private label manufacturer.

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

Comment: In the context of a shift away from existing tracking systems, lead time is expected range widely from 12-24 months, or potentially longer depending on the complexity of approach taken. Particularly in the case where packaging graphics must be changed and integrated into existing changes (affecting manufacturer, seller and retailer), a longer period of transition is anticipated to develop and implement new graphics. This typically includes underlying changes to engineering design and supply chain data structures. An adequate period of transition will be necessary to implement changes. This will help minimize the potential for obsolete inventory while balancing compliance, particularly in this case where product safety issues are not typically involved.

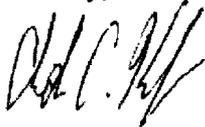
Request: Whether successful models for adequate tracking labels already exist in other jurisdictions.

Comment: We note that manufacturers have considerable discretion to display tracking label information on products regulated in other jurisdictions including FDA and EPA.

Other Federal agencies have published guidance documents as a useful facet of an overall approach to achieve compliance. We encourage CPSC to consider this approach to help industry comply with CPSIA.

Finally, we encourage CPSC to exercise its regulatory discretion with regard to implementation and enforcement of CPSIA. We continue to be engaged in orientation activities sponsored by CPSC regarding the Act.

Sincerely,



Charles C. Keely
Regulatory Technical Leader
Global Regulatory Affairs

Stevenson, Todd

From: Keely, Chuck [cckeely@kcc.com]
Sent: Monday, April 27, 2009 4:56 PM
To: Tracking Labels
Subject: Comments: Section 103 CPSIA, Tracking Labels for Children's Products
Attachments: Comments_CPSIA_Sec103_Tracking_Label_27Apr09.pdf

Please allow the attachment to serve as our response to the CPSC request for comments and information regarding Tracking Labels for Children's Products under Section 103, CPSIA. We appreciate the opportunity to comment.

Regards,

Chuck Keely | Kimberly-Clark Corp. | Global Regulatory Affairs | cckeely@kcc.com | P:+920-721-5551 | F:+920-721-7878
|

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2009-0010-0112

ASSOCIATION FOR SAFE GLASS & CERAMIC PRODUCTS

1444 I Street, NW, Suite 700
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202-712-9041

April 27, 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,

The Association for Safe Glass and Ceramic Products (ASGCP) is pleased to submit these comments in response to the 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 (CPSIA). We have previously filed comments related to specific testing requirements for glass and ceramic children's products and CPSIA requirements related to certificates of conformity and component part testing.

Labeling "Practicability"

ASGCP notes that tracking labels are only required where such labels are "practicable." As our members manufacture and import glass and ceramic items including some items that would be classified as children's items, we believe that CPSC should clearly define "practicable" in relation to CPSIA labeling requirements. We believe that size, cost, and aesthetics would be the most significant issues of concern for makers and importers of children's products. Each of these concerns raise issues for glass and ceramic manufacturers and importers.

CPSC should consider both the size of the children's product itself, as well as the size of the decorative or imprintable surface when determining whether a marking on the product is practicable. We believe that it would be impracticable to imprint or engrave a label on an item that by its nature is very small (such as jewelry or a very small figurine). Of equal concern related to the size of an item, we believe that the size of the imprintable surface should also be given consideration when establishing labeling criteria. Some items, such as a miniature souvenir glass, have a very small base, and there would not be adequate room to imprint the label in a readable format. Clear guidance is needed from CPSC in relation to this issue.

Product aesthetics are of paramount concern to companies that manufacture and import glass and ceramic items. Consumers purchase such items for their appearance. It would greatly reduce a glass and ceramic products marketability if the label were to appear on a visible surface. For glassware, every surface is visible including the bottom of the base given the transparent nature of glass, and such non-decorative markings would make an item undesirable for many consumers. For glass and other transparent items, ASGCP asks CPSC to determine that permanent markings on the item would render the item aesthetically unmarketable, and to require instead markings on the package.

Cost is another major concern when considering how to place permanent markings on either glass or ceramic children's items. There are significant and costly technical issues related to the application of permanent custom markings on the base of an item. For example, the addition of a permanent label using traditional decal transfer technology on the base of a ceramic children's plate or mug would require that an additional decal be printed, applied, and a separate firing would be required to vitrify the label. A manufacturer could not simply add the label during the normal decorating process and fire the label while firing the decoration given technical considerations related to how ware is processed through a lehr or kiln. The firing process is energy intensive, and any additional firings dramatically increase the cost associated with manufacturing an item.

These issues are compounded significantly for small custom glass and ceramic decorators that process orders for small quantities of custom items. In some cases, companies have already discontinued all children's products given the additional costs associated with such permanent labeling.

Where it is practicable to include a CPSIA label on the item or on the packaging, clear guidance is needed on what information should be available. For glass and ceramic items that are produced for the promotional products market, the name of the actual manufacturer and custom decorator is sensitive commercial information that is not available to the buyer of the items. For purposes of this requirement, the manufacturer should be identified by its trade name or the name by which it markets its wares in the promotional product market. Such information is well known to promotional product distributors, and the provision of such trade information would enable the ware to be traced back to its source if necessary.

CPSC should certainly recognize current methods that are utilized to mark products such as UPC and other coding systems. Flexibility is critical to enable glass and ceramic manufacturers and importers to offer information useful in identifying products in the event of a recall. A rigid uniform standard would be highly impractical. ASGCP recommends that CPSC sanction a code system where a manufacturer or importer code is included on the label which is linked directly to the product's testing certification document.

Summary

Glass and ceramic tableware manufacturers recognize the advantages of tracking labels. We believe that it is critical, however, to consider size of the labeling area, aesthetics and cost when determining how glass and ceramic children's items must be labeled. For glassware, it would not be practicable to require manufacturers or importers to print a label on the item that would render it aesthetically unmarketable.

ASGCP requests that CPSC promptly issue guidance that would establish that aesthetics, size and price point are among the factors to consider in assessing the "practicability" of tracking labels on products and packaging. It is critical to allow flexibility based on the type of children's product to be labeled.

Adjusting production systems will in some cases require manufacturers to establish new imprinting or marking systems and computerized tracking programs, and these changes will take a significant amount of time. Given that the labeling requirement is scheduled to take effect on August 14, 2009 for all products manufactured after that time, we believe it is advisable to delay the

ASGCP Section 103 Comments
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effective date to enable manufacturers and importers to consider what is required of manufacturers and importers based on guidance issued by CPSC. In that way, we believe that CPSC can provide adequate guidance that will enable companies to meet the new requirements.

Thank you for your consideration of our comments, and I welcome the chance to answer any questions on the subject.

Sincerely,

A handwritten signature in black ink that reads "Andrew Bopp". The signature is written in a cursive, flowing style.

Andrew Bopp
Association for Safe Glass and Ceramic Products

Stevenson, Todd

From: Andy Bopp [abopp@bostrom.com]
Sent: Monday, April 27, 2009 4:57 PM
To: Tracking Labels
Subject: CPSIA Section 103 Labels, ASGCP Comments
Attachments: CPSIA Section 103 Labelling ASGCP Comments.pdf

To Whom it may Concern,

I am attaching comments regarding the CPSIA tracking label requirements. Please contact me if you have any difficulty with the document.

Thank you,

Andy

Andrew Bopp
Association for Safe Glass and Ceramic Products
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Washington, DC 20005
202-712-9041



2009-0010-0113

April 27, 2009

Todd A. Stevenson
Secretary
Consumer Product Safety Commission
4330 East-West Highway
Room 502
Bethesda, MD 20814

RE: 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:

The following comments are submitted on behalf of the National Retail Federation (NRF) in response to the Consumer Product Safety Commission's (CPSC) Request for Comments on Tracking Labels for Children's Products under Section 103 of the Consumer Product Safety Improvement Act (CPSIA).

NRF appreciates the opportunity to provide feedback on the issue of tracking labels. We fully believe that the CPSC needs to allow flexibility when it comes to the issue of tracking labels due to the diversity and complexity of the products covered by the CPSIA and the diversity of the manufacturing systems already in place among retailers and suppliers. In addition, there are already certain labeling requirements in place for products such as apparel which need to be considered when making a final determination on the tracking label requirements. Any new requirements should build upon what industry already has in place and not look to overly burden industry with new excessively complex and expensive requirements. We will address the specific issues raised in the *Federal Register* notice below.

By way of background, NRF is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet, independent stores, chain restaurants, drug stores and grocery stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.6 million U.S. retail companies, more than 24 million employees - about one in five American workers - and 2008 sales of \$4.6 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations.

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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 determining whether or not it is “practicable” to place a tracking label on a children’s product, there are many factors that must be considered. These include the size of the product, the cost of the product and the overall impact to the product itself. When looking at size, it is important to note that there are some products where it is just too small to place a tracking label on the product itself. This includes items such as children’s jewelry. On a child’s necklace or bracelet where would the tracking label be placed and what size would the text of the label be? In this example, the item is just too small to have a tracking label for the ultimate consumer to see and use in the case of a recall.

It is also important to recognize the cost of the product itself and the cost of the tracking label. There are some items where the cost of the tracking label could be more expensive than the cost of the item purchased by the consumer.

The CPSC should also consider how the tracking label will affect the look and use of the product itself. There are certain products, including toys, where a permanent tracking label on the product itself will impact the overall look of the final product. As an example, a product created by a mold could look different if the tracking label had to be incorporated into the mold itself.

In some instances it might make more sense for a tracking label to be placed on the packaging itself. As an example the CPSC can look to country of origin labeling requirements for apparel products. Most apparel will have a country of origin on the label itself. However, there are certain products where the label is permitted on the product packaging instead of the product itself. The best example here is socks. There is no country of origin label on the individual pair of socks, but it is included on the packaging for the socks. These products do not lend themselves for tracking labels due to comfort, use, and design. Use of labels interferes with the comfort of the product. Stamping information on these products is NOT practical. How would you imprint information on a pair of nylons or stretchy socks? There are often few seams to sew in a label in socks. Also, given that this type of product gets soiled easily, imprinted information could easily wash away and a more permanent imprint would affect the design of the product. Tracking information on the packaging should be sufficient for this type of product, especially as there is NO history of lead or phthalates in this product.

As another example, how is the tracking label supposed to be applied to products contained in a set? Are there supposed to be tracking labels on each item included within the set or would a label on the package suffice? In the case of sets, such as a barn and farm animal set, we believe a tracking label on the product packaging should be sufficient.

The amount of required information for tracking also impacts what is "practicable" to place on the product. To the extent the law permits use of an efficient coded number to enable manufacturers/retailers and purchasers to ascertain the required information, the more feasible it becomes to mark the product itself.

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;

While a standardized nomenclature, appearance and arrangement of information is a laudable goal, we do not believe it is needed to allow manufacturers or private labelers to comply with the labeling requirements. In order to achieve such standardization one would need an internationally recognized standard which would take years to complete at an enormous expense. Many manufacturers and private labelers already have existing systems which enable them to identify the source of a product, the date of manufacture, the country of origin and other relevant information. These systems should be built upon to include any new requirements under the CPSIA.

CPSIA requires manufacturers to place "...permanent, distinguishing marks on the product and its packaging, to the extent practicable, that will enable... B) the ultimate purchaser to ascertain the manufacturer or private labeler, location and date of production of the product, and cohort information...."

It is important to recognize that the form and content of these "permanent distinguishing marks" are wholly dependent on the interpretation of "purchaser to ascertain." If the required information must be apparent to the purchaser upon reading of the marks, the information cannot be encoded. It would have to appear at length in words and numbers. There would then be no possibility, for example, of an efficient tracking number that could be marked permanently on many smaller products. With the tracking number in hand, it is reasonable to expect that purchasers can "ascertain" the required information by contacting the seller, who must provide it or refer them to the source that can.

b. Other business considerations relevant to tracking label policy.

Again while a standardized system would be preferable if existing systems were not already in place, the CPSC must recognize that there are no simple technological solutions to the issue of tracking

labels. NRF is concerned with the reference to the "Feasibility Study: Post-manufacturing Traceability System between the PRC and the EU." While there are some good recommendations for future actions, it must be recognized that many companies are not using RFID or the other systems as identified in the paper. The CPSC should not mandate that industry use such technologies. In addition, there are concerns with creating databases managed by independent third parties. The CPSC must consider the issue of business confidentiality as well. Certain proprietary information should not be required to be disclosed on the tracking label.

Proprietary information includes names of foreign manufacturers. The honorable purpose of permanent tracking labels on children's products is to increase recall effectiveness. Tracking labels facilitate this by enabling consumers to specifically identify a product that has been recalled, and just as important, enabling the US manufacturer or importer to identify the production cohort in which the violation of a safety rule or defect occurred. The tracking label also increases recall efficiency by not recalling more than is necessary to assure consumer safety.

Recall effectiveness is not served by forcing disclosure of important trade information like the name of a foreign manufacturer to any "purchaser" who asks. Importers work hard to find and develop good manufacturing partners abroad; they should not have to reveal their names to competitors on demand when it does not serve a higher purpose. The private labeler and/or importer, not the foreign manufacturer, conducts any recall and provides all required information (including proprietary) to the CPSC. The purchaser needs to be able to identify products that are or should be recalled, and they can do this with the tracking number. If customers must contact any party with questions about it, it is the US retailer or private labeler, not the foreign manufacturer.

The CPSC recognized that it is the US manufacturer or importer who bears the primary responsibility for safety when it ruled that Certificates of Conformity under section 102 of CPSIA do not require name of the foreign manufacturer.

If an underlying intent of the law is to disclose the foreign manufacturer to purchasers in order to help them avoid the manufacturer's products in future, it is likely to fail while still undermining importers' competitiveness. The reason is that foreign factory names are easily changed in small ways. After one recall in which their names are disclosed, many factories will have the incentive to do so.

The text of Section 103 (a) amending Section 14 (a) of The Consumer Product Safety Act does not mandate disclosure of a *foreign* manufacturer. It states the ultimate purchaser must be able “to ascertain the manufacturer or private labeler....” There is no reason to believe that Congress intended anything more than that the *responsible party in the US* be disclosed. It is reasonable to believe that CPSC has the authority under Section 14 (c) to make this interpretation by rule: “The Commission may by rule require the use and prescribe the form and content of labels which contain the following information (or that portion of it specified in the rule)...”

In addition, industry needs guidance from the CPSC on the definition of “permanent” with regard to the label. How does the CPSC plan to define the term? The Federal Trade Commission defines “permanent” with regard to care labeling based on number of washings and use and abuse. Will the CPSC look to the same type of definition? What about the issue where the product has gone “tagless?” Where would the tracking label need to be placed?

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.

NRF does not believe that a lack of a standardized nomenclature, appearance or arrangement of information will negatively impact a consumer's ability to identify recalled products. As long as there is a simple system for the consumer to identify the required information, it won't have an impact on their ability to identify a recalled product. Use of technology or a tracking label that required a reader would be of no benefit to the ultimate consumer as they would need to take the product to some location to have the label read. As long as they can identify a code, and can either contact the company to see if the product is included in a recall, that should suffice. That communication can be via a website, a special contact number or other means of communication.

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).

NRF believes that the CPSC should allow for the use of alpha-numeric codes, by themselves, for the tracking label. As noted above, as long as the consumer can contact the retailer/private labeler/manufacturer to see if the code is part of a

recall, that should satisfy the requirements. Allowing the use of alpha-numeric codes also helps to resolve concerns with business confidentiality.

- 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.**

As noted above, we do not believe there would be substantial benefit to consumers if products contained tracking labels in an electronically readable form which required supplemental technology. We strongly oppose the consideration of such a proposal. The consumer would have to either purchase that supplemental technology or find some other means of reading the electronic tracking label. The ultimate consumer is better served having a tracking label containing a code which they can then contact the retailer/private labeler/manufacturer to see whether or not the product is included in a recall.

- 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.**

NRF believes that all of the above means of communication should be made available by the seller to notify the consumer. There isn't one method that should be mandated, but all should be made available. Consumers have many different ways of contacting the seller of the product and the seller can then direct the consumer to the appropriate place to obtain the required information. This could be an Internet website, a toll free number or a notification at the point of sale. As discussed above, because the identity of the manufacturer is considered proprietary information, the private labeler should not be required to disclose such information.

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

NRF believes that industry would need at least one year to comply with the tracking label requirements as prescribed under CPSIA. Tracking labels need to be considered at the very beginning of the design phase of production, which typically happens a year or more before the final product is placed on the retailers' shelves. Since the requirement requires a permanent and distinguishable mark on the product, for non-apparel products which don't have a current tag or other marking, this process needs to begin in the product design phase so that the retailer and manufacturer can work together to determine the best location for the tracking label so as not to disrupt or damage the look of the

final product. If the tracking label makes the product aesthetically unappealing, the consumer will not purchase the product.

The current deadline for when the tracking labels requirement takes effect is going to be very problematic for industry as a whole. This is especially problematic since the CPSC has yet to issue any guidance on the issue and we don't expect any guidance until well after the April 27 deadline for these comments. That will leave industry with very little time to implement the tracking label requirements for those products which are set to go into production on August 14, 2009. NRF strongly supports the request that was filed on behalf of the NAM CPSC Coalition asking for a one-year stay of the tracking label requirement. This will provide industry enough time to comply once the CPSC finally issues guidance.

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

While we are not aware of other successful models for tracking labels in other jurisdictions, there are several instances where labels are required for country of origin purposes that the CPSC can look to for guidance. Most notably are the requirements by U.S. Customs and Border Protection for marking wearing apparel under 19CFR134.32. Not only does this detail the requirements for the label, but it also provides exemptions for products and circumstances for which a label is not required. We would also encourage the CPSC to look at the requirements by the Federal Trade Commission (FTC) for country of origin labeling under the Textile and Wool Acts. This includes what products are covered, which aren't and provides guidance on the location of the label and exemptions. This also includes the use of a Registered Identification Number (RN Number). The RN Number is given to companies by the FTC and is universally recognized by those in the apparel trade as an easy means of identifying companies.

Conclusion

NRF welcomes the opportunity to share our thoughts on the CPSC's Draft Guidance Regarding Which Children's Products are Subject to the Requirements of CPSIA Section 108. If you have any questions, please contact Jonathan Gold (goldj@nrf.com), NRF's Vice President, Supply Chain and Customs Policy.

Sincerely,



Steve Pfister
Senior Vice President
Government Relations

Stevenson, Todd

From: Gold, Jon [GoldJ@NRF.com]
Sent: Monday, April 27, 2009 5:13 PM
To: Tracking Labels
Subject: NRF Comments on Tracking Labels
Attachments: NRF Final Comments on Section 103 Tracking Labels 042709.pdf

Attached please find comments from the National Retail Federation on the CPSC's request for information on Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act. If you need additional information, please let me know. <<NRF Final Comments on Section 103 Tracking Labels 042709.pdf>>

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2009-0010-0114

April 27, 2009

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
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Dear Mr. Stevenson:

I am writing on behalf of the American Apparel & Footwear Association – the national trade association representing the apparel and footwear industries – with regard to the request for comments on Section 103 of the Consumer Product Safety Improvement Act (CPSIA), Tracking Labels for Children's Products.

On March 26, 2009, we submitted comments 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.” Last year, 18 million children's products were recalled. Of the 18 million, only 2.8% were children's apparel or footwear. Furthermore, the number recalled apparel and footwear products (527,294 units) amount to only a negligible percentage of the total number of children's apparel and footwear products in the market. Finally, of all the apparel and footwear units recalled, one third (176,118 units) was due to hooded drawstring hazards – an easily

recognizable hazard that does not require additional tracking information to enable any party involved to target, identify or remove the product from store shelves or from consumer homes. We therefore believe that the tracking label requirement unduly burdens the apparel and footwear industry without providing significant benefit for recall effectiveness.¹

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. Unfortunately, the legislation limits the manufacturer's ability to determine what information is most useful to include for tracking purposes. As a result, the tracking label requirement imposes significant (and in some cases, unsustainable) costs on manufacturers for labels that may ultimately provide no useful tracking information. 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. For example, Company A may manufacture a batch (batch A) of plain white cotton tee shirts with tracking label information 123 on them that allows the ultimate purchaser to ascertain the required information. Half of that batch (batch A1) is sold to Company B who screen prints the shirts. The other half of the batch (batch A2) is sold directly to Retailer A. In this instance, tracking information 123 does not take into account that batch A1 underwent additional processing. The tracking label needs to function 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, children’s jewelry or hair accessories.

¹ Recall statistics obtained from Kids in Danger’s “Toxic Toys and Faulty Cribs” Report. April 21, 2009. Available online at: <http://www.kidsindanger.org/publications/reports/toxic toys faulty cribs report.pdf>.

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 rationale 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.

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, 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. Other products not exempt from preexisting labeling requirements (such as under shirts, plain tee shirts and sweat pants with elastic bands, etc.) should also be considered. If the products are unlikely to be involved in a recall, there is no need for a manufacturer to include the additional information.

Furthermore, 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.”

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;

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 a pair of pants. 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. Requiring companies to disclose such information will be *detrimental* to businesses. 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 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 even though the requirement applies to products manufactured on or after the effective date. Apparel and footwear are manufactured many months in advance and components (like labels) are sourced even earlier. Because of these long production times, companies began making changes to their internal business structures, supply chains and sourcing as early as November 2008 for products that are going to be

manufactured on or after August 2009. Unfortunately, Section 103 is extremely vague and the CPSC did not issue any compliance guidance to help industry with the new requirements. As a result, any changes companies made were based on educated guesses. Even if the CPSC were to issue guidance today, companies would have only 3 1/2 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 consideration in these matters. Please contact Rebecca Mond (at rmond@apparelandfootwear.org or at 703-797-9038) with our staff if you have further questions.

Sincerely,



Kevin Burke
President and CEO

Stevenson, Todd

From: Rebecca Mond [rmond@apparelandfootwear.org]
Sent: Tuesday, April 28, 2009 9:41 AM
To: Stevenson, Todd
Cc: Steve Lamar
Subject: AAFA Tracking Label Comments
Attachments: Tracking Label Comments 4.27.09.doc

Importance: High

Todd,

Please see attached AAFA's comments regarding Section 103 of the CPSIA, Tracking Labels for Children's Products.

Thanks and regards,

Rebecca Mond
Government Relations Representative
American Apparel & Footwear Association
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Arlington, VA 22209
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RMond@apparelandfootwear.org
703-797-9038



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2009-0010-0115

April 27, 2009

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

via Email: TrackingLabels@cpsc.gov

RE: CPSIA Section 103 Tracking Labels

To Whom It May Concern,

The Printing Industries of America (Printing Industries) submits these comments in response to the Notice of Inquiry that was published by the Consumer Product Safety Commission (CPSC, or the Commission) 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).

As background, Printing Industries 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—books, magazines, 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.

Section 103 of the CPSIA requires manufacturers of children's products to "place permanent, distinguishing marks on the product and its packaging, *to the extent practicable*, that will enable" the manufacturer and ultimate purchaser to essentially ascertain the source of the product they are purchasing. This requirement thus affects both suppliers and customers that depend upon the graphic arts industry. The purpose of the Section 103 requirements is to provide certain information on packaging and products information that will enable a company or consumer to identify the source of the product in the event the product does not comply with a consumer product standard and needs to be recalled.

In this letter, Printing Industries will focus on the application of tracking labels as they relate to "ordinary paper-based printed materials," defined by Printing Industries in our April 27, 2009 letter to the Commission as follows:

- "Ordinary paper-based printed materials" means materials printed on paper or cardboard, printed with inks and/or toners and bound and finished using a conventional method.



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- The term “ordinary paper-based printed materials” do not include books or printed materials that are printed on material other than paper or cardboard or contain non-paper based components such as metal or plastic parts or accessories that are not part of the binding and finishing materials used in a conventional method.

Examples of “ordinary paper-based printed materials” would include items such as magazines, calendars, datebooks or organizers, posters, folders, stickers, wall appliques, CD and DVD inserts, greeting cards, flashcards, and trading cards. It should be noted Printing Industries was a signatory to and supports the Association of American Publishers (AAP) April 23, 2009 comments regarding tracking labels and “ordinary books.”

Below are Printing Industries’ comments on tracking labels and “ordinary paper-based printed materials.”

- **“Ordinary Books” and other “Ordinary Paper-Based Printed Materials” should not be subject to the Section 103 requirements if they are exempt from the section 103 lead limits**

On February 12, 2009, the AAP requested the Commission exercise its general rulemaking authority and issue a determination that “ordinary books” and “ordinary paper-based printed materials” inherently do not contain lead above CPSIA limits; Printing Industries followed this request with a supporting letter on April 27, 2009. If the Commission issues a determination that “ordinary books” and “ordinary paper-based printed materials” do not inherently contain lead and/or phthalates above CPSIA limits, these products should not be subject to the Section 103 tracking requirements.

- **Section 103 requirements need to consider size and scope of product use and avoid redundant labeling**

Section 103 of the CPSIA requires printers of “ordinary” paper-based printed graphic arts products to place “permanent, distinguishing marks on the product and its packaging, to the extent practicable” that will enable a company or consumer to identify the source of the product in the event of a recall.

Clearly, the CPSIA recognizes that placing tracking labels on all products and packaging is not feasible. Printing Industries is particularly concerned with the applicability of tracking labels to “ordinary paper-based” graphic arts products that consist of many small components or that act as supplementary materials in a toy kit.

For example, it is not reasonable and in many instances possible for printers to place a tracking label on each card in a deck of playing cards or each sticker on sheet of stickers. This approach, if possible, results in unnecessary redundant labels and a greatly increased



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cost. A more reasonable approach is to label the packaging of the cards and stickers. In this instance, one single label on the playing card's packaging would enable the consumer to identify the source of the product and satisfy the requirements of Section 103. Printing Industries recommends this approach for packaging designed and intended to repeatedly store "ordinary paper-based printed materials."

Likewise, for products that are included in a larger product, it is also not reasonable or possible for printers to place a tracking label on each trading card that is sold as part of an action figure kit or board game. First, there is the obvious difficulty of having to find the space necessary to clearly identify the location and date of the product's production, batch number, and other necessary information needed to identify the product on a card that is less than 3 x 5 inches in area and second, finding a solution to this problem would add significant design resources in terms of time and material spent to produce the product. In this instance a single label on the main toy of value in the kit, e.g., the action figure enables the action-figure manufacture to identify the card supplier and ultimately the card production information would work best. This single label approach would eliminate redundant labeling efforts on the part of suppliers and manufacturers, prevent confusion on the part of the consumer over which manufacturer to contact, and minimize the economic burdens associated with the requirements.

- **Section 103 requirements need to permit adhesive labels as "permanent" marks**

Section 103 requires the use of permanent marks to identify the source of a product. The use of the word permanent implies these marks need to be printed on the product packaging, the product, or both. In instances where there is little or no space on the packaging or the product itself to print the necessary information, or where it may not be feasible to print on the product packaging, as in the instance of products packaged in cellophane or clear plastic packaging, the Section 103 requirements need to permit the use of adhesive labels to identify the necessary production information.

- **Section 103 requirements need to provide flexibility for "distinguishing" marks**

Section 103 requires a manufacturer to use "distinguishing" marks to enable a consumer to identify the source of a product. Section 103 does not state how these marks must be labeled or how quickly and readily the information must be available to the consumer; at issue is the ability of the consumer to identify the source of the product. Section 103 uses the word "ascertain", which means "to find out or learn." The use of the word ascertain by Section 103 and the Commission's request for comments on the benefits of electronically readable formats for tracking labels indicates that the production information does not need to be in "readable" language. Therefore, the Section 103 requirements need to provide flexibility over what constitutes a "distinguishing" mark, and should leave all decisions over what permanent, distinguishable marks best identify



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the production information to the discretion of the manufacturer. In most cases, an electronic data base or dedicated website will be most practical in helping consumers to identify necessary production information.

Summary and Conclusion

The Printing Industries of America would like to express our appreciation for the opportunity to review and provide comments on the Commission's *Request for Comments and Information on Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act*. Overall, we support and commend the CPSC in their efforts to implement the CPSIA to date and in their recognition that ordinary books and paper-based printed materials do not pose a health hazard to children. It is hoped that these comments provide additional insight into the complexities of tracking labels for such products and that our suggestions help establish a mutually beneficial set of conditions that are both technically and economically feasible.

The Printing Industries of America would be willing to meet with representatives from the CPSC to discuss our concerns with the staff's current approach to applying the tracking label provisions of the CPSIA to graphic arts products. Please feel free to contact me at 412-259-1794 or gjones@printing.org with any questions you may have or to arrange a meeting time that is convenient for you and the appropriate staff involved in the development of the regulation.

Sincerely,

Gary A. Jones
Director, EHS Affairs
Printing Industries of America

Stevenson, Todd

From: Dugan, Christopher [cdugan@printing.org]
Sent: Tuesday, April 28, 2009 5:16 PM
To: Tracking Labels
Subject: tracking labels
Attachments: PIA Tracking Label Comments 4-27-09.pdf

To whom it may concern:

Please accept Printing Industries' revised comments on Section 103 Tracking Labels for the public record. This revised document only contains editorial changes to Printing Industries' tracking labels comments that were submitted yesterday, April 27th.

Thank you,

Christopher Dugan

Christopher Dugan
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2009-0010-0116



Promoting an Open Market for Quality Educational Products and Services

An Education Trade Association Founded in 1916

April 14, 2009

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

Re: Request for Comments on Tracking Label Requirement

The National School Supply and Equipment Association (NSSEA) is an organization of 1,500 businesses who sell educational supplies, equipment and instructional materials to schools, parents, and teachers. We care deeply about the safety of children. At the same time, 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). NSSEA appreciates this opportunity to comment on the tracking label requirement on behalf of its members. To prepare our comments, we have obtained comments and insights from some of our members.

According to the limited legislative history, the tracking label requirement is intended to enhance the effectiveness of recalls. In truth, before the passage of the CPSIA the Consumer Product Safety Commission (CPSC) required recalls to be broad enough to encompass all non-complying or defective products. Products that could not be identified in any way were rare. If anything, the tracking labels are most likely to narrow the scope of future recalls. Yet Congress has not left it to manufacturers to judge what would be in their own best interests based on their products and the relative risk, but has imposed these across the board requirements—and costs—on everyone, regardless of the practicalities and whether they can be justified.

We would also like 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 and have much smaller operations.

In our comments below, we will respond to the questions specifically asked by the CPSC 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 practical problems raised by our members.

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 learning and education 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.

National School Supply and Equipment Association

For example, many educational products, toys, and games have numerous small components. Marking each of these items 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, be intermixed with items from other sources or production periods, and only become part of a final product upon packaging. For this reason, marking of small components with the packaging date could not only be very expensive, it also may not greatly help identify a defective component that could have been manufactured months before.

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. Even making date or production “cohort” tags for each new lot and sewing them into soft goods 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 games or other items) or otherwise). 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 or sold without significant packaging. 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 or the product itself may be the only alternative. Insisting on doing both would require further packaging costs and also create more waste to feed into our landfills.

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 and 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. This 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 CPSC wishes to institute such a labeling scheme, this information potentially impacts on confidential commercial information. Many private labelers and importers as well 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 once they have been published. Many of our members' products are manufactured in foreign countries. Some products have a fairly extended development and manufacturing cycle. Changing systems requires educating suppliers 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:

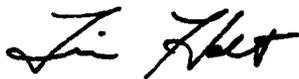
As noted above, the statutory requirement seems to have been created with only large manufacturers in mind. Our members are smaller, may not manufacture products in batches, are likely to have less control over their source of supply (unless they manufacture items themselves here in the United States), 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 products. Our members do not have the option of amortizing the cost over millions of products.) CPSC should give more flexibility to smaller manufacturers, or perhaps decide not to enforce the requirements against such small manufacturers at all.

The CPSC 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 CPSC 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 might be the only viable option for some products. Labeling only the product, might work for others.

We do not have to reiterate the many ways the CPSIA has created challenges for our members. We request that the CPSC provide some flexibility in crafting these regulations, and show understanding of the vast range of firms and products regulated so the ultimate requirement minimizes disruption and costs to our members that cannot be justified based on the benefits of tracking labels. Further, we request that the agency provide a reasonable amount of time for firms to comply with these requirements after they are published. To do otherwise, would only further damage our businesses with no real improvement of public safety.

Cordially,



Tim Holt
President/CEO
National School Supply and Equipment Association

NSSEA Board of Directors

CHAIR: Dennis Gosney, Wood Designs

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Stephanie Keller, Nickerson New Jersey
Debbie Moore, Peter Li Education Group
Greg Moore, MooreCo., Balt/Best-Rite
Janet Nelson, DEMCO
Molly Risdall Parnell, Smith System

Cc: Eric Stone, K&L Gates, LLP

Stevenson, Todd

From: Adrienne Watts [AWatts@NSSEA.ORG]
Sent: Monday, April 27, 2009 5:15 PM
To: Tracking Labels
Subject: Tracking Label Comments
Attachments: NSSEA Tracking Lab Comments42109.DOC

Please see the attached document.

Thank you,

Customer Service Department, NSSEA on behalf of Adrienne Watts, V.P. Marketing & Communications
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2009-0010-0117



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**COMMENTS TO THE CONSUMER PRODUCT SAFETY COMMISSION
CPSIA SECTION 103 - TRACKING LABELS**

April 27, 2009

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, Maryland, 20814
Email: TrackingLabels@cpsc.gov
Fax: 301-504-0127

Dear Mr. Stevenson:

These comments are submitted on behalf of Gildan Activewear – a global manufacturer, importer, and distributor of basic apparel – in response to the Consumer Product Safety Commission’s (CPSC) request for comments and information on the implementation of Section 103 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), which requires the manufacturer of a children’s product to place permanent distinguishing marks (tracking labels) on the product and its packaging.

As a major importer and distributor of t-shirts, socks, underwear and other garments, Gildan appreciates and shares with the CPSC, the Congress, consumers and other private-industry stakeholders the goal of ensuring that products sold in the United States do not pose risks to children’s health. This includes a commitment to the CPSIA’s underlying objective that distinguishing marks provide a means for swiftly ascertaining the source of certain children’s products. Gildan understands the necessity of being able to quickly identify and resolve any problems within the supply chain that adversely affect the confidence of a buyer, whether the buyer is an end-user, consumer, or another value-adding manufacturer.

To summarize, the critical points and recommendations are as follows:

- A stay of enforcement for apparel products should be granted for at least twelve months to provide time to deal with the open questions of CPSIA Section 103, and to eliminate uncertainties for manufacturers and retailers who are already struggling to cope in an extremely difficult economic environment.

- It is not economically or commercially practicable to require tracking labels on low-value products such as children's socks. The General Certification of Conformity (GCC) and testing requirements are burdensome yet reasonable to provide adequate information for potential recalls; requiring tracking labels is unnecessary and impractical.
- CPSC requirements should not jeopardize business confidentiality by providing competitors with proprietary information, such as the name of the specific factory where companies source their products.

While Gildan commends the CPSC for its active engagement with the industry on this sensitive issue, unfortunately for apparel companies, this request for comments and information was published far too late to give adequate notice to comply with the August 14, 2009 deadline. The nature of the global apparel industry is such that Gildan and other companies are currently placing order for garments that will be manufactured after the August 2009 deadline, without the CPSC's final guidance on the Section 103 implementation. Rather than compel companies such as Gildan to guess how to comply with the requirement, it is necessary for the CPSC to issue a stay of enforcement for Section 103 of the CPSIA for at least twelve months.

During the one-year stay of enforcement, it should then be the goal of the CPSC to implement the CPSIA's tracking label requirement in a way that works within the unique, existing design and production frameworks for certain products such as apparel, including Federal Trade Commission (FTC) labeling requirements under the Textile Fiber Identification Act.

In fact, the CPSIA's Congressional authors acknowledged the damaging implications of applying a uniform standard for distinguishing marks on all children's products. To give the CPSC the flexibility required to make informed regulations for Section 103, Congress added the language "to the extent practicable" to the labeling requirement, which gives the CPSC broad authority and discretion in implementing this Section.¹ CPSC should exercise this authority to implement the labeling requirement in a manner that meets the objectives of the broader policy while taking into account the unique circumstances of different industries, including apparel.

If the CPSC does not issue a one-year stay of enforcement, and if the CPSC implements the Section 103 of the CPSIA without proper deliberation and consideration for various product supply chains, the tracking label requirement will impose substantial costs for the apparel industry and ultimately the consumer, particularly families already hard-hit by the current recession. These costs could be extremely high per unit if it is implemented in a manner that, for example, requires overly burdensome and duplicative labeling requirements or compromises confidentiality of proprietary information.

I. THE CPSC SHOULD ISSUE A STAY OF ENFORCEMENT FOR APPAREL

¹ CPSIA, Section 103(a)(5)

CPSC should use its congressionally authorized authority to issue a stay of enforcement of the tracking label requirement for apparel, given the long-range sourcing patterns for apparel and the current lack of a final rule from CPSC on tracking labels. Gildan recognizes that the CPSC has been working hard to implement the entire CPSIA with limited resources and has been operating on extremely tight statutory timeframes. Given these burdensome circumstances, it is understandable (albeit impracticable) that the request for comments and information for Section 103 implementation was issued only five months before the August 14th, 2009 deadline (February 26th), with industry comments due nearly four months before the deadline (April 27th), and with final rules that will likely be published a matter of weeks before the deadline (assuming the comments are carefully reviewed and considered for incorporation into the regulations). However, this timetable is just not workable. There may be enough time for the CPSC to craft sensible regulations by August 14, 2009; however, the timetable is insufficient for industry to incorporate the final guidance.

Ideally, apparel companies should know exactly how to comply with this requirement twelve months in advance of the enforcement date. Right now Gildan and other companies are making sourcing decisions and placing orders for products that will be manufactured well after the August 2009 effective date.

Compliance with the labeling requirement by August 2009 is further problematic because key provisions of the statute remain ambiguous and undefined. Companies wanting to comply with the labeling requirement have no way of doing so because the obligations and expectations of the CPSC with regard to the tracking label system remain unknown. This means that Gildan and other apparel companies are making decisions without adequate notice of what information will be required to comply with the rule.

The situation is substantially different than the recent lead and phthalate content enforcement deadlines. In those circumstances, companies were informed of exact content level restrictions for certain inputs by certain dates. Congress left very little room for the CPSC to interpret those requirements. In the case of tracking labels, however, the CPSC was given broad authority to regulate how the required information can accompany a children's product, and broad authority to determine what information will be required. With no current guidance on how to comply with a future rule that could be significantly different from product to product, it is prudent to delay the enforcement of the tracking label requirement until the final guidance can be disseminated and incorporated throughout the different supply chains. Such a stay of enforcement would be similar to the CPSC's decision to stay enforcement of the testing and certification requirements earlier this year, and in accordance with its history of deliberative and inclusive rulemaking in implementing the CPSIA.

In addition to Gildan and other companies needing the stay of enforcement period to adapt their supply chains to CPSC's final rule, the stay is necessary to allow inventories to be consumed and restocked with compliant products. Some major retailers are currently informing their suppliers

that they will be requiring CPSIA Section 103 tracking labels on all products sold on the date of enforcement, regardless of when a product was manufactured. Some major retailers have even indicated to Gildan that they will require compliance with the tracking label provision of the law for all children's products by August 1, 2009.

Retailers claim that there is no way to ascertain the date of manufacture of a product sold after the effective date, and will therefore require the tracking labels on all products sold after that date, even for products released from inventory that were manufactured before the effective date. Without the stay of enforcement, this situation could become a repeat of the unreasonable request made by several retailers, and the subsequent damages, at the time the GCC became effective in Fall 2008. At that time, some retailers informed their suppliers, including Gildan, that the GCC must accompany all products shipped after the effective date, regardless of when the products were manufactured, even though the GCC only applied to products manufactured on or after November 12, 2008.

Gildan does not want the CPSC to expedite the rulemaking process for tracking labels in order to meet the August 2009 deadline. An expedited rulemaking process will likely result in regulations that would have harmful, unintended consequences for the industry. Instead, the CPSC should remain deliberative and take the necessary time to craft regulations that are reflective of the unique products and industries affected by the CPSIA labeling requirement.

II. LABELING REQUIREMENTS ARE IMPRACTICABLE FOR CERTAIN APPAREL DUE TO COMPLEX, VALUE-ADDED SUPPLY CHAINS

During the stay of enforcement, Gildan encourages the CPSC to craft rules that reflect the fact that the CPSIA Section 103 labeling requirement is not practicable in complex supply chains, such as those of certain apparel products. It is impracticable for a final apparel product to contain a permanent label that details the "manufacturing" information for every stage of its value-added production. Currently, it is impossible to guess how the labeling requirement would work in the supply chain setting, where several "manufacturers" may add value to a product before it reaches the consumer. The Consumer Product Safety Act (CPSA) defines manufacturer as "any person who manufactures or imports a consumer product."² In the supply chain setting, there may be multiple entities that could arguably be "manufacturers" within meaning of Section 103(a)(5).

To offer an illustration of the complex problems associated with affixing a permanent label in the supply chain setting, consider a typical t-shirt manufactured by Gildan:

- (1) Gildan manufactures fabric in the Dominican Republic and Honduras, generally from U.S.-spun yarns, which are sent for cutting, as appropriate, and assembly in various Western Hemisphere locations, where the goods are often packaged in bulk, then boxed

² See 15 U.S.C. 2052(a)(5)

in large quantities and imported into the United States. Gildan controls large U.S. distribution centers, where it sells its packaged products in boxes to U.S. retailers or processors. Once Gildan sells a box of t-shirts, for example, the products move out of its distribution centers and it is no longer in control of the product.

(2) Gildan's products are sold by wholesalers to screen printers, tie-dyers, embroiderers, and private labelers, or a combination thereof, who will "break the boxes" of t-shirts and apply their specific finishing processes and often apply their own labels.

(3) After any such finishing processes, the product is finally sold to a retailer, a sports team or to individual consumers.

The way the CPSIA is written, any of these points in the supply chain could be the "manufacturer" that is required to affix a permanent label or marking on the shirt. This would create an absurd situation where one garment would contain different labels from the manufacturer of blank t-shirts and the screen printer, tie-dyer, embroiderer, and/or the private labeler. As a result, it should be the entity selling the product to the retailers or directly to the consumers that should be responsible for the CPSIA Section 103 labeling requirements.

Again, these various value-added finishing processes take place after Gildan sells its product. A screen printer, for example, will buy a box of Gildan t-shirts or sweatshirts, and then through a heat transfer process or a direct dye process will apply logos or designs to the product. Does the CPSC want to know where and how this screen-printing process took place through a permanent tracking label? If so, Gildan cannot be expected to know which of its individual products will be destined for specific finishing processes, and therefore cannot include finishing information in its label at the time of manufacture and prior to importation.

Further, in the examples of t-shirts, sweatshirts, and other apparel, after Gildan sells the product and the various finishing processes are applied, Gildan estimates that over ten percent of its products have the labels torn out, or are relabeled, before the end-user purchases the product. Gildan should not be held liable if its buyers, or other entities downstream, remove the Gildan labels and replace them with private labels. Further, will CPSC require private labelers and other finishers to apply their own labels after the product is bought from Gildan?

In another example, Gildan currently manufactures sock tubes in its facilities in the United States (as well as Honduras). The sock tubes made in the United States are sometimes shipped to Central America for assembly and packaging and then shipped back to the United States with a *Made in the USA* label, under the rules of origin of the U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) and consistent with the Textile Fiber Identification Act. In this case, would the CPSC consider the location of manufacture anywhere other than the United States? Would it help facilitate a recall to have a *Made in the USA* label along side a CPSC label citing Central America?

The complexities are magnified by the fact that it is unclear what information will be required to be available to the end-user. The CPSIA requires that the location and date of production be available as well as "cohort" information. Each value added process in the apparel supply chain would have a different date, location, country of origin, and "cohort" information, making the information on such apparel labels confusing at best, and unreliable in the event of a recall at worst.

III. IT IS PHYSICALLY IMPRACTICABLE FOR CERTAIN APPAREL PRODUCTS TO CONTAIN TRACKING LABELS

The twelve-month stay of enforcement will allow the CPSC time to consider not only that tracking labels are impracticable for certain apparel due to complex supply chains, but that certain apparel products, such as socks, cannot contain individual labels because it would be financially unviable and physically impracticable. The CPSIA's Section 103 language "to the extent practicable" is recognition by Congress that applying permanent marks on certain products is simply not feasible.

There is precedent for unique treatment of certain types of apparel, including socks, due to practicability issues in the context of labeling requirements. Under country of origin markings³ and the Textile and Wool Act,⁴ individual socks have been exempted from the labeling requirements for the practical reason that requiring such labels would fundamentally alter the product. Gildan urges the CPSIA to give due consideration to these previous exemptions from individual product labeling requirements and determine that it is impracticable to affix permanent labels to each sock.

Further, it would be impossible for Gildan to affix permanent labels to each sock on the practical basis of comfort and finance. A label on the inside of a sock would be uncomfortable, and U.S. sock consumers would be burdened. In addition to affecting the commercial market for socks due to comfort and style issues, the sock industry would be compelled to invest a commercially unviable amount of money, relative to the very low per unit cost of individual socks, if labeling were required for socks.

IV. PRODUCTS SOLD IN BULK OR WITHOUT INDIVIDUAL PACKAGING SHOULD NOT BE REQUIRED TO HAVE PERMANENT LABELS AFFIXED TO THEM

Another illustration of the complicated nature of the apparel industry, and which further demonstrates the need of a twelve-month stay of enforcement for apparel, is that many apparel products are bought and sold in bulk and are not individually packaged. Therefore, the CPSC must take the necessary time to carefully consider how to implement the CPSIA Section 103 labeling requirement for such products. The legislative history of the CPSIA demonstrates that

³ 15 U.S.C. §70 (2000)

⁴ 15 U.S.C. §68

Congress, to a certain extent, contemplated products sold in bulk or without individual packaging. The Conference Committee Report from the CPSIA clarified that for manufacturers purchasing items where they are sold "without individual packaging," the labeling requirement simply means that "the packaging of the bulk shipment" itself needs to provide the required information."⁵ This is a clear indication that there is not a one size fits all approach to product labeling, and Gildan encourages the CPSC to take adequate time to craft regulations that make a necessary exemption for bulk packaged apparel products, such as socks, underwear, and t-shirts.

V. PROPRIETARY INFORMATION SHOULD REMAIN SECURE

During the twelve-month stay of enforcement, Gildan encourages the CPSC to consider business confidentiality when crafting the CPSIA labeling regulations. Gildan is concerned that in an effort to provide information that will help facilitate recalls, the CPSC could require information to be placed in labels that compromises supply chain information, such as the names of manufacturing facilities. For example, if such information were made publically available, it could lead to some direct competitors, finishers, and retailers directly contacting and contracting with Gildan's suppliers.

VI. EXISTING INVENTORIES SHOULD NOT BE AFFECTED ON THE DATE OF ENFORCEMENT

Gildan operates a network of large U.S. distribution centers, where products are staged after import, and then shipped to buyers when orders are placed. On August 14, 2009 Gildan distribution centers will have large inventories of products that were imported prior to the CPSC's final published guidance on the CPSIA tracking label requirement. According to the statute, the labeling requirement is only applicable to products manufactured on or after August 14, 2009, and Gildan encourages the CPSC to state emphatically that any labeling requirement will not affect existing inventories.

The twelve-month stay of enforcement will allow Gildan (and the industry) time to consume the bulk of its inventory before the CPSIA Section 103 labeling requirement becomes effective. It is financially impracticable for Gildan to apply permanent labels to existing product inventories. This issue is particularly acute for the entire U.S. distribution and retail sectors right now, as the economic downturn has created significant increases in inventories of many products. As

VII. CONCLUSION

Gildan recognizes that much of the publicized turmoil surrounding the implementation of the CPSIA to date is a result of narrow statutory language that does not allow the CPSC flexibility to properly craft and implement regulations that are sensitive to industry. With regard to the CPSIA Section 3 labeling requirement, however, the CPSC should take full advantage of the

⁵ See H. REP NO. 110-787 at 67.

broad congressional authority to implement the labeling requirement by crafting regulations that achieve the delicate balance of meeting the CPSIA policy objectives, minimizing disruption to apparel supply chains, and avoiding the potential unintended, harmful financial consequences to industry during a difficult economic climate. Unlike the lead and phthalate content limit regulations, the CPSC has an opportunity to craft labeling regulations with broad discretion and consideration for the unique supply chains of different product types.

Gildan appreciates the deliberate nature of the CPSC's rulemaking process, and Gildan will continue to offer guidance based on its experience in the apparel industry and global supply chains.

Sincerely,



Keith A. Jenkins
Director of Government Affairs
Sorini, Samet & Associates, LLC, on behalf of Gildan Activewear

April 27, 2009

Date

CC: Serge Zagury - Director, Customs and Trade Compliance, Gildan Activewear

Stevenson, Todd

From: Keith Jenkins (SS&A) [kjenkins@ssa-dc.com]
Sent: Monday, April 27, 2009 5:14 PM
To: Tracking Labels
Cc: David Townsend
Subject: Gildan Activewear Comments - CPSIA Section 103 - Tracking Labels
Attachments: Gildan Activewear Comments - CPSIA Section 103 Tracking Labels.pdf

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

From: Sorini, Samet & Associates on behalf of Gildan Activewear

The attached comments are submitted on behalf of Gildan Activewear in response to the Consumer Product Safety Commission's request for comments and information in Federal Register notice 74-8781 on February 26, 2009.

Sincerely,

Keith A. Jenkins
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2009-0010-0118

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April 27, 2009

VIA ELECTRONIC MAIL

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

Re: Tracking Labels

Dear Mr. Stevenson:

The following comments are submitted on behalf of Paris Accessories, Inc., an importer of clothing and accessories (the "Company") and in response to the Notice of Inquiry regarding Tracking Labels for Children's Products published at 74 Federal Register 8781 (February 26, 2009). The inquiry relates to the implementation of tracking label requirements imposed by the Section 103 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA").

The Consumer Product Safety Commission has requested public comments on a variety of topics regarding the tracking labeling requirement, including the following:

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.

The CPSIA requires a children's product to have "permanent distinguishing marks on the product and its packaging, to the extent practicable" that will permit the manufacturer and 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)." (Emphasis added.) 15 U.S.C. § 2063(a)(5).

The Company imports infants' and children's socks that, by virtue of their classification as "children's products," are subject to the tracking label requirement. These products, by their

very nature, are small in size and the addition of a tracking label is not practicable. Not only is a tracking label not practicable due to the size of the socks, a label, if added, would result in discomfort or irritation to the foot of the infant or child. Further, many domestic retailers do not allow any loose threads within the interior of the socks they sell, particularly children's socks, for safety reasons. The addition of a tracking label creates the potential for loose threads.

The areas where a tracking label could be placed are limited. Many socks of this type have grippers on the bottoms which are part of the sock's design and are a selling feature. This means that the tracking label can not be placed on the bottom. This leaves only the inside of the sock, making the tracking label a potential source of discomfort and irritation.

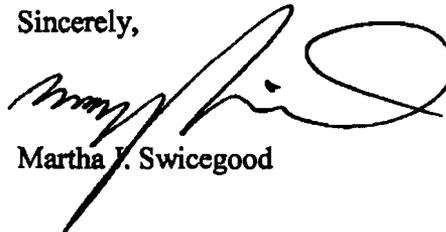
There is also the question of cost. A tracking label could add as much as 20 to 35 percent to the cost of these socks, which retail at prices as low as 60 cents a pair. A tracking label that increases the cost of low priced socks to this degree is not practicable.

Moreover, while a tracking label potentially could be added to the packaging for the socks, this option is not practicable because it is reasonably foreseeable that the packaging is discarded once the socks are removed. A tracking label on sock packaging would not serve the intended purpose under the CPSIA to promote a consumer's identification of a recalled product.

Accordingly, the Company requests that the Commission exempt infant, toddler and children's socks from the tracking label requirement. Compliance with this requirement is neither feasible nor practicable given the size of the product and the cost associated with the label. In addition, consideration should also be given as to whether the tracking label would affect adversely the comfort of the child using the product by causing irritation to the child's skin.

Thank you for your time and consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Martha J. Swicegood', with a large, stylized flourish at the end.

Martha J. Swicegood

cc: Paris Accessories, Inc.

Stevenson, Todd

From: Swicegood, Martha J. [mswicegood@mcguirewoods.com]
Sent: Monday, April 27, 2009 5:16 PM
To: Tracking Labels
Subject: Tracking Labels
Attachments: [Untitled].pdf

Dear Sir or Madam,
Attached please find comments submitted in response to the Notice of Inquiry Regarding Tracking Labels for Children's Products.

Thank you,
Martha Swicegood

Martha J. Swicegood
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2009-0018-0119

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April 27, 2009

VIA FAX AND ELECTRONIC MAIL

Office of the Secretary
Consumer Product Safety Commission
4330 East-West Highway, Room 502
Bethesda, MD 20814-4408

**Re: Section 103 of the Consumer Product Safety Improvement Act --
Response to the Consumer Product Safety Commission's Request for
Comment on Tracking Labels**

Dear Mr. Stevenson:

On behalf of Renfro Corporation, we respectfully respond to the Consumer Product Safety Commission's ("CPSC's") February 26, 2009 request for comments and information regarding the implementation of section 103 of the Consumer Product Safety Improvement Act ("CPSIA"), Tracking Labels for Children's Products.¹ Section 103 of the CPSIA requires the manufacturer of children's products made on or after August 14, 2009 to place distinguishing marks on the product and its packaging that provide certain identifying information to enable the manufacturer and the ultimate purchaser to ascertain the source of the product.

Renfro Corporation is a major U.S. manufacturer of adult and children's socks with facilities both in the United States and abroad. As a company that is committed to the safety of its products, Renfro commends the CPSC for enforcing high safety standards on manufacturers of children's products and understands the complexity in implementing a set of rules that works for both industry and consumers alike. Renfro looks forward to participating in the process to ensure a commonsense implementation of section 103 of the CPSIA.

Renfro does not believe, however, that section 103 of the CPSIA is intended to place virtually insurmountable financial and logistical burdens on companies whose products have been demonstrated to fall well below the CPSIA's safety requirements, as is the case with unembellished children's and infant socks and hosiery. As a result, Renfro respectfully requests that the CPSC (1) issue a stay of enforcement of section 103 of the CPSIA for socks and hosiery

¹ *Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act; Notice of Inquiry; Request for Comments and Information*, 74 Fed. Reg. 8781 (February 26, 2009).

until August 14, 2010; and (2) determine that it is not practicable at this time for the sock and hosiery industry to institute the tracking labels provision given current technology and business practices.

I. THE CPSC SHOULD STAY THE ENFORCEMENT OF SECTION 103 OF THE CPSIA UNTIL AUGUST 14, 2010

Implementation of the requirements of section 103 of the CPSIA will be a costly and time-consuming procedure for many companies. Efforts should be made by the CPSC to work with industries and other stakeholders to make the regulations relevant, concise, and practicable for producers, importers, and consumers. With the close of the comment period on April 27, 2009, there will be little time for the CPSC to review the comments, develop regulations, and issue clear guidelines regarding this provision by the August 14, 2009 deadline, much less allow adequate time for companies to understand and implement the new guidelines in their production and packaging processes. Given the importance of adopting a set of practical rules that can be used across a multitude of industries, each industry unique with their own specific concerns and needs, the rule-making process would benefit greatly from a 12-month stay of enforcement. A stay of enforcement also would allow the CPSC time to consider and identify products in which it is not practicable to apply permanent tracking labels, as is the case with children's and infant socks and hosiery.

In addition, in its February 29, 2009 *Federal Register* notice, the CPSC announced its intention to discuss tracking label policy with other national and regional regulators, as well as to follow the developments in tracking label policies in other jurisdictions. There already exist labeling guidelines that apply to socks and hosiery; laws that take into account the sock and hosiery industry's particular circumstances. In order to avoid a patchwork of conflicting label regulations, the CPSC should develop its guidelines with other pre-existing labeling systems in mind. For example, the Federal Trade Commission recognizes the unique nature of socks in its labeling guidelines. As a result, socks are subject to a different labeling requirements than other apparel. The creation of a patchwork of conflicting regulations for the same product will only serve to confuse the consumer and unnecessarily burden industry. Review of existing regulations and coordination with other agencies requires thoughtful consideration that may not be possible under a short time frame if the August 14, 2009 date stays in effect, especially given the CPSC's tremendous workload and responsibilities.

Apparel producers, especially for small items like socks, have particular challenges in complying with the tracking label provision. Renfro has been reviewing its manufacturing processes and business practices in order to determine how it could comply with the requirement. In the absence of any CPSC guidance to-date, however, Renfro has been unable make any changes to implement this provision. Given the expense associated with complying with the new labeling provision, it has not been cost-effective for Renfro to guess how the provision will be implemented. To develop a reliable tracking system, and possibly make alterations to Renfro's supply chain for each model, will take up to a full year to implement properly after clear guidance has been issued by the CPSC. Any shorter time period may result in a disorderly, confusing, needlessly expensive, and possibly inaccurate tracking system across industries.

The new tracking label requirement can be an important tool in providing safe products to America's children. It must be implemented in a way that provides all stakeholders sufficient time to comply with the provision. Renfro respectfully requests that CPSC exercise its discretion to issue a stay of enforcement of section 103 of the CPSIA until August 14, 2010, as it did for certain materials subject to lead limits under section 101 of the CPSIA.

II. IT IS NOT PRACTICABLE AT THIS TIME FOR THE SOCK AND HOSIERY INDUSTRY TO COMPLY WITH THE REQUIREMENTS OF SECTION 103 OF THE CPSIA

Section 103 of the CPSIA contains vague and ambiguous language on the tracking label requirement, which gives CPSC the opportunity to further define the detail required in the tracking labels. Renfro supports Congress's objective in developing this legislation to institute a tracking system to identify quickly the source of children's products that pose a hazard to consumers. The CPSC should, however, consider the practicality of any tracking label guidelines assigned to the sock and hosiery industry, especially given that these products have been shown to pose little hazard to consumers.

First, it is impracticable for Renfro to place permanent, distinguishing marks on each sock for identification purposes. Congress recognized that certain industries may not be able to place permanent tracking labels on their products when Congress modified the tracking label requirement with the phrase "to the extent practicable." Not only is the technology not available to Renfro at this time but to do so but it would result in an unsightly addition to such a small apparel product that is often valued for its appearance almost as much as it is for its utility. A permanent label placed inside the sock could create discomfort and irritation for the young consumer and concern by the children's parents.

Second, Renfro notes that this provision will result in economic hardship for Renfro and other sock and hosiery manufacturers. Socks are a low margin product and the industry is intensely competitive. This expense will fall disproportionately on domestically produced products. The competitive nature of the sock industry have lead many manufacturers to become as efficient as possible with automated production systems. In reviewing various tracking label options, Renfro has been forced to conclude that a manual system may be the only way to meet section 103 of the CPSIA's requirements. The cost of a manual system could be three to four times higher at U.S. facilities than the same system at foreign facilities. Renfro is concerned that in an effort to provide product information to the public for tracking purposes, the end result may be the continued loss of jobs in the U.S. manufacturing sector.

Third, Renfro should not be forced to disclose publicly the names of its manufacturers. As stated before, the sock industry is highly competitive. Disclosing publicly the names of its manufacturers will only serve to benefit competitors in the industry. Allowing companies to maintain business confidentiality will not interfere with the primary objective of section 103 of the CPSIA to facilitate recalls of children's products deemed potentially dangerous to the public.

III. CONCLUSION

Renfro understands the magnitude of the task the CPSC has before it in implementing the tracking label provision of the CPSIA. Renfro hopes that the CPSC will exercise its broad discretionary authority to make any implementation of this requirement as efficient and effective as possible for industries and consumers alike.

Renfro appreciates the opportunity to comment on the CPSC's rulemaking process and looks forward to continuing to participate in this process.

Sincerely,



Paige Rivas
International Trade Consultant
King & Spalding, on behalf of Renfro Corporation

CC: Harold Stone, Renfro Corporation

Stevenson, Todd

From: Rivas, Paige [PRivas@KSLAW.com]
Sent: Monday, April 27, 2009 5:24 PM
To: Tracking Labels
Cc: 'StonieStone@renfro.com'
Subject: Tracking Label Submission
Attachments: Renfro Tracking Label Submission.pdf

Dear CPSC,

Please see attached for comments submitted on behalf of Renfro Corporation in response to your February 26, 2009 request for comments regarding the implementation of section 103 of the Consumer Product Safety Improvement Act. A copy of these comments also have been transmitted via facsimile.

Thank you,

Paige Rivas
International Trade Consultant
202-626-9119
King & Spalding

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2009-0010-0120

April 27, 2009

VIA ELECTRONIC MAIL

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

Re: Implementation of section 103 of the CPSIA, Tracking Labels for Children's Products.

Dear Mr. Stevenson

On behalf of the The Hosiery Association (THA), and our over 100 companies which employ 40,000 workers in 23 states, we are writing to submit comments regarding Section 103 of the CPSIA on the Tracking Label requirements for children's products. First, we submit that the deadline of August 14, 2009 is not practicable in terms of the implementation of any tracking label requirement. Additional guidance - which we hope will result in part from this comment period - is needed before industry can devise a workable tracking and labeling system. Moreover, we believe that the statutory language of the legislation allows for substantial flexibility in the implementation of the requirement because the goal is operational traceability, not the imposition of an arbitrary and unworkable standard. Finally, in the particular case of the sock and hosiery industry, we are concerned that there may be confusion between pre-existing Federal Trade Commission (FTC) standards for labeling and the standards established by CPSIA. A stay of implementation would allow for harmonization of these and potentially other labeling standards.

Request for Stay of Implementation

As summarized above, the deadline of August 14, 2009, in the absence of guidance from the CPSC, does not allow for a practicable solution for the implementation of a tracking label system, particularly in the hosiery industry. The industry is at the moment placing orders for product to be manufactured on or after August 14. It does not have enough information about the specifics of the tracking label requirement to provide information to its suppliers in order to affix labels for manufactured product. THA therefore requests that the August 14, 2009 deadline be extended until August 14, 2010. We believe that no additional risk will be created by such an extension. Despite receiving a stay of enforcement for General Conformity Certificates (GCC), most importers and manufacturers are already using GCCs, which provide a degree of tracking capability already. Moreover, a stay of the tracking label requirement does not create a hazard. Importers and manufacturers are still required to comply with all existing, and new, standards for consumer product safety.

 The Hosiery Association

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Focus on Operational Traceability

The clear goal of Section 103 is to allow for the traceability of children's products, 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 the batch, run number, or other identifying characteristic)."

The use of the terms "enable" and "ascertain" indicate that the focus of the provision is not to proscribe a procedure or a mechanism, or even a standard, for tracking labels, but rather to allow for the obtaining of certain information. We believe that manufacturers can be in compliance with the provision as long as they are able to obtain the information required, and as long as that information is transparently available to the consumer. The marks required by the provision are clearly designed to facilitate tracking by the manufacturer, and therefore can be in the form of an internal code. Again the goal is to "enable" the manufacturer and subsequently allow the consumer to "ascertain" the information required. As long as this function can be fulfilled, we believe that the requirement is fulfilled. Preserving this flexibility is essential to ensure compliance while not creating an undue and unnecessary burden to industry.

At the same time, we must ensure that importers and manufacturers maintain a reasonable degree of control over proprietary information. Consumer products can be tracked effectively through the use of code, without having the key to that code available publicly. It would be fundamentally detrimental to the industry to force companies to reveal their sources to competitors and retailers, who will use it to their commercial advantage. Particularly with a low-risk product like socks and hosiery, especially unembellished, the effect would be disproportionately damaging to the industry.

Defining Practicability

The flexibility of the tracking label requirement in the CPSIA is also inherent in the opening paragraph (a)(5) of the Section:

"the manufacturer of a children's product shall place permanent, distinguishing marks on the product and its packaging, to the extent practicable..."

The phrase "to the extent practicable" allows for substantial latitude in the implementation of the requirement, again emphasizing that the focus of the provision is on the goal of traceability, rather than the imposition of a specific standard.

Nevertheless, in order for the industry to be able to focus on effective traceability, it must have more time to develop an operational system. Additional guidance from CPSC would greatly help. For example, to what extent would a CPSIA tracking label program coincide or conflict with the care labeling standard established by the FTC?

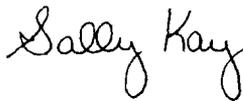
Section 423.1(c)(1) of the Care Labeling Rule exempts articles of clothing from labeling when “the utility or appearance would be substantially impaired by a permanently attached label”. Recognizing this standard, the FTC granted exemptions for labeling for sheer hosiery and pantyhose (50 denier or less). Moreover, as further clarified in a September 28, 2008 letter from the FTC to the Hosiery Association, the FTC concurred with an earlier opinion that “attaching a label to a hosiery item such as a sock or stocking ‘would result in an uncomfortable, unattractive or damaged article.’” The letter makes clear that sheer hosiery, pantyhose, socks and stockings and hosiery of 50 denier or less are exempt from the labeling requirement by virtue of the fact that they lack waistbands, they are too fragile, or they are sold in pairs. Is this the same standard that will be used by CPSC?

Conclusion

The legwear industry is eager to work with the CPSC to establish an operational tracking system for children’s legwear products. We have the capacity to do that and to ensure that our products remain the safe products that our consumers have grown to appreciate and trust. Moreover, we can ensure that the objective of Section 103 is met – to provide for effective traceability of children’s products - without creating undue cost and burden to the industry. To do so, however, we need more time to develop the system, and further guidance is required in order to ensure broad conformity within the industry.

Please contact me if you have any questions regarding these comments. Thank you for your attention and consideration.

Sincerely,



Sally Kay
The Hosiery Association

Stevenson, Todd

From: Ned Steiner [esteiner@strtrade.com]
Sent: Monday, April 27, 2009 5:29 PM
To: Tracking Labels
Attachments: THA Legwear Coalition tracking label comments.pdf

This message is being sent on behalf of the Hosiery Association.

Please contact THA or myself if you have any questions or concerns.

Thank you for your consideration.

Ned Steiner

Edward G. Steiner
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Stevenson, Todd

2009-0010-0121

From: Rick Woldenberg [rwoldenberg@learningresources.com]
Sent: Monday, April 27, 2009 5:33 PM
To: Tracking Labels
Cc: Nord, Nancy; Moore, Thomas; Martyak, Joseph; Falvey, Cheryl
Subject: [Possibly Spam]: Re: Tracking Labels

Importance: Low

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

Re: Tracking Labels

Dear Sir,

We are replying to the request for comments published in the Federal Register on February 26, 2009 on the implementation of Section 103 of the CPSIA (see <http://cpsc.gov/businfo/frnotices/fr09/trackinglabels.pdf>). You have asked for comments on several specific topics. I have responded to your questions below but provide general comments first.

I would note upfront that of all the provisions in the CPSIA that I consider dangerous and ill-conceived, the tracking labels provision has the greatest potential to wreak economic damage and induce unmerited market restructuring. This provision alone may bankrupt companies and wipe out entire product lines, all without improving children's product safety. I call on the CPSC and Congress to stay the implementation of this provision indefinitely to allow for public hearings and reconsideration of this requirement. If the CPSC and Congress proceed with implementation of Section 103 as planned for August 14, 2009, accountability for the irreversible damage inflicted over industry warnings will rest with the CPSC and Congress. This terrible outcome is avoidable by brave action taken in advance. Please table this provision pending development of a sensible risk-based alternative.

General Comments:

a. Children's Product Industry Safety Record Makes Tracking Labels VERY Wasteful. Our company is not unlike most participants in the market, having had virtually no recalls over the years. Notably, recalls for lead-in-paint in children's products (all markets) during the historically high recall period of January 1, 2007 – January 30, 2009 (25 months) involved only 87 companies (125 recalls total). See analysis in <http://learningresourcesinc.blogspot.com/2009/02/cpsia-dont-believe-consumer-groups-snow.html>. Given that many thousands of companies trade in children's products in the U.S. economy, this data confirms that only a miniscule fraction of all children's product companies generate recalls in any given year. Of the 125 recalls for lead-in-paint during the subject 25-month period, one company was responsible for seven recalls, two companies had five recalls, three had four recalls, three had three recalls, nine had two recalls and the remaining 69 companies had one recall each. Many of these recalls were self-induced as the companies turned themselves in as a result of self-policing. In addition, the CPSC exercised no discretion in implementing recalls for the many hyper-technical lead-in-paint violations during this period (see the remarks of Nancy Nord on February 16, 2009 at the New York Toy Fair), thus inflating the apparently dramatic recall figures.

The new requirement to place tracking labels on our products will have a devastating impact on our company and our investment decisions going forward, all without any impact whatsoever on safety or the effectiveness of recalls of our products (if any). We built a strong track record of safety administration in the 25 years since our founding (not by accident), and with the stringent new rules of the CPSIA, the tiny risk of a recall of our items is further reduced. For perspective, please note that I estimate that our company has produced and sold between 750 million and 1 billion units since our founding in 1984. In that period of time, we have had ONE recall of 130 pieces. In that case, we identified the customers who had purchased the recalled items using our computer inventory tracking system, called them each individually and recovered ALL of the recall units. We did this without the use of tracking labels. **Please note that these figures suggest that the expected recall rate for our products is approximately 0.00001%.** How much should we spend to improve recall effectiveness if the risk of a recall over a 25-year period is 0.00001%? Nothing, of course. If we spend 0.5% of revenue on tracking labels under an implementation of Section 103 (as anticipated), the labeling cost would exceed the annualized cost of recalls by 50,000:1.

If the tracking label provision is enforced against our company, we will incur SUBSTANTIAL incremental expenses which will NOT improve our safety performance. Notably, the labels CANNOT POSSIBLY improve our recall effectiveness. As demonstrated above, the VAST MAJORITY of newly-regulated children's product companies have NEVER HAD ONE RECALL for any reason. If far less than 1% of children's product manufacturers have a single recall in a five-year period, the cost for tracking labels cannot be justified, ESPECIALLY in light of the undocumented benefit of improved recalls (namely, injuries expected to be avoided). There is simply no way the cost and benefit of tracking labels match or relate favorably for consumers or anyone for that matter.

Notably, like so many aspects of the CPSIA, the imposition of the tracking label requirement indiscriminately without consideration of quantifiable risk causes major market distortions. While I am all in favor of "improving recall effectiveness" (whatever that may mean in this case), the cost of more effective recalls should be evaluated against the ACTUAL impact of ineffective recalls. In some cases, where the risk to life is severe (perhaps a good example is cribs or playpens), labels may make sense because consumers and resellers need an easy way to tell which items should be set aside. This reasoning would not apply indiscriminately to other categories of children's products. Improving recall effectiveness will come at a cost, and if there is no actual societal benefit to the change in the system, the cost of the changes will be pure cost to all of us.

I would note further that most items can be easily identified without tracking labels. It is also true that many items are made by only one source, and in fact, many small companies have few sources. Knowing the brand name is sufficient in those cases to identify the source. In addition, many companies (like ours) use sophisticated warehouse management/inventory-tracking software which provides comprehensive control over manufacturing lots. This software helps manage recalls quite effectively. For instance, in the above recall situation, we were able to quickly identify all at-risk transactions using our tracking software. Tracking labels would not have improved and might have reduced the effectiveness of that particular recall.

b. Use Enforcement Discretion to Table or Sharply Restrict the Tracking Labels Requirement. Given the assertion by the CPSC of its broad "enforcement discretion" in granting a permanent stay of enforcement on the ATV industry, I call on the CPSC to use its "enforcement discretion" to permanently stay the tracking label requirement and to redeploy it only in those instances where a clear connection to public safety and prevention of injuries can be made. In the case of our company, with our strong record of safety administration, the nature of our products and their excellent and consistent track record for safety, the application of the tracking label requirements is both wasteful and will distort our economic decision-making. The CPSC should waive the requirement in all cases where there is no demonstrated need for labeling to protect the public. To do otherwise is to sacrifice the small business community to these overreaching and unproductive requirements.

c. The Tracking Label Requirement Will Kill Many Innocent Items Produced by Small Business. The cost of administration of tracking labels will be enough to cause a MAJOR culling of specialty market items. For instance, with more than 1500 items in our current product line, the complexity

of the undertaking at our company is simply breathtaking. The impact of tracking labels falls disproportionately on small businesses using small runs to service niche markets. When the expense of tracking, retaining and managing lot information, managing and implementing lot markings, inspecting shipments at factories and at the destination warehouse, rehabbing incorrectly labeled items, training and supervising internal staff and the supply chain simply on tracking labels and the potential liability attached to errors or administrative failures, is considered and added to the cost of small run products, it seems likely that most small businesses will be cutting their product lines. It is also likely that many large businesses will feel similar pressures to reduce product ranges and possibly exit entire markets.

Arguably, the tracking label provisions can only be managed by companies using only large production runs (make-to-order, rather than make-to-stock) or selling very limited product ranges (50-100 items only). Only under these circumstances is the complexity and cost of tracking labels even slightly controllable. Companies meeting this criteria usually cater to the mass market. Small businesses and start-ups do not typically use large production runs which can bear the expense of tracking labels. Whereas a large company can fairly easily manage the labeling requirements on a P.O.-by-P.O. basis efficiently, small businesses will bear a skyrocketing burden as they attempt to serve the specialty market.

d. The Tracking Label Concept GREATLY Oversimplifies the Task. Tracking labels will be a tortuous process for most companies. Please consider:

1. For many companies with small runs, lot sizes for different components in a single product may vary. For instance, boxes and other print items might be produced in 5,000 piece runs or larger to gain minimum pricing efficiency. If product components are run in different lot sizes or lots out of sequence (for instance, making new product with old boxes), labeling will likely be manual and expensive. Some re-labeling may be required. On some occasions where the finished product itself is made out of sequence with the packaging, an additional step of matching labels (packaging and product itself) will be required. This step will likely need to be verified by statistical sampling at the factory and spot-checked upon arrival, a hugely wasteful and expensive step that will slow companies down to a crawl. Please keep the burden of these activities in mind when considered their low potential value to a company like ours that recalled only 130 pieces in 25 years (none of which caused an injury).

Small lot manufacturers, like crafters, work-at-home-moms and companies catering to special needs, will find the burden of managing the complexity of matching component lots and handling complex labeling requirements unbearable. This will also encourage disregard for the law, faking the labels (never changing the lot number, for instance) or the creation of some kind of black market (selling out of the trunk of your car or at flea market, rather than through stores). Forcing small businesses underground cannot be good policy.

2. Many companies have multiple sources for a single item. The cost and complexity of maintaining and properly labeling items with varying sources will be prohibitive (impossible as a practical matter).

3. Changing labels on each run will be a taxing administrative process. To change a label on both the product and the package may require the involvement of product development staff in some companies or for some products. This will soak up innovation resources to process administrative details. At our company, since our items vary considerably (plain and painted wood, plastic, urea, sewn, roto-cast, injection-molded, electronics, printed, kits, etc.), numerous different labeling protocols must be developed and enforced to ensure proper labeling with consistent quality control. We anticipate this effort will require specialized software at considerable expense. We do not presently own such software and it may or may not be available on the market. We also anticipate that we will need to hire, train and retain a full-time staff devoted just to tracking labels. Given the size of our product line and the frequency of our production runs, we estimate a need to change at least 20,000 – 30,000 labels every year. That could be as many as 600 labels per week at our small company. It will be a nearly impossible task.

4. The task of incorporating lot markings will be new to many small factories. Small businesses use different factories than big companies. Not only do small companies serve different parts of the market, a different supply chain has also developed to serve them. [Please note that the most notorious recalls in 2007/8 were NOT by small companies serviced by small factories; the data does not suggest that size of factory correlates directly to quality.] The shift to tracking labels with this manufacturing base is likely to be a rough one. For instance, our supply chain has never had to change each of our products lot-by-lot. We have not selected our factories for this skill set and do not know if they can manage a process like this. No doubt some of our factories will fail to be good partners for lot markings. The transition to tracking labels will be disruptive to our supply chain, and will be quite expensive. It cannot be done in a short period of time. Even a one year lead-time is unrealistic.

5. Many items which are sold safely and appropriately in the U.S. have ambiguous or unknown sources. Items obtained through trading companies often have intentionally-obscured origins. In addition, just as many importers present themselves as manufacturers, some factories present themselves as manufacturers but are actually trading companies. As a practical matter, it is not possible to identify the manufacturer in many cases. In other cases, the origin of the item may be impossible to identify because it is a fungible commodity (think of aluminum foil, table tennis balls or paper clips). With multiple sources possible (or even mixed together in one box), **it may be impossible** to properly label items in compliance with the rules. Finally, some items may be sold as "children's products" under the CPSIA definition although they sell freely in the general economy without regulation. For instance, tape measures sold at Home Depot might also be sold as educational materials. Likewise, Reynolds Aluminum foil sold at the grocery store without labels might be sold to schools for science experiments. Labeling common items will be impossible because the sources for such consumer goods are unlikely to cooperate, based on our real world experience. As a consequence, many resellers will have to choose between breaking the law and dropping important supply items. This phenomenon will hammer the school business, among others.

6. Many items have numerous small parts that cannot be marked. A set of blocks cannot be easily marked, for instance. This will slow down many marketers of children's products. In some cases, labeling might even impair the ability of the item to function properly.

7. Production runs do not always have a clear "date". For instance, production runs can stretch over several days or occur in several places at one time. In other cases, production can be done separately for various components, and then simple assembly (put item in a box, for instance) may occur at another date. If the basic item is made at one time but assembled into boxes on several occasions, tracking labels may set out misleading information if the assembly date is shown. Or, if assembly is somehow done wrong, the date would be misleading if keyed off the production date of the basic item. This creates a real dilemma for small businesses. Other permutations may also be troublesome.

8. Owing to the presence of various components in each item, the tracking label requirement will quickly devolve into an implicit requirement to track components back to its source for each production run. This kind of recordkeeping is WELL BEYOND most companies' capabilities (small or large). In any event, the low value of most children's products means that there won't be enough profit to support the development of a recordkeeping system more appropriate to Boeing or Lockheed Martin. It is also well beyond the capability of most of our factories as their computerized automation will not accommodate this kind of complexity. The Dickensian requirement to track such excessive and ultimately useless data will strongly discourage start-ups in children's products and will cause many, if not most, children's product companies to transition away from serving the children's market. This will happen over time as the burden becomes clear to most companies. Niche markets like Education will be crushed by such negative incentives. This has already begun to take place in the thrift store market, as many thrift stores are refusing to sell children's products to avoid the risk of litigation or fines. Like the thrift stores, the rest of us will react to these new costs and risks by adjusting our businesses to the new conditions. In most cases, controlling costs under the CPSIA will mean exit.

9. Many important children's products, especially in the education field, are kits that present special labeling challenges. Labeling kits with many components will be a nightmare and will

constitute competitive suicide. Consider a kit with 50 components. For such a kit, we might have to list each source on the packaging and possibly mark the same information on the master carton, providing a wonderful competitive roadmap to our customers or competitors to save money or to steal business. In addition, we might have to label EACH component in the kit with its source. See above for the many challenges that confront kit makers when they try to label the components. If a 50-component kit requires labeling on a component-by-component basis, the biggest single expense in packaging a kit may turn out to be labeling. The cost of such kits will skyrocket to pay for wasteful labeling activities that have never proven necessary or desirable since the United States was founded in 1776, or in any other industrial country that I am aware of. With the anticipated increase in cost, I believe many such kits will be discontinued.

10. Some items are sold in bulk and have no packaging. These items do not fit within the rule and need to be excluded. Some items are packaged for retail and then broken apart for retail in bulk at the store level, too.

11. Some companies market natural materials (such as rocks) as children's products, creating unique difficulties. Companies marketing natural or live materials like clay, plants, insects or animals (or dead materials like frogs for dissection) to children will not be able to document origin (where did that clay come from, or that frog? What is the origin of the granite specimen?) or easily label the specimens. Needless to say, labeling an ant, a tomato plant or rocks from several locations is absurd.

e. Manufacturers Can Accurately Assess Cost and Benefit of Tracking Labels. In our case, with 130 pieces recalled over a 25-year period, we believe it is in our economic interest to (i) keep making safe products through strict control of our supply chain and other quality control measures, and (ii) take the risk of having to recall more units than necessary by opting to NOT label our products by lot number and other co-hort information. This is CLEARLY a favorable economic decision for our company. At no time in our history would it have made economic sense to label our products by lot to facilitate "more effective recalls". We are concerned that the resources devoted to managing a tracking label program will divert funds from factory inspections or other necessary quality control efforts designed to ensure the safety of our products. Other than situations where labeling is clearly needed to prevent likely injury, the manufacturer is best situated to make this judgment. In some cases, manufacturers have used serial numbers to create their own quality monitoring system where necessary or desirable in pleasing customers or building a brand. We believe the market will operate to provide incentives to manufacturers to reduce costs through labeling, if tracking labels actually adds value.

f. A Requirement to Disclosure Factory Identity In ANY Form Will Kill Companies. The identity of sources is critically-sensitive and confidential data in many cases. Maintaining confidentiality on that information is essential for any private labeler. If private labelers must reveal their ultimate source, their brands will be severely damaged or even destroyed. I note with a sense of dread that senior CPSC enforcement and legal officials announced at the 2009 ICPHSO meeting that the CPSIA requires disclosure of sources in a form that consumers can access. In particular, I recall one CPSC official advising the large assembled group of businesspeople to get past their "mourning process" over disclosure of this confidential data. I certainly hope the agency will reconsider this terrible decision. It is not unknown for large customers to buy certain products with the seeming idea to develop their own version if sales are good. This process will be greatly accelerated if not shortcut by the disclosure of factory identities. Likewise, competitors will feast on the factory identities to reverse engineer deals or steal business.

Were the CPSC to proceed to implement a rule requiring that confidential sources be disclosed AT ALL, the rules of the game would change forever in the Children's Product market. This rule would be experienced as a cost by market participants. That is, manufacturers would discount their ability to capture or retain large accounts for any item they didn't make themselves or make in a controlled factory. In most cases, without the large volume accounts, these products would no longer make economic sense and would be dropped or would never come to market. Interestingly, many companies do good business selling open market items under their own name. [Think of tape measures.] Clearly if there is enough demand to fuel sales for so many private label open market items, this activity must meet a real market need. If the CPSC imposes a disclosure rule governing factory identities, most of this economic activity will end and

that market need will go unfulfilled. It will be just too easy to steal sources and the incentive to bring these open market items to the children's market will so greatly reduced as to kill the market. This will benefit NO ONE.

g. Confusion over Labeling Will Cause the Market to SHRINK. I have already heard of one school electing to teach geology using posters rather than rocks over concern about CPSIA compliance. No amount of explaining and hand waving was able to move the school off this decision. Whether or not the school should have had legal worries about the CPSIA, they did in actual fact and the students in that district will now learn about rocks from a piece of paper rather than from specimens. This obviously inferior method of teaching will no doubt negatively affect the quality of education. Like it or not, in the real world, the rules set forth in the CPSIA (including tracking labels) will drive regrettable decisions downstream. No amount of education or "clarification" will fix this problem. Imposing a misconceived across-the-board tracking label rule will result in mass chaos in the market and will damage our schools and our economy. Without a serious trimming and refocusing of this requirement, the CPSC and the Congress should be prepared for high costs to our society from a rule with limited safety upside on any basis.

h. Like Other Aspects of the CPSIA, the Marketing Intent Implicit in the Definition of "Children's Products" Will Cause Havoc. Since the intention of the seller determines whether something is a "children's product" under the CPSIA, it is clear that there will be commercial "wars" over labeling between manufacturers and retailers who repurpose items for sale into schools or to children otherwise. For instance, a marketer could buy pens domestically from a pen supplier and then offer a service to stencil a child's name on them. [This is a popular service in the children's toy and housewares market.] The CPSIA tracking label obligation will not fall on the manufacturer who produced a pen for general use. But how will the downstream value-added reseller get the correct information for the label without the cooperation of the pen supplier (who may not have it himself)? This type of bizarre problem will close the door to the sale opportunity - people will not endure the hassle for labels, they'll find some other way to make money. Unless the purpose of this rule is to end commerce in children's products, the problems implicit in heavily regulating part of the market and leaving the rest completely unregulated will need to be reconsidered. [In this case, we advocate that less regulation is the appropriate solution.] The concept of an "intent-based" rule defining the scope of the labeling obligation is going to shrink the children's market owing to confusion alone. Despite Congressional cries for greater "clarity", I do not believe this structural flaw in the law can be repaired by any amount of clarifying by the CPSC or anyone else.

Your Questions:

Q1. 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.

A1: First and foremost, the term "practicable" needs to take into account the economics of the labeling task. If economics are somehow ignored on "public policy grounds", small business and niche markets are likely to be crushed, assuming the provision is taken seriously and both regulators and the marketplace enforce the provision. If so, important niches served by small businesses will be deprived of existing products (as suddenly uneconomic products are culled from the market) and innovative new products (for lack of economic incentive and for the paucity of start-up businesses). There is a legitimate fear in the market that the tracking label provision will accelerate a move toward a mass market-only economy, where choice is limited to whatever the Wal-Mart's and Toys R Us's of the world will allow consumers to buy. Small production runs suffer from dramatically worse economics under this rule, and that economic disadvantage will tender huge opportunity to the mass market.

I recommend that "practicable" take into account the production run economics, and that therefore the implementation only be imposed on production runs of 50,000 pieces per lot or more. This would have the effect of protecting small businesses, and would tailor the provision ONLY to those large runs which have the potential to do widespread harm. **Please do not interpret any constructive remarks herein about any aspect of tracking labels or**

implementation of Section 103 as a form of endorsement. I am unambiguously on record as opposing implementation of this provision for the reasons outlined in this letter. Any remark in this letter about how to implement Section 103 is simply in response to your questions, not an indication of any support for tracking labels.]

In addition to economics, I believe there are many manifestations of products that should have some relief from labeling requirements:

- Those items where the all-in cost of tracking labels is more than 0.5% of the landed cost of the item for that production run. [Ex.: low value items or highly complex labeling projects]
- Those items with no "main" part with surface area sufficient to hold a tracking label without destroying its function or aesthetics. [Ex.: pens]
- Those items with multiple components from multiple factories (kits of various kinds). [Ex.: large science kits for schools]
- Those items where the product and its packaging are produced at different times and in different lots sizes. [Ex.: many items made by small businesses for niche markets.]
- Products comprised of small parts. [Ex.: Lego's]
- Natural or living materials, as mentioned above.

Re: packaging, as noted above, kits present a particular challenge in labeling as many sources are often found in one package. In addition, many finished goods (open market) in the children's market come from multiple sources, which is usually invisible to the importer. Accessing this information may be difficult or impossible. Relations between importers and factories may fracture if this rule is imposed, as factories depend on "private labels" as much as importers do. *It is further worth noting that if the production of children's products is made sufficiently arduous, expensive or risky, factories will stop serving U.S. importers of children's good, thus further accelerating the decline on the market.*

Other packaging issues:

- Small facings [Ex.: bags of dice with a tiny header card.]
- Temporary packaging [Ex.: items sold in a B2B market which may or may not be sold to consumers in the non-retail packaging provided. Often the B2B customer doesn't want the seller to know what he is doing with the goods, as the seller may be his competitor. As a consequence, the manufacturer may sell some items thinking that they are NOT for resale and find out later that they were sold at retail.]
- Items without packaging [Ex.: play tables may not come in retail packaging at all.]

I share the concern of many commentators about the requirement that the label be "permanent". I do not know what that might mean. A permanent label should mean anything that sticks with greater durability than a Post-It. Packaging should be allowed to have the tracking information printed on it (in other words, without a label), and the product itself should be allowed to provide the information in any "permanent" means, even if not by label.

Some retailers are said to be currently insisting on "labels", even when the information could be molded or painted on the item. This will add additional costs and arguably will be a worse solution. The requirement by certain retailers for a label is a by-product of the incomplete rules on this requirement as the deadline approaches. Action by the CPSC to stay the implementation of the tracking labels requirement MIGHT get the retailers to back off their varying requirements. Please note that since this provision can be enforced by EACH State Attorney General independent of the CPSC, we believe NO action by the CPSC will have the effect of slowing down the growing body of varying rules on tracking labels in the market as the retailers compete to exceed the expected requirements to ensure none of the 51 regulators capable of enforcing this law will take action. This is creating a truly toxic environment for commerce.

Q2: (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(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.

A2a: The manufacturer will be able to determine the location and date of production by its recordkeeping. Standard nomenclature is not necessary to make the information decipherable from the standpoint of a manufacturer. There may be good reason to let manufacturers determine their own form of information as businesses and software systems will vary significantly among the market participants. This is purely a data and recordkeeping function.

Please note that the location of production for many small businesses and their products won't change over many years on an item-by-item basis. For many such items, it is sufficient to note the date of production to identify location. In addition, for companies like ours, simply tying the item back to internal purchase order records will definitively identify the location (and date) of production. Notably, the precise date of production is not nearly as important as the lot identification. Please note that we are not selling consumable products like candy bars. The date of production is largely irrelevant data - the only information that truly matters is identifying the lot, regardless of when it was made. Any information that would tie a particular unit back to a particular production run is what is needed to make recalls effective. In addition, consumers will only need to be able to make this connection for "more effective recalls". In other words, if the item has the marking "XYZ" on it and that code is recalled, then a consumer can positively identify the item using the code. The rest of the data is irrelevant. Arguably, given the varying levels of education, sophistication and language skills in our country, a truly comprehensive display of data on tracking labels might be counter-productive and impair understanding. In my opinion, the more data provided, the more likely that consumers will be confused. I would prefer a marking like a serial number which is far less complex and much more definitive. This system would also preserve confidentiality of source information which is absolutely critical to preserve economic incentive.

A2b: Anything that would allow each manufacturer to use its discretion in designing and using tracking labels would be quite desirable. As I said, from the point of view of a manufacturer, the key considerations in a recall situation is identifying affected units and clearly describing them for its customers and consumers in general. For many companies, current recordkeeping puts them in a good position to identify items affected, often by date of sale. [Of course, in the case of recalls by date of sale, the manufacturer might be required to accept returns that cannot be distinguished by date of sale or other distinguishing characteristics like product features, components or colors.]

Q3: 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.

A3: As noted above, the consumer only needs to be able to identify the item as recalled or not being recalled. This can be accomplished without the specific co-hort information apparently required by the statute. A "serial number" style for identifier will work well for this purpose. I believe food products often use this means of product identification with great success. The notion that consumers have a valid, non-abusive use for factory identity information is unsubstantiated.

Likewise, resellers of used merchandise, like charities and thrift stores, would be able to effectively monitor recalls using serial number-style markings.

The location and appearance of the information might not need standardization if a summary, serial number-style marking is permitted. Most such markings are usually placed near the other manufacturer boilerplate information and are not hard to find. I think the only instance in which some degree of standardization might be beneficial is if the provision is taken literally and implemented without change as a form of label.

Q4: 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).

Tracking information should be available in only one language to keep costs down. Use of symbols may be deployed to make the information accessible to people who don't speak English. We do not believe most of the tracking label information has any value to consumers other than to identify lots. A simple alpha-numeric code should suffice for this purpose and eliminate the need for ALL other information.

Q5: 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.

Consumers will not benefit from labeling in the first place and will have no way to access electronically readable data like a bar code. Requirements that businesses build a massive Internet-accessible infrastructure for consumers to access night and day online will kill many small businesses and will throw yet another major roadblock up for start-up businesses. A provision like this would throttle the life out of innovation and growth through new company formation.

Q6: 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.

As noted above, we STRONGLY object to the provision of source information to consumers or anyone on any basis and in any form. Notwithstanding the supposed benefits, required disclosure of source identity is misconceived and will wreak unprecedented havoc on our markets. There is simply NO justification for forcing the restructuring of a massive industry for the supposed benefit of revealing source information to consumers. If implemented, consumers may gain access to a lot of useless information but will have no products to buy.

Q7: The amount of lead time needed to comply with marking requirements if the format is prescribed.

A7: I believe that it is appropriate to allow at least TWO YEARS from the promulgation of final implementing rules for transition into a tracking label regime, if the agency elects to proceed with this ill-advised provision, to allow for supply chain re-training, building of appropriate U.S.-side business infrastructure and/or an orderly transition away from operating in the children's market.

Q8: Whether successful models for adequate tracking labels already exist in other jurisdictions.

A8: We are not aware of any labeling requirement comparable to the CPSIA requirements anywhere in the world. We are active in over 80 countries presently and have never had to provide any of the information required by this law in any jurisdiction.

As a closing note, I want to confirm that we have identified no reason to believe that tracking labels will have any material positive impact on safety for children's products. We urge the CPSC and Congress to stay this provision pending development of a more rational and pro-market provision.

Please do not hesitate to contact me with any further questions. Thank you for considering my views on this important subject.

Sincerely,

Richard Woldenberg
Chairman
Learning Resources, Inc.
380 North Fairway Drive
Vernon Hills, IL 60061
Tel 847-573-8420
rwoldenberg@learningresources.com

Stevenson, Todd

2009-0010-0122

From: Michael Warring [mwarring@amep.com]
Sent: Monday, April 27, 2009 6:02 PM
To: Tracking Labels
Cc: Amber Shipley; Joy Silvern; Marni Karlin; Paul Carver; Traster, Benjamin (Mark Udall); arne.duncan@ed.gov; info.markey@mail.house.gov; niemeyer@enasco.com
Subject: Request for Comments on the Statutory Tracking Label Requirement of CPSIA 2008

TO: Office of the Secretary
Consumer Product Safety Commission

RE: Request for Comments on Tracking Label Requirements under CPSIA2008

Thank you for the opportunity to comment on the Tracking Label Requirement of CPSIA2008.

As the President of a small manufacturing company (70 to 75 employees in two locations) with almost 6,000 different items sold to 2,800 different customers, mostly distributors, in 2008 using 500 vendors for source materials or products, I assure you that any labeling requirement is going to be difficult to implement and manage. In reality, our unit sales volume on any of these products is often less than 100 units a year, with a sales price that is generally between \$20 and \$50 per unit. It is not uncommon for purchased products to be acquired in runs of 300 units or less a year. At that volume spread across physically different products purchased in whole or part from 500 vendors, automation is not possible. Permanent labeling is not possible. That leaves us with either paper or foil based labels that must be generated in very small batches and applied by hand – labels that in and of themselves will introduce a choking hazard, never mind another testing requirement for lead, lead in paint and phthalates, as the label is now part of the product. The only economic choice I have is to drop products that sell in volumes that are too low to support automated labeling at the vendor or within our own manufacturing facility. Combine this with the economics of third party testing and I must pare my business down to maybe 1,500 products. At that level, I will not have sufficient mass to maintain my presence in the educational manipulatives marketplace. My recommendation is to limit any labeling requirement to product that can be marketed economically in large batches and has a physical form and size that allows for automated permanent labeling. Think in terms of \$100,000 or more in annual revenue per product, 3,000 units or more in batch size, with a surface area of 54 square inches (a 3"x3"x3" cube).

The request for comment suggested addressing eight different points with two sub-points. I am not sufficiently experienced or educated to formally address each and every point. I would suggest that the Commission consider the following issues and concerns in their evaluation of establishing labeling requirements for companies large and small (and everywhere in-between), and in every form, private, public, and hobby:

1. A low cost product will only support automated 'permanent' labeling in certain volumes. Think in terms of middle four figures or more in terms of units.
2. Not all companies thrive on unit volume, but instead address small unit volume markets with niche opportunities spread across a substantial product range. Low unit production will lead to manual labeling.
3. A substantial product range may be in the form of several thousand dissimilar products sold in very low volumes. This broad range of low volume products provides sufficient profit to justify the existence of a company or industry to address those low volumes AND low unit price needs (in this case, teachers).
4. A single type of manually applied label that is available to address these low volume products may not be able to be used on broad ranges of dissimilar products necessitating multiple labeling methods and materials.
5. 'Set up' times for manually applied labels produced in small quantities on different media using different equipment will be cost prohibitive for small production runs. This will eliminate many consumer choices, as the products will no longer be available – the market for these products being rather small and specialized.
6. As mentioned above, introduction of another component to a product (the label) creates another component testing requirement for lead, lead in paint and phthalates for that product as well as an additional choking hazard. As written and implemented, the label (and printing) cannot be tested once and then used across all products but must be tested as a unique component on each and every product to which it is applied. I have 6,000 products, that is 6,000 more individual tests that must be run and paid for by the margin available from the product.
7. Small volume, low price products will not support lot tracing – not that I can do lot tracing anyway.
8. A good portion of the uniqueness of a product to the market and its limited availability by a single manufacturer/importer allows that manufacturer/importer to exist simply to fill the low volume/low price market for that product. Providing any information that allows elimination of 'the middle man' from the chain will eventually

lead to the complete elimination of the middle man, and ultimately to the subsequent reduction in choices to end-users as large companies by-pass the middleman to 'take over' the low volume product and then eventually drop the low volume product from their offerings. In summary, opening up unique sources for low volume/low price product to large end-users will eventually eliminate the low volume/low price product from the marketplace as the large company model will not support low volume product choices.

9. Please remember that this requirement is being written for all forms of entities looking to exchange a good for money. This could be a person selling birdhouse kits cut and packaged in their garage donated to a local youth group, school, or charity for fund raising. It could also be Wal-Mart. There are a lot of configurations between these two points and they each have very real limits or abilities to jump through hoops that may or may not make real sense. In my company's case, I am not aware of a single product recall incident in its 23 year history, yet I am being asked to spend \$3,000,000 to \$12,000,000 or so NOW to test my inventory in its current form and to spend somewhere around \$1,000,000 or more each year thereafter testing product that has no inherent risk factor relative to lead, lead in paint or phthalates. Tracking labels will just speed our eventual demise from the economic landscape that is the School Supply and Educational Manipulatives market.

Please think in realistic terms as procedures and requirements are put together.

Sincerely,

Michael Warring
President
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2009-0010-0123



April 27, 2009

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

Re: Request for Comments on Tracking Label Requirement

ETA/Cuisenaire is a 40-year old, family-owned business who sells supplemental math, science, and reading materials to the elementary school and preschool market. This market is reached through direct marketing to schools on a national level and through wholesale channels via textbook publishers and learning centers who resell our product to schools. This market is small and narrowly focused compared to the mass consumer market for product intended for children under the age of 12 at which the CPSIA has been primarily directed. The majority of businesses that service this school market are small to medium-sized business owners, like our self. We care deeply about the safety of children which is why we feel it is necessary to have our voice heard on this matter so that our resources can be bettered utilized on product safety matters that have a direct and positive impact to the manufacturing and distribution of safe product.

Borrowing from a letter to the CPSC by Tim Holt, the President of NSSEA (National School Supply and Equipment Association), "according to the limited legislative history, the tracking label requirement is intended to enhance the effectiveness of recalls. In truth, before the passage of the CPSIA the Consumer Product Safety Commission (CPSC) required recalls to be broad enough to encompass all non-complying or defective products. Products that could not be identified in any way were rare. If anything, the tracking labels are most likely to narrow the scope of future recalls. Yet Congress has not left it to manufacturers to judge what would be in their own best interests based on their products and the relative risk, but has imposed these across the board requirements—and costs—on everyone, regardless of the practicalities and whether they can be justified".

To illustrate the impact that the CPSIA labeling and tracking requirements as specified in Section 103 will have on ETA/Cuisenaire and similar businesses within our market, I would like to address each of the questions asked by the CPSC in the *Federal Register* notice of February 26, 2009 (74 FR 8781-8782). In doing so, I hope to bring to light how there are thousands of businesses in the U.S. that will be unable to exist or will experience great financial hardship

(resulting in personnel lay-offs and loss of revenue) if the current labeling and tracking provisions in the CPSIA are not abolished or severely overhauled to be applied in a more sensible, fair, and cost effective manner:

Given the spectrum of options available to CPSC to implement the tracking labeling requirement for children's products, the staff is interested in comments and information regarding:

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.

Section 103 of the CPSIA is clearly written to focus on manufacturers of mass-marketed children's product that is typically imported as a finished good with no value-add assembly in the U.S. prior to distribution. This is a myopic view of the universe of companies who *actually* distribute children's product into the U.S. market. The tracking label policy assumes that a wholesale or retail distributor of children's product "imports" or "manufacturers" these goods and, therefore, should be able to easily administer and comply with such a policy. This assumption is completely wrong and thus, renders the law impractical for several reasons:

1. Not all purveyors of children's product sell into the mass-retail market and therefore, do not have the sophistication in their operations to efficiently and economically put processes in place to comply with this law. They lack both capital and human resources to be able to sustain a profitable business which operates on much smaller cash flows and profit margins than mass market corporations.
2. Not all product that is marketed or used by children under 12 years old is primarily manufactured for this age group. Therefore, distributors who create their own value-add "kits" or bundles of product in the U.S. cannot control the manufacturing and labeling/marketing process rendering tracking labels impossible to implement. For example, ETA/Cuisenaire and our competitors sell product to the elementary school industry often creating math, science, and reading kits made up of a various assortment of goods that were not originally manufactured for children under 12 . These kits can include components that are typically sold in the houseware, hardware, and office product markets. These components are manufactured for mass distribution to the consumers without any need for lot tracking. Once these products become a component kit designed to teach elementary students easy-to-understand, concrete examples of scientific or mathematical principles (like how to build an electro-magnet with a roll of copper wire, a nail, a flashlight bulb, and a battery), the kit and its components now require special labeling as specified in Section 103 of the CPSIA. The value-add distributor (like ETA/Cuisenaire in this example), does not have the ability or the buying power to demand from these mass-market manufacturers to comply with the CPSIA since the product they produce are not originally intended for children under 12. The value-add distributor has only one option --- remove the product they sell from commerce and experience a certain economic crisis that threatens its existence.

3. Assuming a small or medium-sized business can control the manufacturing of its own product, the potential cost of complying with the labeling/marketing/lot control is so overwhelmingly cost prohibitive, the business will either elect to shut down its operation or simply pass the cost of compliance on to the consumer (which may be economic suicide if the small/medium-sized business is competing with mass-producers). For businesses that service the elementary and preschool market, these inflated costs will be passed on to the taxpayers. And what added safety does the buying public get for its higher expense?... absolutely none. The CPSC currently requires that all product failing to comply with current Federal safety regulations, must be recalled. This means the manufacturer or importer of record must recall all tainted product. If the manufacturer/importer cannot precisely pinpoint the defective “lots” distributed in the market place, then the company is obligated to notify consumers and retail distributors to return, for credit or replacement, all product, that has been sold to the public that the manufacturer cannot prove is safe. By merely having the lot number permanently affixed to the product does not improve public safety. All it does is minimize the exposure to the company who has to conduct the recall. This may sound like the CPSC is doing the manufacturer/importer a favor, however, in reality, it is creating a massive expense and burden that was once an uncertain, variable cost to a now certain and fixed cost.

The mere existence of lot tracking does not reduce the incidence of product recall or increase public safety. It merely reduces a manufacturer’s scope of recall. With the enactment of Section 103, the “cure” (to reduce a manufacturer’s scope of recall through implementation of a stratospheric expense) is worse than the “disease” (recalling product that actually failed compliance) considering that most companies in the U.S. may never face the need to recall a product. This is because U.S. companies are held to certain product safety standards that are in place to reduce or limit the need for a recall in the first place. One can assume that of all the product sold to the American public on an annual basis, the percentage of product that fails safety compliance resulting in a recall would be less than 1%. By adding lot control, the incidence of product failures does not decrease. The result is that non-mass producing manufacturers and importers, who do not have the capital wherewithal to implement a labeling/tracking process that befits the volume of product sold, will pay an enormous recurring expense that will greatly exceed the cost of several product recalls...recalls, that statistically speaking, will probably never occur. Again, labeling/tracking does not prevent a recall, it just *theoretically* narrows the scope of the recall.

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

Given that the breadth of product and businesses being affected come in all shapes and sizes, it is impossible to apply one or several standardized protocols without experiencing the law of diminishing returns (see comments to question # 1 above).

The tracking provision employed by large manufacturers is designed around the need to track lots that are produced several times within a month or year (on a mass basis) and thus, makes it cost effective for the mass producer to limit its exposure to a specific manufacturing batch. This is not the case for small and medium-sized manufacturers/importers. The sophistication in equipment and personnel needed to be able to meet a standardized nomenclature is not within reach of most businesses. Furthermore, there may be other inexpensive means to identify a manufacturing lot that is best left to the individual businesses that have their own unique characteristics and business models. Furthermore, the cost incurred by businesses to adhere to Section 103 is a proactive, punitive penalty for businesses who already comply with all applicable product safety regulations.

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.

In the example of "kits or bundles" described in response to question #1, having standardized nomenclature at the component level with a multitude of manufacturing dates and locations will only confuse the consumer on how to identify recalled product. It is impossible to predict how the end user may use or store this product once they receive it, therefore, rendering a standardized labeling/tracking system useless. For example, a box of Lego pieces may be purchased by a consumer who already owns other Lego sets in their household. After purchasing the box of Lego, complete with the manufacturing data printed on the retail box, the consumer combines the new Lego pieces with their existing Lego pieces into one convenient Rubbermaid container in their child's playroom. Even if each individual Lego piece was marked with a unique identifier, (which for very small parts, is impossible) the consumer would be faced with searching for the proverbial "needle in a haystack" amongst thousands of Lego pieces. The same situation holds true for the merchandise that is sold in the elementary school market and every daycare and preschool where individual teachers come up with their own unique, efficient storage solutions so that they may utilize every square inch of their ever-shrinking classroom space.

Additionally, Section 103 does not take into account *how* the product was delivered to the consumer. Was it sold through a retail store or was it shipped via mail order to the consumer? If the latter, than the mail order company who shipped the product has very detailed records as to whom and where it sold product that may be subject to a recall. Once a manufacturer has ascertained what product has to be recalled, all they have to do is provide a list of all the customers to whom it shipped product. For businesses in this category, recalls can be more precise and targeted all to the benefit of the consumer without the need for costly, ineffective labeling.

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).

One only needs to look at the coding system used in the food and drug market. Anyone who has ever tried to decipher the codes on a box of cereal or bag of flour/sugar/baking soda knows that the meaning of such data is not relevant to the consumer. It is designed to simply allow the manufacturer to track a specific lot of food product. To provide the public with a reference key does not help the public in any way. And speaking of food and drug, it appears Section 103 of the CPSIA goes beyond the labeling nomenclature used by food manufacturers. The reason I know this is because of the recent recall of *Cliff Energy Bars* due to the recent salmonella outbreak from tainted peanuts. When I saw the recall notice posted at Costco stores of the recalled energy bars, it simply stated a description of the product and the date range in which the tainted product was sold to the public. Since I was in possession of said *Cliff Bars* and I purchased them within the specified date range, I promptly returned the product to Costco for a refund. No lot codes, no manufacturing data, no product labeling whatsoever was used to identify the recalled food that could have been a matter of life or death, or hospitalization.

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.

The question of providing tracking information in electronically readable form is, again, not taking into account the number of small and medium-sized businesses who are actually responsible for the manufacturing and distributing of product to smaller markets. Again, there are many ways products are sold to children both directly and indirectly. Since my company services the school industry through a direct sales force and a mail order catalog, there are no retail stores distributing our product. The product is shipped from our warehouse to schools throughout the country. Since there is nowhere for a school teacher to bring the product in question to be scanned, then what benefit does the optical data serve? This is not the same as buying a product at a retail store that has its UPC scanned at the register with an optical reader. Furthermore, the cost associated with such labeling technology would not be scalable to the size of the business purchasing such technology. Therefore, a large mass producer could more readily implement such a process with incremental expense and the small business owner would be put out of business.

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.

Referring back to the peanut recall in my answer to question #4, the name of the peanut manufacturer or processing plant had no relevance to the consumer. The consumer only needed to know what product (by brand name or retail outlet) was being recalled. Again, in the example of the recalled *Cliff Bars*, the peanut processing plant was never mentioned in the recall notice nor had any relevance to the recall process at the consumer level. If for policy reasons having nothing to do with identification of products in recalls the CPSC wishes to institute such a

labeling scheme, this information potentially impacts on confidential commercial information. Many private labelers and importers as well 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.

Whether Section 103 is implemented on August 14, 2009 as presently constituted or with practical revisions, **NO** inventory that is in U.S. warehouses as of that date should be retroactively subjected to these marking requirements. Furthermore, since one size does not fit all and there are businesses of all shapes and sizes, there needs to be some consideration for the size of the market and the size of the businesses that serve that market when the timeline for compliance is constructed. A phased approach with no less than August 14, 2010 for the first phase should be strongly considered.

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

Using the food example as previously stated in question #4 and #6, the answer to question #8 is "keep it simple". Given the severity of the events that lead to the recall of peanut-based food product (salmonella-related deaths), the mere fact that the recall was effectively handled by simply telling the public the brand names affected and the date range in which the purchases were made (NOT the date of manufacturing) was sufficient for both the public health and the FDA's approval of such a recall. **Simplicity** is the most efficient and effective means to ensure a successful model.

Comments:

To summarize the impact to ETA/Cuisenaire (ETA) if the current version of the CPSIA, Section 103 takes effect August 14, 2009, please consider the following:

1. Most product sold by ETA goes through a "value-add" kitting process in our U.S. facility prior to distribution to our customers. We manage over 25,000 active parts in our warehouse. This includes finished goods and components that are manufactured by OEM/private label factories overseas, as well as, product available in the open U.S. market from other "third-party" companies who either manufacture in the U.S. or import and wholesale product made overseas.
2. The product that is procured on the open market from third-party suppliers in the U.S. may or may not have been originally intended for children under the age of 12, **however**, because these items are re-merchandized into "kits" or "bundles" that are sold to schools for use in the classroom by children 12 and under, then these component materials now are subject to Section 103 of the CPSIA. Because these third-party sources do not have to comply with any CPSIA regulations, ETA (being a value-add distributor) cannot provide the labeling data specified in Section 103 and, therefore, must cease to distribute

such product. This result will put ETA out of business unless such third-party product is excluded from Section 103 requirements for value-add distributors.

3. Of the thousands of items ETA imports from overseas, the expense to meet the requirements specified in Section 103 will have an initial \$3.5 million minimum capital investment to achieve compliance with a minimum recurring, annual expense of \$1.35 million as follows:
 - a. \$250,000 in annual legal counsel expenses to ensure consistent and accurate administration of operating procedures and eliminate risk of punitive penalties from the CPSC for failure to comply with all regulations
 - b. \$1.1 million in increased personnel headcount for two Quality Engineers, two Compliance Specialists, two additional Sourcing Agents (required to find new suppliers who have the ability to comply), assembly/production labor, and two inventory control analysts.
 - c. \$3 million in revising or scrapping and rebuilding molds and dies to accommodate new marking/labeling/tracking requirements directly on the product.
 - d. \$300,000 in computer software modifications to accommodate systematic tracking in order to manage the data
 - e. \$250,000+ in new labeling and tracking hardware

As COO of ETA/Cuisenaire, I work closely with our CEO and ownership to make and execute the difficult decisions required to keep our employees gainfully employed. These are loyal employees who have served us for many years and are great contributors to enhancing the education of our nation's children. After the CPSIA had gone into effect, we have had to remove personnel from our product development, sales and marketing teams in an effort to absorb the enormous expense of the CPSIA. This expense cannot all be simply passed to consumers through higher prices. If Section 103 is enacted August 14, 2009 as presently written, I do not know how we will be able to financially cover the expense burden without further headcount reductions with the real possibility of closing our doors. I respectfully request that great consideration is taken to accommodate companies like our self to abolish the requirements in Section 103 of the CPSIA or, at a minimum, to make significant changes to address all the challenges that I have set forth in this letter --- not only for the good of ETA/Cuisenaire and fellow business owners, but for the tens of thousands of employees and their families that our businesses employ.

Sincerely,



Bill Chiasson
Executive Vice President, COO
ETA/Cuisenaire

Stevenson, Todd

From: Bill Chiasson [bchiasson@etacuisenaire.com]
Sent: Monday, April 27, 2009 6:04 PM
To: Tracking Labels
Cc: Nord, Nancy; Moore, Thomas; Martyak, Joseph; Falvey, Cheryl
Subject: Tracking Label comments
Attachments: Comments to CPSC on Lot Tracking Section 103 Apr 27 09.pdf

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

Re: Request for Comments on Tracking Label Requirement

Dear Sir,

I am replying to the request for comments published in the Federal Register on February 26, 2009 on the implementation of Section 103 of the CPSIA (see <http://cpsc.gov/businfo/frnotices/fr09/trackinglabels.pdf>). I have provided answers and comments to your questions below but first let me give you some background information and comments specific to the company I work for and our specific marketplace. For your convenience, I have attached a .pdf document of this email in letter form.

ETA/Cuisenaire is a 40-year old, family-owned business who sells supplemental math, science, and reading materials to the elementary school and preschool market. This market is reached through direct marketing to schools on a national level and through wholesale channels via textbook publishers and learning centers who resell our product to schools. This market is small and narrowly focused compared to the mass consumer market for product intended for children under the age of 12 at which the CPSIA has been primarily directed. The majority of businesses that service this school market are small to medium-sized business owners, like our self. We care deeply about the safety of children which is why we feel it is necessary to have our voice heard on this matter so that our resources can be bettered utilized on product safety matters that have a direct and positive impact to the manufacturing and distribution of safe product.

Borrowing from a letter to the CPSC by Tim Holt, the President of NSSEA (National School Supply and Equipment Association), "according to the limited legislative history, the tracking label requirement is intended to enhance the effectiveness of recalls. In truth, before the passage of the CPSIA the Consumer Product Safety Commission (CPSC) required recalls to be broad enough to encompass all non-complying or defective products. Products that could not be identified in any way were rare. If anything, the tracking labels are most likely to narrow the scope of future recalls. Yet Congress has not left it to manufacturers to judge what would be in their own best interests based on their products and the relative risk, but has imposed these across the board requirements—and costs—on everyone, regardless of the practicalities and whether they can be justified".

To illustrate the impact that the CPSIA labeling and tracking requirements as specified in Section 103 will have on ETA/Cuisenaire and similar businesses within our market, I would like to address each of the questions asked by the CPSC in the *Federal Register* notice of February 26, 2009 (74 FR 8781-8782). In doing so, I hope to bring to light how there are thousands of businesses in the U.S. that will be unable to exist or will experience great financial hardship (resulting in personnel lay-offs and loss of revenue) if the current labeling and tracking provisions in the CPSIA are not abolished or severely overhauled to be applied in a more sensible, fair, and cost effective manner:

Given the spectrum of options available to CPSC to implement the tracking labeling requirement for children's products, the staff is interested in comments and information regarding:

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.

Section 103 of the CPSIA is clearly written to focus on manufacturers of mass-marketed children's product that is typically imported as a finished good with no value-add assembly in the U.S. prior to distribution. This is a myopic view of the universe of companies who *actually* distribute children's product into the U.S. market. The tracking label policy assumes that a wholesale or retail distributor of children's product "imports" or "manufacturers" these goods and, therefore, should be able to easily administer and comply with such a policy. This assumption is completely wrong and thus, renders the law impractical for several reasons:

1. Not all purveyors of children's product sell into the mass-retail market and therefore, do not have the sophistication in their operations to efficiently and economically put processes in place to comply with this law. They lack both capital and human resources to be able to sustain a profitable business which operates on much smaller cash flows and profit margins than mass market corporations.
2. Not all product that is marketed or used by children under 12 years old is **primarily** manufactured for this age group. Therefore, distributors who create their own value-add "kits" or bundles of product in the U.S. cannot control the manufacturing and labeling/marketing process rendering tracking labels impossible to implement. For example, ETA/Cuisenaire and our competitors sell product to the elementary school industry often creating math, science, and reading kits made up of a various assortment of goods that were not originally manufactured for children under 12. These kits can include components that are typically sold in the houseware, hardware, and office product markets. These components are manufactured for mass distribution to the consumers without any need for lot tracking. Once these products become a component kit designed to teach elementary students easy-to-understand, concrete examples of scientific or mathematical principles (like how to build an electro-magnet with a roll of copper wire, a nail, a flashlight bulb, and a battery), the kit and its components now require special labeling as specified in Section 103 of the CPSIA. The value-add distributor (like ETA/Cuisenaire in this example), does not have the ability or the buying power to demand from these mass-market manufacturers to comply with the CPSIA since the product they produce are not originally intended for children under 12. The value-add distributor has only one option --- remove the product they sell from commerce and experience a certain economic crisis that threatens its existence.
3. Assuming a small or medium-sized business can control the manufacturing of its own product, the potential cost of complying with the labeling/marketing/lot control is so overwhelmingly cost prohibitive, the business will either elect to shut down its operation or simply pass the cost of compliance on to the consumer (which may be economic suicide if the small/medium-sized business is competing with mass-producers). For businesses that service the elementary and preschool market, these inflated costs will be passed on to the taxpayers. And what added safety does the

buying public get for its higher expense?... absolutely none. The CPSC currently requires that all product failing to comply with current Federal safety regulations, must be recalled. This means the manufacturer or importer of record must recall all tainted product. If the manufacturer/importer cannot precisely pinpoint the defective “lots” distributed in the market place, then the company is obligated to notify consumers and retail distributors to return, for credit or replacement, all product, that has been sold to the public that the manufacturer cannot prove is safe. By merely having the lot number permanently affixed to the product does not improve public safety. All it does is minimize the exposure to the company who has to conduct the recall. This may sound like the CPSC is doing the manufacturer/importer a favor, however, in reality, it is creating a massive expense and burden that was once an uncertain, variable cost to a now certain and fixed cost.

The mere existence of lot tracking does not reduce the incidence of product recall or increase public safety. It merely reduces a manufacturer’s scope of recall. With the enactment of Section 103, the “cure” (to reduce a manufacturer’s scope of recall through implementation of a stratospheric expense) is worse than the “disease” (recalling product that actually failed compliance) considering that most companies in the U.S. may never face the need to recall a product. This is because U.S. companies are held to certain product safety standards that are in place to reduce or limit the need for a recall in the first place. One can assume that of all the product sold to the American public on an annual basis, the percentage of product that fails safety compliance resulting in a recall would be less than 1%. By adding lot control, the incidence of product failures does not decrease. The result is that non-mass producing manufacturers and importers, who do not have the capital wherewithal to implement a labeling/tracking process that befits the volume of product sold, will pay an enormous recurring expense that will greatly exceed the cost of several product recalls...recalls, that statistically speaking, will probably never occur. Again, labeling/tracking does not prevent a recall, it just *theoretically* narrows the scope of the recall.

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

Given that the breadth of product and businesses being affected come in all shapes and sizes, it is impossible to apply one or several standardized protocols without experiencing the law of diminishing returns (see comments to question # 1 above).

The tracking provision employed by large manufacturers is designed around the need to track lots that are produced several times within a month or year (on a mass basis) and thus, makes it cost effective for the mass producer to limit its exposure to a specific manufacturing batch. This is not the case for small and medium-sized manufacturers/importers. The sophistication in equipment and personnel needed to be able to meet a standardized nomenclature is not within reach of most businesses. Furthermore, there may be other inexpensive means to identify a manufacturing lot that is best left to the individual businesses that have their own unique characteristics and business models. Furthermore, the cost incurred by businesses to adhere to Section 103 is a proactive, punitive penalty for businesses who already comply with all applicable product safety regulations.

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.

In the example of "kits or bundles" described in response to question #1, having standardized nomenclature at the component level with a multitude of manufacturing dates and locations will only confuse the consumer on how to identify recalled product. It is impossible to predict how the end user may use or store this product once they receive it, therefore, rendering a standardized labeling/tracking system useless. For example, a box of Lego pieces may be purchased by a consumer who already owns other Lego sets in their household. After purchasing the box of Lego, complete with the manufacturing data printed on the retail box, the consumer combines the new Lego pieces with their existing Lego pieces into one convenient Rubbermaid container in their child's playroom. Even if each individual Lego piece was marked with a unique identifier, (which for very small parts, is impossible) the consumer would be faced with searching for the proverbial "needle in a haystack" amongst thousands of Lego pieces.

The same situation holds true for the merchandise that is sold in the elementary school market and every daycare and preschool where individual teachers come up with their own unique, efficient storage solutions so that they may utilize every square inch of their ever-shrinking classroom space.

Additionally, Section 103 does not take into account how the product was delivered to the consumer. Was it sold through a retail store or was it shipped via mail order to the consumer? If the latter, than the mail order company who shipped the product has very detailed records as to whom and where it sold product that may be subject to a recall. Once a manufacturer has ascertained what product has to be recalled, all they have to do is provide a list of all the customers to whom it shipped product. For businesses in this category, recalls can be more precise and targeted all to the benefit of the consumer without the need for costly, ineffective labeling.

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).

One only needs to look at the coding system used in the food and drug market. Anyone who has ever tried to decipher the codes on a box of cereal or bag of flour/sugar/baking soda knows that the meaning of such data is not relevant to the consumer. It is designed to simply allow the manufacturer to track a specific lot of food product. To provide the public with a reference key does not help the public in any way. And speaking of food and drug, it appears Section 103 of the CPSIA goes beyond the labeling nomenclature used by food manufacturers. The reason I know this is because of the recent recall of *Cliff Energy Bars* due to the recent salmonella outbreak from tainted peanuts. When I saw the recall notice posted at Costco stores of the recalled energy bars, it simply stated a description of the product and the date range in which the tainted product was sold to the public. Since I was in possession of said *Cliff Bars* and I purchased them within the specified date range, I promptly returned the product to Costco for a refund. No lot codes, no manufacturing data, no product labeling whatsoever was used to identify the recalled food that could have been a matter of life or death, or hospitalization.

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.

The question of providing tracking information in electronically readable form is, again, not taking into account the number of small and medium-sized businesses who are actually responsible for the manufacturing and distributing of product to smaller markets. Again, there are many ways products are sold to children both directly and indirectly. Since my company services the school industry through a direct sales force and a mail order catalog, there are no retail stores distributing our product. The product is shipped from our warehouse to

schools throughout the country. Since there is nowhere for a school teacher to bring the product in question to be scanned, then what benefit does the optical data serve? This is not the same as buying a product at a retail store that has its UPC scanned at the register with an optical reader. Furthermore, the cost associated with such labeling technology would not be scalable to the size of the business purchasing such technology. Therefore, a large mass producer could more readily implement such a process with incremental expense and the small business owner would be put out of business.

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.

Referring back to the peanut recall in my answer to question #4, the name of the peanut manufacturer or processing plant had no relevance to the consumer. The consumer only needed to know what product (by brand name or retail outlet) was being recalled. Again, in the example of the recalled *Cliff Bars*, the peanut processing plant was never mentioned in the recall notice nor had any relevance to the recall process at the consumer level. If for policy reasons having nothing to do with identification of products in recalls the CPSC wishes to institute such a labeling scheme, this information potentially impacts on confidential commercial information. Many private labelers and importers as well 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.

Whether Section 103 is implemented on August 14, 2009 as presently constituted or with practical revisions, **NO** inventory that is in U.S. warehouses as of that date should be retroactively subjected to these marking requirements. Furthermore, since one size does not fit all and there are businesses of all shapes and sizes, there needs to be some consideration for the size of the market and the size of the businesses that serve that market when the timeline for compliance is constructed. A phased approach with no less than August 14, 2010 for the first phase should be strongly considered.

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

Using the food example as previously stated in question #4 and #6, the answer to question #8 is “keep it simple”. Given the severity of the events that lead to the recall of peanut-based food product (salmonella-related deaths), the mere fact that the recall was effectively handled by simply telling the public the brand names affected and the date range in which the purchases were made (NOT the date of manufacturing) was sufficient for both the public health and the FDA’s approval of such a recall. **Simplicity** is the most efficient and effective means to ensure a successful model.

Comments:

To summarize the impact to ETA/Cuisenaire (ETA) if the current version of the CPSIA, Section 103 takes effect August 14, 2009, please consider the following:

1. Most product sold by ETA goes through a “value-add” kitting process in our U.S. facility prior to distribution to our customers. We manage over 25,000 active parts in our warehouse. This includes finished goods and components that are manufactured by OEM/private label factories overseas, as well as, product available in the open U.S. market from other “third-party” companies who either manufacture in the U.S. or import and wholesale product made overseas.

2. The product that is procured on the open market from third-party suppliers in the U.S. may or may not have been originally intended for children under the age of 12, **however**, because these items are re-merchandized into “kits” or “bundles” that are sold to schools for use in the classroom by children 12 and under, then these component materials now are subject to Section 103 of the CPSIA. Because these third-party sources do not have to comply with any CPSIA regulations, ETA (being a value-add distributor) cannot provide the labeling data specified in Section 103 and, therefore, must cease to distribute such product. This result will put ETA out of business unless such third-party product is excluded from Section 103 requirements for value-add distributors.
3. Of the thousands of items ETA imports from overseas, the expense to meet the requirements specified in Section 103 will have an initial \$3.5 million minimum capital investment to achieve compliance with a minimum recurring, annual expense of \$1.35 million as follows:
 - a. \$250,000 in annual legal counsel expenses to ensure consistent and accurate administration of operating procedures and eliminate risk of punitive penalties from the CPSC for failure to comply with all regulations
 - b. \$1.1 million in increased personnel headcount for two Quality Engineers, two Compliance Specialists, two additional Sourcing Agents (required to find new suppliers who have the ability to comply), assembly/production labor, and two inventory control analysts.
 - c. \$3 million in revising or scrapping and rebuilding molds and dies to accommodate new marking/labeling/tracking requirements directly on the product.
 - d. \$300,000 in computer software modifications to accommodate systematic tracking in order to manage the data
 - e. \$250,000+ in new labeling and tracking hardware

As COO of ETA/Cuisenaire, I work closely with our CEO and ownership to make and execute the difficult decisions required to keep our employees gainfully employed. These are loyal employees who have served us for many years and are great contributors to enhancing the education of our nation’s children. After the CPSIA had gone into effect, we have had to remove personnel from our product development, sales and marketing teams in an effort to absorb the enormous expense of the CPSIA. This expense cannot all be simply passed to consumers through higher prices. If Section 103 is enacted August 14, 2009 as presently written, I do not know how we will be able to financially cover the expense burden without further headcount reductions with the real possibility of closing our doors. I respectfully request that great consideration is taken to accommodate companies like our self to abolish the requirements in Section 103 of the CPSIA or, at a minimum, to make significant changes to address all the challenges that I have set forth in this letter --- not only for the good of ETA/Cuisenaire and fellow business owners, but for the tens of thousands of employees and their families that our businesses employ.

Sincerely,

Bill Chiasson
Executive Vice President, COO
ETA/Cuisenaire

2009-0010-0124



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Deborah M. Fanning, CAE, Executive Vice President
Deborah S. Gustafson, Associate Director

April 27, 2009

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

Re: Implementation of Section 103 of the CPSIA, Tracking Labels for Children's Products

Dear Sir:

These comments are being submitted by The Art and Creative Materials Institute, Inc. (ACMI). We have reviewed the Consumer Product Safety Commission's (CPSC) Request for Comments and Information on Section 103 of the Consumer Product Safety Improvement Act (CPSIA) regarding the implementation of Section 103 of the CPSIA on Tracking Labels for Children's Products. These comments necessarily focus on the application of Section 103 to art materials, since art materials are the issue of expertise by ACMI and its member manufacturers. ACMI's certification program ensures the products of its member companies comply with ASTM D 4236, the Labeling of Hazardous Art Materials Act (LHAMA) and other portions of the Federal Hazardous Substances Act (FHSA) for both acute and chronic hazards and FHSA's labeling requirements.

Scope of the Proposal

ACMI urges CPSC, in its consideration of this subject matter, to better define the scope of products to be covered under this rule or to include exemptions for products intended for children that would address the following issues:

- 1.) Products, such as most art and craft materials meant for children, that are not expensive should be exempted from this requirement or manufacturers should be allowed to continue to use their current product identification method for recalls or develop a new method based on simple coding. Costs of implementation could very well double the price of these inexpensive items. One ACMI member has estimated they would need to spend \$100,000 to purchase just the machinery needed to institute simple lot coding, which would not include set-up, training and personnel to operate this system.

LOOK FOR THESE SEALS.....



- 2.) Products, such as chalk, finger paints and other art and craft materials, that have a very short expected usage, i.e. that are consumed over a limited time span, such as one year or less, should be exempted from this requirement or manufacturers be allowed to continue to use current or develop new simple coding methods for the same reasons as stated above.
- 3.) Products, such as children's art materials that conform to LHAMA and ASTM D 4236 and other sections of CPSIA, should be exempted from this requirement or manufacturers be allowed to continue to use current or develop new simple coding methods, since they have been evaluated pre-market for non-toxicity and are unlikely to be involved in recalls. Art and craft materials in the certification program of ACMI are thoroughly evaluated and tested for any acute or chronic hazards under FHSA, including LHAMA. These evaluations are based on conservative risk and exposure assessments, which were developed by ACMI's consulting toxicologist at Duke University Medical Center and which meet or exceed requirements of LHAMA and FHSA.

Practicability

The following conditions and circumstances should be considered in determining whether it is "practicable" to have tracking labels on children's art materials:

- 1.) The term 'permanent labels' needs to be better defined. For all practical purposes, no labels are "permanent" on either writing instruments (barrels) or other art materials (wrap labels on stick mediums and tube type packaging). Most writing instruments are in the 'disposable' category, i.e., meant to be thrown away after the ink runs out. The "imprint" on the barrel is applied most commonly by "screening" and/or "decal." Neither "paper labeling" or "hot-stamping" are cost-effective and do not allow sufficient space for text. Hand oils and acids can remove any of these methods of imprinting, so any markings are easily removed with use. Permanent labeling on writing instruments and most art materials is unrealistic in the real world usage.
- 2.) The term "placement of labels" also needs to be better defined. Disposable writing instruments are produced on an automated "mass" level to keep individual costs low. Production lot tracking is currently or can be "documented," but only to the "retailer shelf box unit," not the "consumer consumption unit." There is not enough surface area on the barrel to imprint the numerous labeling requirements currently being imposed upon the industry, i.e., barcodes, basic instructions, multiple languages, country of origin, product stock codes, point size, ink color(s), manufacturer name, seals and logos. Type size of the fonts would have to be so small on the limited surface area, rendering the message unreadable and thus the message would not be conveyed. For some art materials, there is barely enough room for all this information on the box that contains individual markers, crayons, chinks and other materials sold in sets. Certainly, there cannot be a requirement that all the information suggested in Section 103 be on the art material or its package or that the code must be a date code. A system must be developed that allows a small code on the art material or package that allows the manufacturer to determine what products need to be recalled from the marketplace and consumers to know whether the art material in their possession is involved in the recall.

Manufacturers should be allowed the flexibility of determining the specific location of the tracking label on the art material or packaging based on the art material itself. For some art materials in sets or those that have varnishes or other finishes applied, the best location for the tracking code may be the inner box surface, since it would not be varnished and would allow the tracking code to be absorbed and dry more readily on paperboard, rather than use of volatile, solvent-based inks that would adhere to varnishes or other such finishes.

- 3.) Both writing instruments and other art materials can have a “long shelf life” in the distribution chain. It is not uncommon for disposable writing instruments to be in a retailer’s inventory for over 12 months, or longer for other types of art materials. Having labels or imprints with date codes may only cause more inventory problems for the retailers, distributors and manufacturers, as consumers will only purchase products with more recent date codes, when the date of manufacture is irrelevant for the purpose of improving recalls. Art materials would not need to be recalled because they had passed a safe, expiration date, such as with food products.
- 4.) For many art materials sold in sets, i.e., a crayon set of 64 colors, there can be 64 different manufacturing dates (one for each color). Placing a tracking label of the “assembly date” of the set doesn’t communicate any real production date of the individual color items within the set. If there were going to be a problem with the product, it most likely would be because of an individual color, not the entire set. For some art materials sold in sets, i.e., chalk, the art material itself cannot support a tracking label or code or there is not technology to accurately mark them, so the package would have to bear the tracking label.

Flexibility in Providing Information

Flexibility in providing information is more critical than standardized nomenclature, appearance and arrangement of information. Since there are so many different art materials sold for use by children in so many different sizes and types of packaging, flexibility must be allowed the manufacturer to use the most appropriate method of communicating the relevant information to all those that need it. It seems logical that one method does not fit all, even just in our industry, never mind in other industries. An art material itself or the package of a set of art materials needs to bear a simple code that allows consumers to know whether they have a recalled product or a recalled product within the set and for the manufacturer to be able to determine which products have to be recalled and to communicate that information directly to consumers by various methods, including through CPSC, by the media, or on the manufacturer’s website, where more and better information can be communicated.

Certainly, requiring such information in multiple languages on a product label is impractical if not impossible, given the small size of many art materials that can barely contain all the information already required by various laws and regulations. A simple, numeric code can lead consumers to sources of information in various languages, such as CPSC, the media and manufacturers’ websites.

Benefit to Consumers from Electronic Format

It seems inconceivable that consumers would be asked to have and use supplemental technology to obtain information from a tracking label on a package of crayons, on markers, packages/bottles of paint, especially if the tracking label is a simple, numerical code.

Private-Labeled Products

Obviously, the manufacturer or private labeler needs information such as that required by Section 103 of CPSIA to be able to identify those products that might be involved in a recall situation. Current packaging laws already require country of origin and manufacturer/private labeler information on the product. We do not believe there is any benefit to consumers to provide them with excessive information, no matter the vehicle, i.e., the Internet, toll-free telephone number, or at the point of sale. The customer needs to know from the tracking label whether they have a recalled product. Other than country of origin, why would a customer need to know where and when an art material was manufactured for the private labeler? Or, worse yet, where and when individual items in a set were manufactured? The consumer needs to know the manufacturer or private labeler whose name is on the product and is responsible for conducting any recall. The consumer certainly does not need to know both the manufacturer and the private labeler. Such information in the art material industry is extremely confidential and proprietary and is rarely revealed.

Lead Time for Compliance

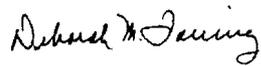
Since significant resources and capital have already been provided to comply with the requirements of CPSIA, a change in nomenclature, technology or to a different prescribed format for tracking labels would impose an impossible burden on small manufacturers who are already reeling from the problems facing the U.S. economy. Many of our manufacturers require 2-3 years lead time to change their packaging, especially for products for which packaging is purchased for use for numerous years, in order to make packaging purchases affordable. In order to avoid disposal of children's art materials in inventory or on retailers' shelves, tracking labels requirements must be limited to art materials produced after the effective date required by CPSIA or when a manufacturer's current packaging inventory is used, whichever is later. Also, since art material manufacturers purchase packaging in large quantities for use for numerous years, whatever regulations adopted by CPSC to implement Section 103 should be adopted for use long-term.

Office of the Secretary
Consumer Product Safety Commission

April 27, 2009

In conclusion, we appreciate the opportunity to submit these comments on this very important issue.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Deborah M. Fanning".

Deborah M. Fanning, CAE
Executive Vice President
The Art and Creative Materials Institute, Inc.

Of Counsel
Martin J. Neville, Esq.
Mary Martha McNamara, Esq.

Stevenson, Todd

From: Debbie Fanning [debbief@acminet.org]
Sent: Monday, April 27, 2009 7:08 PM
To: Tracking Labels
Subject: Comments on Section 103 of CPSIA on Tracking Labels
Attachments: ACMI Comments on CPSIA Section103 Tracking Labels.pdf

Importance: High

Attached are the Comments of ACMI on Section 103 of CPSIA on Tracking Labels. We appreciate the opportunity of sending you information on the effect of tracking labels on members of the art material industry.

Deborah M. Fanning, CAE
Executive Vice President
The Art & Creative Materials Institute, Inc. & Council for Art Education, Inc.
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2009-0010-0125

April 27, 2009



Via E-mail and UPS Overnight Delivery

Mr. John G. Mullan
Director, Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Office of General Counsel

50 Pointe Drive
Brea, California 92821
Phone 714 674-8186
FAX 714 674-6992

Re: Tracking Labels for Children's Products

Dear Mr. Mullan:

Since the Consumer Products Safety Improvement Act was introduced, Avery Dennison has monitored its progress to ensure that we have a clear understanding of the requirements as they are defined, implemented and enforced. As a recognized industry leader in labeling and tagging products, we are also interested in helping our wide array of customers understand the labeling requirements set forth in the Act.

Enclosed please find Avery Dennison's response to the Consumer Product Safety Commission's call for comments on Section 103, Tracking Labels for Children's Products. In addition to responding to your eight areas of interest, we have included some additional comments and suggestions you may find useful.

We have also asked our consultant, Joan Mattson, to assist us in coordinating a date to meet with you for an interactive discussion about our comments.

As counsel to the Sustainability team at Avery Dennison, I will be happy to answer any questions you may have. I hope you find our input helpful, and we look forward to meeting with you.

Best regards,

A handwritten signature in cursive script that reads 'Judith L. Young'.

Judith L. Young
Vice President and Assistant General Counsel
Office Products and Sustainability

Enclosure

cc: Josh Dunn
Dale Harder
Joan Mattson

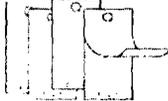
Comments: CPSIA Section 103 Tracking Labels for Children's Products Comments

Background

Avery Dennison is a recognized industry leader that develops innovative identification and decorative solutions for businesses and consumers worldwide. The Company's products include pressure-sensitive labeling materials; graphics imaging media; retail apparel ticketing and branding systems; RFID inlays and tags; office products; specialty tapes; and a variety of specialized labels for automotive, industrial and durable goods applications. A FORTUNE 500 Company with sales of \$6.7 billion in 2008, Avery Dennison is based in Pasadena, California and employs more than 36,000 employees in over 60 countries. For more information, visit www.averydennison.com

Avery Dennison is a global company, currently in over 60 countries. The corporation is comprised of four main divisions:

Businesses at a Glance

				
SEGMENT	Pressure-sensitive Materials	Retail Information Services	Office and Consumer Products	Other Specialty Converting Businesses
BUSINESS (ES)	<ul style="list-style-type: none"> + Roll Materials + Graphics and Reflective Products + Performance Polymers 	<ul style="list-style-type: none"> + Information and Brand Management + Printer Systems + Fastener 	<ul style="list-style-type: none"> + Office Products 	<ul style="list-style-type: none"> + Specialty Tape + Radio Frequency Identification (RFID) + Industrial and Automotive Products + Security Printing + Performance Films
SALES (in millions)	\$3,644	\$1,548	\$936	\$582
PERCENT OF TOTAL SALES	64%	23%	14%	9%
GLOBAL BRAND(S)	Fason, Avery Graphics, Avery Dennison	Avery Dennison, Monarch	Avery	Avery Dennison
PRODUCTS	Pressure-sensitive roll materials, graphics and reflective materials, water and solvent-based performance polymer adhesives and engineered films	A wide variety of information and brand management solutions that include graphic tags and labels, variable data tags and labels, woven labels, printed fabric labels, heat transfers, patches and specialty trim, eco-friendly solutions, packaging and security solutions, in-plant printing, RFID solutions, designer trim collections, supply chain solutions and web services as well as barcode printers, software solutions, molded plastic fasteners and application devices.	Self-adhesive labels, binders, sheet protectors, dividers, online templates and printing, writing instruments, T-shirt transfers and do-it-yourself card products	Specialty tapes, industrial adhesives, architectural and engineered films, automotive decorative interior films, automotive exterior films and labels, metallized pigments, self-adhesive postage stamps, RFID inlays and durable tags
CUSTOMERS	Global label converters, consumer products package designers and manufacturers, industrial manufacturers, printers, designers, sign manufacturers and graphic vendor	Global retailers and brand owners, apparel and consumer goods manufacturers, restaurant and food service chains, grocery and drug store chains, and a variety of other industries serviced via resellers	Office products superstores, major retailers, office professionals, school administrators, small business owners and consumers	Industrial and original equipment manufacturers, medical products and device manufacturers, converters, packagers and consumer products companies

As a manufacturer and seller of both labeling / tagging products and finished consumer products, Avery Dennison has a broad range of experience with labeling and tracking methods and technology, and offers the following comments regarding the CPSIA Section 103 pertaining to tracking labels.

Comments

1. 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.

Avery Dennison produces various sized labels and tags for all forms of apparel and footwear, according to brand strategy and product design. Logical criteria to be considered include size, material, shape and attachability to product.

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

In some industries, guidance is needed to establish a clear compliance baseline. Note that general labeling standards (for durability, readability, placement) have been established for Apparel and Footwear in a number of other areas, such as care & content, country of origin, UPC code (through the FTC, DHS and industry conventions)

b. Other business considerations relevant to tracking label policy

Consider product risk when implementing product tracking labels. Products comprised of GRAS (generally regarded as safe) materials should have fewer requirements than those products posing greater risk. For example, a paper divider presents a much lower risk (or likelihood of recall) than a children's toy. Adding a date code to dividers would provide the ability to recall a product that has a very low likelihood of being recalled. A date code on the package or polybag would likely be adequate and much less costly than requiring tracking label information on individual dividers or similar multi-pack products.

Date and lot codes may span over a multi-day range. Products manufactured with large lots of raw materials (e.g., injection molded parts where the base material is purchased in rail car quantities) or continuous flow manufacturing should have larger windows of date code information than those of discrete processes or where raw material batch size is small.

Highlighters, for example, utilize polypropylene as the base material for the marker body, and it is purchased in rail car quantities. Adding date codes to these products would require no finer date code window than one week, as all products manufactured at that location within that week will be composed of the same raw material lots. This may also hold true for other types of products, as long as the individual components and raw materials are purchased using a similar batch purchase approach

In order for apparel manufacturers to work on a level playing field some form of prescribed labeling guidance is needed. There are literally thousands of apparel and footwear manufacturers and retailers operating in many countries, many of them small and/or in remote locations. A readily available general guidance document will assist them in becoming compliant and communicating effectively across this complex supply chain.

Other more sophisticated manufacturing businesses have already established quality management systems with inherent tracking mechanisms. Avery Dennison Office Products' division has already taken several preparatory steps toward implementing the date code requirement on product manufactured or sold by the division. Requiring standardized nomenclature would force a redesign to the date codes in question, and in many instances force purchase of equipment designed to apply a standardized date code. This would add cost and complexity to our manufacturing process, depending on how narrowly the date code is defined.

Requiring a standard location on a product poses a challenge due to the broad array of shapes and sizes of products affected by this act. Products already using a date and lot code would potentially need to be changed, requiring time and cost to comply.

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.

Consumers will benefit most from consistent formatting and delivery of this information. Standard placement, nomenclature and durability are important criteria to establish to make sure consumers can ascertain this information.

There are several instances in recent product recall history where the manufacturer identified the product label location, code information and recall code range for products being recalled. Standardizing the date code information and location would only minimally improve these processes by simplifying the identification of the recalled lots.

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).

On many products, space exists only for alphanumeric information. A coded system is the most efficient way of conveying the tracking information to consumers and regulators throughout the supply chain. Additionally, a coded system could better protect the confidentiality of a retailer or brand owner's sourcing strategy from its competitors, while giving the individual consumer the needed information.

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.

Electronic readable information (via bar coding or RFID labels) would provide the opportunity to provide more information than an alphanumeric system. RFID labeling could conceivably include store-relevant certification document, but is much more expensive than standard barcode base tracking system.

A consumer, however, would have difficulty reading electronic data without returning the product in question to a location possessing an electronic reader. Though almost all retail outlets in the US today have electronic code readers, it would pose a significant burden on retailers (and consumers) in the instance of a large recall, when thousands of customers would request date codes be read.

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

The identity of third-party manufacturers is often a trade secret; supplying that information could comprise a competitive risk to free commerce and invite industrial espionage.

One recommendation is to identify country of manufacture (already required) and appropriate date code information without directly identifying the actual manufacturer (which in most cases would be of no use to the requestor), as long as the private labeler has the means of providing the manufacturer name to the CPSC upon demand. The private labeler would bear responsibility for product compliance and product safety, a lower business risk than revealing third party manufacturers to competitors.

Optimally, a third party or government managed data warehouse could be established as a universally accessible one-stop means of interpreting consumer product codes. Data transmission and structure standards would need to be set in order to ensure universal access.

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

In the apparel industry, products are typically designed seasonally 1 ½ to 2 years ahead of planned distribution, and label orders are generally placed 6 months ahead of consumer sale.

For Avery Dennison's Office Products division, there is sufficient lead time to implement the required date and lot code information, unless late changes to the requirements are made. Due to long lead times, products imported into the United States from overseas suppliers must have date code information on them several months in advance of the August 15 date. Changing date code requirements would force a delay in implementation to enable equipment purchase and supply chain replenishment.

8. Other successful labeling tracking models

Most ISO 9000 certified companies have implemented a date code and product tracking process as a part of ISO certification. Should a complete tracking model be desired, implementation of the processes spelled out in the ISO requirements would be more than sufficient for complying with this Act.

Other Comments

Prescribed precise placement of labeling is not recommended, as there are many different shapes, sizes and types of products; rather, a general guidance such as is used for warning labels might be considered.

A Dual Track Compliance Model?

Both large and small manufacturers should be considered in evaluating tracking label models. One approach is to offer two tracks to compliance:

Low-tech: For companies without electronic data coding and tracking capabilities, develop a label example for them to model that will meet the Act's requirements.

High-tech: For companies that wish to make use of technologies available to them, an alternate system using a bar coding system or other technology could be developed. Regardless of the technology used, information must be consumer-accessible .

Unique business characteristics in the Apparel Industry

High volume of units - Over 20 billion pieces of clothing were imported into the US in 2008 (US Trade Statistics)

Globally fragmented production – In excess of 90% of apparel is imported into the US from thousands of factories in over 130 countries. Manufacturers can range in size from large multi-factory companies to very small “mom and pop” businesses.

While many other types of consumer products (including office products) that fall within the scope of the CPSIA already have tracking system built into their manufacturing processes, and can adapt those systems to meet the provisions of the CPSIA, the apparel industry has been less structured, in part due to its production fragmentation.

Material constraints – Attached fabric labels are commonly used, since printing directly on garments is generally costly and difficult to apply.

Date code durability is an issue to consider, especially for the apparel and footwear industries. Often children's clothes are resold and reused for many years; a “permanent” date code would become irrelevant or illegible after a certain period.

Socks are an example of a product where a serialized identification system is more practical than one requiring a large amount of information directly on the product. Using a "license plate" approach with unique ID numbers is practical and allows for cross referencing with multiple sources of information. Socks, hosiery and similar items often rely on packaging labeling and don't utilize tags, sewn on labels or printed information on the item.

Care / content, country of origin and current FDA compliance mandates FTC standards for labeling, and provisions are made for ease of accessibility by the consumer. (ref. 16 CFR 423):

- Labels must be fastened so they can be seen or easily found by consumers at the point of sale;
- If labels cannot be readily seen because of packaging, additional care information must appear on the outside of the package or on a hang tag fastened to the product;
- Labels must be fastened securely and be legible during the useful life of the product

There are also exemptions given to certain items where a permanently printed or attached tag or label is not practical (for example, fully reversible apparel with no pockets).

For your reference, attached is a table for Apparel showing current industry practice related to labeling and identifying areas where guidance is needed.

Industry Practice - Apparel

CPAIA Labeling Parameter	Current Industry Practice/Convention	Comments
Manufacturer	Brand RN Code Number	The brand name is normally incorporated into the garment label. A vendor identification "RN" number is also normally included in product labeling – it references a business entity – not a specific factory <i>GUIDANCE NEEDED: What constitutes a manufacturer?</i>
Production Location	Country of Origin	There are standard conventions in place around Country of Origin labeling. <i>GUIDANCE NEEDED: How specific does this need to be – Country, Province, City/Town ?</i>
Date of Production	Season	Date coding is not normally used in apparel manufacturing. Garments are normally designed, manufactured and ordered on a seasonal basis. <i>GUIDANCE NEEDED: Can a range of dates be used to satisfy this requirement?</i>
Cohort Information (Lot/Batch #)	PO Number Style Size /Color	Garments are normally produced according to a purchase order that covers a combination of styles, sizes and colors. <i>GUIDANCE NEEDED: Is it acceptable for cohort information to be extrapolated from style, size, and color combinations?</i>

Stevenson, Todd

From: Pati.Medina-Stubbs@averydennison.com
Sent: Monday, April 27, 2009 7:33 PM
To: Tracking Labels; Mullan, John
Subject: Letter to Mr. John G. Mullan re: Tracking Labels for Children's Products dated 04/27/09
Attachments: Ltr to Mr. John G. Mullan 04-27-09.pdf

Sent in behalf of Judith L. Young

Please see attached scanned letter and enclosure. The originals to be sent via UPS overnight delivery.

(See attached file: Ltr to Mr. John G. Mullan 04-27-09.pdf)

Thank you.

Pati Medina-Stubbs

Legal Assistant for Judith L. Young

Avery Dennison Office Products | Brea, CA

(: 714.674.8933 | 7: 714.674.6992

*: pati.medina-stubbs@averydennison.com

P Please consider the environment before printing this email

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2009-0010-0136

April 27, 2009

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

Dear CPSC Staff and Commissioners:

Below, you will find our company's responses to the CPSC Request for Comments on the tracking label requirements of the CPSIA.

Please let me know if there is any other information I can provide that would be helpful for your decision-making process.

Best regards,

Megan Hunt
mhunt@champrosports.com
847-229-4072

1. Conditions and circumstances of "practicability"

Two aspects to consider in whether or not it is "practicable" for a product to carry a tracking label are: whether the product could physically accommodate a permanent label or mark, and the cost of the labeling relative to the cost of the product.

To elaborate on the first point, our company carries two main divisions of products: apparel and hard goods. For apparel, it is relatively easy to sew simple tracking labels into the product, and in fact this process is already done using the registered identification number required by the FTC. Our company also includes a label on some of its apparel items with a code that designates the factory and the purchase order, which could be used to identify the batch.

Labeling of hard goods, however, is more difficult to generalize because of the many types of products involved. Some hard goods could accommodate a label that would be sewn in (such as chest protectors, leg guards, equipment bags). Other products could accommodate a sticker if stickers could be counted as permanent labeling (like jump ropes, helmets, football pads, or playground or sports-oriented balls), or the information could be printed directly on the product. However, printing either on a sticker or directly on the product is rarely permanent, particularly in the sporting goods industry, because of the hard use to which the products are subject. Still other products would not be conducive to permanent labeling because of their lack of surface area or the nature of their surface area (helmet replacement parts, uncoated foam balls, wiffle balls).

The cost of the labeling relative to the product cost and the batch cost is also a significant indicator of practicability. For certain inexpensive items, adding a tracking label could exponentially increase the cost of the product. Labeling is quite expensive, and whether it is done with a screenprinting plate, a heat transfer label, or a sticker, it usually takes using a particular label on thousands of items to make it cost-effective. Generally, our medium-sized business does not order quantities of thousands at a time, but only dozens or occasionally hundreds because we can not afford to pay for and stock more inventory than what is needed for a season. The labeling requirement could end up hurting all but the largest businesses which could spread out the specialized labeling costs between the large number of products that they have produced at once.

Another point to consider for clarification is whether the tracking label would be required on each piece of a product sold as a set. For example, we sell toy versions of sporting goods, grouped as sets. Would there need to be a tracking label on each piece of the foam bowling set with 10 pins and 1 ball, or on each piece of the foam hockey set with 10 hockey sticks, 1 ball, and 1 puck?

2. Standardization of tracking labels

We do not believe that CPSC standardization of tracking labels would facilitate the manufacturers' ability to determine the location/date of production. The format of tracking information would be a decision worked out between the manufacturer and private labeler and it would be agreed upon such that all parties involved would know how to interpret the labeling or marking.

However, if the CPSC were overly specific about the appearance and arrangement of information, it could affect product aesthetics and the usefulness of the label. Specifying the arrangement of information could dictate the size and shape of the label, which might not be suitable for all products. The longevity of a label could be compromised by rules dictating where it should be placed. Standardization would also limit companies' and manufacturers' ability to determine the most cost-effective way to mark the product, adding additional and unnecessary expense to the manufacturing process.

3. Consumers' ability to identify recalled items

There are two cases to consider: determination of the information by the consumer under ordinary circumstances, and determination in the event of a recall. It is obviously more critical to understand the tracking information in the second instance than in the first, though the CPSIA does not differentiate.

If the CPSC does not standardize the information format and manufacturers choose to code that information, consumers might not be able to interpret the information without assistance. If the manufacturer/private labeler name were required to be on the product, the consumer could still contact the company to ask about the coding system.

In the case of a noncompliant product and subsequent recall, the manufacturer/private labeler would need to release the product label code, which would be no less effective than if the information were printed out in a standardized format.

4. Tracking information in English, other languages, or code

I do not see how requiring the tracking information to be in a particular language or according to a specific code would be helpful. Any code would have to be translated, and if there were a mandated code, the CPSC would have to concern itself with accessibility of that information to companies and to consumers. I believe it would be easiest and just as efficient to allow individual companies to decide how to print the information, and that it would be sufficient to specify that it be done in alpha-numeric format.

5. Electronically readable tracking information

This proposal sounds complicated and expensive, and we would oppose its mandatory adoption. While some manufacturers may be prepared for this technology, we sometimes have a difficult time getting our manufacturers to label products and packages with the correct UPC. Not all manufacturers are prepared to implement this technology and it would be unfair (and probably disastrous on the supply side) to require this sort of tracking capability.

6. Provision of manufacturer information to consumers

We do not believe that the manufacturer information should be required to be provided to consumers for the same reasons that we protested the requirement that information be present on the Certificates of Conformity. Private labelers work very hard to find new and inexpensive sources for their products, and consider this information highly proprietary. Exposure of manufacturer information to the public and potentially to competitors eliminates incentive to develop new products or to look for new, less expensive producers, which ultimately is detrimental to consumers because of loss of innovation and higher prices. Furthermore, I do not think that the wording of Section 103 of the CPSIA calls for manufacturer information to be revealed to the public if the private labeler is named.

7. Lead time necessary for implementation

In order for a simple paper label to be designed, ordered, created, and ready to use for apparel items made after August 14, 2008, the label would have to be designed and ordered by early May in order to arrive on time for August production. This applies to our apparel manufacturers who are already used to including such labels and whose labels are relatively easy to incorporate into the product design. For our hard goods manufacturers, the process would require even more time since we would have to

determine tracking label format and placement for each item and work with them to incorporate the label into production.

8. Other models for tracking labels

The FTC's Registered Identification Number program is the only model I have heard of with similar requirements. However, it covers only part of what is required by the CPSIA – a code for the manufacturer/private labeler.

Stevenson, Todd

From: Megan C Hunt [mhunt@champrosports.com]
Sent: Monday, April 27, 2009 7:55 PM
To: Tracking Labels
Subject: comments - Champro Sports
Attachments: tracking label response.doc

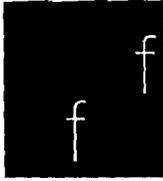
Please see the attached document for our company's response to the tracking labels RFC.

Thank you,

Megan

Megan Hunt
CHAMPRO Sports®
1175 Wheeling Road
Wheeling, IL 60090

P: 847.229.4072
F: 847.229.4090
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canadian apparel federation
fédération canadienne du vêtement

2009-0010-0127

April 27, 2009

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

Re: **Tracking Labels**

Dear Sirs:

The Canadian Apparel Federation ("CAF"), is the national industry association in Canada representing over five hundred apparel related businesses throughout the country. CAF appreciates the opportunity to comment on the CPSIA requirement for tracking labels in children's products and respectfully submits these comments in response to the CPSC's Requests for Comments in connection with Section 103 of the CPSIA.

Summary Concerns with Section 103

Our concerns with Section 103 of the CPSIA are as follows:

1. The tracking label provisions in Section 103 have the potential to make the American marketplace too expensive, too impractical and, because of the lack of trade secret protection, far too risky – without any measurable increased product safety.
2. The CPSIA's goal of ensuring product safety for the benefit of American consumers is laudable and worthwhile, and CAF has proactively worked to assist our members in complying with their obligations under the CPSIA. Section 103 of the Act, however, accomplishes nothing in the fight against unsafe consumer goods. The regulation forces disclosure of proprietary business information in violation of federal law protecting such confidential trade secrets. The regulation would also require creation and application of new labels reflecting each and every new production date, escalating the costs of doing business and imposing new costs on American consumers.

3. Perhaps unintentionally, the tracking label regulations discriminate against product importers and erect non-tariff trade barriers even between the United States and Canada.
4. Canadian research into the practicality of requiring labeling of the factory of origin for consumer textiles demonstrates that this is not an appropriate mechanism for consumer disclosure.

For all of these reasons and others as will be further discussed below, CAF urges that both Congress and the CPSC reconsider Section 103 of the CPSIA.

Further Discussion

1. Practical Considerations

The CPSIA has had a tremendous impact on the sourcing of apparel and related components. Since October, 2008 CAF has hosted numerous workshops and produced information in various forms for its membership on the CPSIA and related issues. In particular, the potential commercial risks and liabilities for exceeding mandatory lead limits have successfully worked to deter against sourcing from any manufacturer not guaranteeing compliance with the CPSIA. During this year of stayed enforcement on certification and testing, CAF members are working closely with their suppliers, testing products and components, and putting in place procedures and best practices enabling continued distribution of children's products into the U.S. marketplace.

CAF and its members believe that consumers *should* know who to contact about a children's product found or thought to be unsafe. If there is a safety problem, consumers *should* have access to safety reports and certifications of compliance. And, pursuant to the CPSIA, domestic manufacturers and importers *are* required to comply with mandated product standards and maintain product testing results and compliance certifications. Consumers should be able to identify these domestic manufacturers and importers so that they are able to confirm the safety of the products their children are using or otherwise have access to.

To be clear, tracking labels should track product back to that domestic (U.S.) entity responsible for placing the product in the U.S marketplace. For this reason, Section 103 may rightfully require labels on children's products that enable tracking of the goods to the domestic manufacturer or importer. Respectfully, however, providing American consumers with the name and address of a component manufacturer located in an inaccessible and perhaps unknown foreign country will not only *not* further any stated goals of the CPSIA, but it will also not provide American consumers with any useful information whatsoever. It also ignores the tremendous efforts CAF members have made to bring their supply chains into compliance with the CPSIA and related regulations. What is the purpose of a complex certification process maintained by the manufacturer or importer if consumers are encouraged to believe that a sub-contractor in a country half way around the world should be in a position to address safety concerns related to a specific product?

Fortunately, identification of the domestic distributor or dealer is already possible and requires no newly created, complicated and sure-to-be misunderstood tracking labels. In both the U.S. and Canada, RN and CA numbers are placed on garment labels to identify the domestic dealer or distributor of that good. These numbers are publicly listed in databases maintained by, in the United States, the Federal Trade Commission and, in Canada, by the Competition Bureau. Consumers often already access these databases to determine who markets a particular product line. Similarly, consumers can access these databases to contact the identified dealers and distributors for identification of domestic manufacturer and/or U.S. importer. And if a distributor, for whatever reason, elects not to place a RN or CA number on its product label, the full name and address of such responsible party must alternatively be published.

Very simply, there is no practical reason or basis to require new labels, additional disclosures if the regulatory intention is to enable consumers to confirm the safety of children's clothing.

2. Cost Considerations

Section 103 of the CPSIA 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. In certain countries and manufacturing facilities, however, production may not be tracked via lot numbers or batch code. Production may instead be tracked by product type, incorporated components or purchaser identification. As a result, requiring product suppliers to affix the specific information required by the CPSIA but not required by any other country of intended shipment or export, simply means that CAF members must pay to provide each supplier with customized labels and, in addition, will be expected to reimburse factories for the necessary additional costs. By limiting sources to those only able to track the required information in order to produce a compliant label, product supply is necessarily contracted, leading to escalated product prices and limited product availability.

In addition, because Section 103 requires that the labels reflect production dates, a new label would need to be created identifying each and every date a new production run occurs; a new label would be needed for each production run of each and every product. Because the provision includes the same marking requirements for even mixed set product packaging, packaging labels would similarly need to be recreated each and every time any individual component factory has a new production run.

As a hypothetical example, a gift set consisting of perhaps a fancy dress for a little girl together with shoes and beaded socks, could conceivably require changing product labels at least 9 times in a mere 3 month distribution period (see below). The costs of labeling and relabeling in terms of labor, material and training, all of which would be passed along to consumers, could be tremendous.

Month 1

1. Production run 1 for sock final assembly – date/batch number/manufacturer contact information
2. Production run 1 for shoes final assembly – date/batch number/manufacturer contact information
3. Production run 1 for dress final assembly – date/batch number/manufacturer contact information
4. Pick/Pack run for gift set – collective production dates/batch numbers and manufacturer identifications

Month 2

5. Warehouse out of socks – places another order with same manufacturer for Production run 1, using same specs and components – new label created and affixed
6. New label created and affixed for gift set

Month 3

7. Warehouse runs out of dresses – places another order with same manufacturer for Production run 1, using same specs and components – new label created and affixed
8. Warehouse runs out of shoes – places another order with same manufacturer for Production run 1, using same specs and components new label created and affixed
9. New label created and affixed for gift set

Within a 90 day business period, nine (9) different labels would need to be created by different businesses located in different parts of the world, each with varying knowledge of the English language or U.S. requirements. This is not only unreasonable in terms of cost and expectation, it is impractical and unnecessary to accomplish any of the stated goals of the CPSIA.

3. Risk Considerations

The Economic Espionage Act of 1996 makes the theft or misappropriation of a trade secret a federal crime. 18 U.S.C. §1832 criminalizes the misappropriation of trade secrets related to or included in a product that is produced for or placed in interstate (including international) commerce, with the knowledge or intent that the misappropriation will injure the owner of the trade secret. Penalties for violation of Section 1832 are imprisonment for up to 10 years for individuals and fines of up to US\$5 million for organizations. The Act defines a protectable trade secret as

all forms and types of financial, business, scientific, technical, economic or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether

tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- *The owner thereof has taken reasonable measures to keep such information secret, and;*
- *The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by the public.*

Domestic importers have proprietary business' relationships with global component manufacturers. Importers structure supply chains that include direct relationships with global manufacturers or other component suppliers in the hopes of fostering direct relationships with U.S. distributors and retailers. If importers disclose to these distributors and retailers proprietary supplier information they will, simply, be cutting themselves out of the supply chain. Retailers and distributors may contract directly with manufacturers to eliminate the cost of the middleman. While this may sound attractive to some concerned with escalating product pricing, it is an unacceptable consequence of legislation couched in rhetoric about product safety. Bypassing tax-paying, law abiding, predominantly small to medium sized U.S. importers does not make products safer, is not a reasonable objective of legislators and agency personnel and is certain to occur if federal statute requires disclosure of confidential supplier information in the guise of product safety concerns.

To be clear, the relationship between the U.S. importer and its non-U.S. product suppliers constitutes proprietary business information with measurable economic value to everyone in this supply chain. The disclosure of this information compromises existing business structures and threatens ongoing business opportunities for U.S. importers and third party product suppliers. Because the CPSIA holds the U.S. importer liable for certifying compliance with such standards and regulations, thereby imposing substantial and measurable added costs to doing business in the United States, it is incomprehensible that the Congress would have further intended to cripple the industry by jeopardizing future business relationships through forced disclosure of what federal law clearly defines as protectable and valuable trade secrets.

This very real threat of cessation of ongoing business caused by imposition of U.S. federal statutory labeling requirements is of great concern to all SMEs currently doing business in the United States. As already discussed in these comments, the disclosure of non-U.S. manufacturer information does not provide the consumer with any benefit whatsoever because the CPSIA makes only domestic manufacturers and importers responsible for maintaining such product safety information. And, the labeling regulations found in Section 103 are certain to unreasonably increase business costs to a point where most U.S. consumers, especially in this economy, will be unable to purchase imported children's products under any circumstances. Therefore, the additional risks posed to global traders through forced disclosure of valuable proprietary trade secrets certainly gives rise to international concerns that the CPSIA is less about product safety and more about the

erection of additional, non-tariff trade barriers protecting only domestic industry. Domestic industries may thrive as importers are forced to raise product prices and limit sourcing to factories able to meet the stringent requirements of the legislation, but American consumers will suffer measurably when consumer goods for their children become too expensive, difficult to find in local mass retail outlets and are not any safer than they were previously.

4. Canadian Experience – Tracking of factory of origin

The issue of disclosing the factory of origin on garment labels is not new for the Canadian apparel industry. In 2003, the Conference Board of Canada, on behalf of the Competition Bureau, Industry Canada, published a report in response to calls by the Ethical Trading Action Group (ETAG) for factory of origin information to be detailed and disclosed on product labels for imported goods sold in the Canadian marketplace. While the information was sought for different purposes (social accountability) the major conclusions are broadly relevant to the tracking requirements of Section 103. Summarily, this 92 page report (found at <http://strategis.ic.gc.ca/pics/ct/ct02546e.pdf>) included the following conclusions:

- the mechanics of disclosure are ill defined or impractical:
- current labels lack the space needed to carry information on manufacturing location(s)
- To disclose manufacturing addresses is to disclose the wrong information, since it fails to inform consumers about what may be of concern to them.

Further, the report raises questions concerning supply chain disruption resulting from factory disclosure. According to the Conference Board, factory disclosure would:

- Make it more difficult to compete, by disclosing alternative direct supply sources to clients, and
- Discourage global participants from entering the Canadian market, by forcing them to disclose globally for the Canadian market, and

CAF urges that the CPSC utilize its resources to do the type of study as was done in Canada by the Conference Board in 2003, and take into account its findings for the consultation at hand. The U.S. Congress and its federal agencies must effectively balance the need to ensure the safety of consumer products against the purported need to force disclosure of protected trade secrets. Section 103 of the CPSIA unjustifiably places too high of a continuing cost of doing business on importers and SMEs without any measurable enhanced or increased benefit to the American consumer.

Conclusion

Section 103 requires tracking labels to *the extent practicable* to permit manufacturer identification of production information assumedly necessary to facilitate effective product recalls and for consumers to similarly identify manufacturers or private labeler information

sufficient to provide purchaser access to production data. It is imperative that CPSC do everything possible to craft regulations that are the least burdensome upon industry and which cause the least amount of disruption to existing, legitimate distribution systems. Specifically, the Canadian Apparel maintains that:

- It is not practical to label products of packaging with the noted "cohort information" that may not be readily available, or that may, in fact, consist of a variety of data that would require labels larger than the packaging itself.
- It is not reasonable to insist that non-U.S. manufacturers affix product labels to garments in a form and with content disclosing proprietary trade secrets and business information that is not required to be provided in the country of manufacture or export, and, in fact, should be protectable under U.S. trade secret laws and protections.
- It is not practical to impose requirements upon industries that are already suffering significantly from an incredibly troubled global economy – especially when those requirements fail to standardize international practices and create the very real possibility that American consumers could be deprived of cost-effective, and safe consumer goods at a time when a competitive marketplace should be the universal objective of all trading partners.
- Given that there is no standardized nomenclature regarding so many aspects of the tracking label requirements, and given that a broad range of manufacturing groups have raised concerns regarding the practical means of meeting these requirements, an indefinite stay of enforcement should be instituted to allow the CPSC to work with all parties in determining how to meet the requirements of Section 103. Once finalized, the CPSC should provide one year for the industry to implement these regulations.

CAF appreciates this opportunity to comment on these regulations and sincerely appreciates the efforts made by the CPSC to reach out to industry and create productive and meaningful dialog. It is imperative that all efforts be made to protect children in each and every country of the world just as it is imperative to collaboratively meet those goals without threatening the viability of an entire industry or risking product availability to the detriment of U.S. consumers desperate to maintain a competitive domestic marketplace.

Should you wish to discuss any of the foregoing comments or learn more about the Canadian Apparel Federation, please feel free to contact the undersigned directly at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Kirke", written over a circular stamp or seal.

Bob Kirke
Executive Director

Stevenson, Todd

From: Bob Kirke [bkirke@apparel.ca]
Sent: Monday, April 27, 2009 10:10 PM
To: Tracking Labels
Subject: FW: Canadian Apparel Federation
Attachments: SKMBT_C35109042711080.pdf

Tracking labels submission from the Canadian Apparel Federation.

N.B. We have moved:

Bob Kirke, Executive Director
Canadian Apparel Federation
708-151 Slater St.
Ottawa, ON K1P 5H3
T (613) 231-3220 x 224
F (613) 231-2305
E: bkirke@apparel.ca
W: www.apparel.ca

From: info@apparel.ca [mailto:info@apparel.ca]
Sent: Monday, April 27, 2009 12:09 PM
To: bkirke@apparel.ca
Subject: Canadian Apparel Federation

2009-0010-0128



April 27, 2009

VIA EMAIL DELIVERY
"Tracking Labels"

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

John Gibson Mullan, Esquire
Director of Compliance
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

Re: CPSIA Section 103 Tracking Labels for Children's Products

Dear Mr. Mullan and the CPSC Tracking Labels Work Group,

I am writing to respond to the request for comments and Information regarding the new Tracking Label requirement in Section 103 of the Consumer Product Safety Improvement Act (CPSIA). Lakeshore Learning Materials is a privately owned company in California. Our goal is to supply safe, durable and high quality educational materials to classrooms across the United States. Our products are available to our customers through mail order catalogs, the Lakeshore Learning Materials Website and Lakeshore Learning Materials retail stores. We carry a product line of over 19,000 different products. On some of the products we carry (high chairs, boom boxes, tricycles, changing tables, etc.) we are already mandated to include Date of manufacture (DOM) marks on the product, guide and final packaging. However, these represent less than 0.5 % of our product line. We are working now to find effective ways to incorporate tracking marks on all our children's educational products across the board in a more consistent manner. As we do so, we are grateful to be able to relay to you the challenges and concerns we are finding. With 19,000 products to mark, we are finding the deadline of August 2009 extremely unreasonable. While we are working as quickly with our 1100+ vendors, the time of implementation given in the CPSIA is simply not attainable. The best we can do is continue our due diligence and complete the project as quickly as possible.

Question 1A: The conditions and circumstances that should be considered in determining whether it is “practicable” to have tracking labels ON children’s products.

We believe that several factors need to be considered when determining what is an is not “practical” to mark. Marking ON the product or on the packaging will be a product by product decision.

1. Size – Items that are small (less than about 3 inches in diameter) are often difficult to permanently mark without damaging the function or the aesthetics of the piece. Heat stamping requires a larger area to imprint legibly. Adding this date in ink will be difficult to do without aesthetic impact. Surface marking on small plastic pieces is not always possible due to the stain resistant nature of many plastics.
 - a. Take as an example a popular craft item – plastic “wiggly eyes.” The item normally comes in a bag of 25, 50, 100 or more. The mark able space on the eye is maybe ¼” and finding a method to mark inside those tight tolerances is close to impossible.
 - b. Take as an example a set of wooden game pieces. The only place to mark on them is the base which may be less than ½” and in many cases not perfectly flat.
 - c. Small, felt finger puppets – all current required information is marked on the packaging due to material and size.
 - d.
2. Bulk pack/Qty – Educational sets often contain 30-40+ pieces of the same part (perhaps in different colors) sold in a tub as a building or creative design set. Molding a production date into every single piece can damage the function as well as aesthetical appeal of the product. It can have a negative visual impact from a consumer and user point of view. We would suggest allowing markings to be on the packaging, labels or header cards (even the guides if necessary), rather than the pieces themselves.
3. Design / Material Used
 - a. Some smaller shaped figures or products have no flat surface that would allow marking
 - b. Many art & craft materials intended for children under 12 yrs would be impossible to mark ON the product itself, due to the very nature of the materials used. A few examples:

▪ Pipe stems	▪ Fabric pom-poms
▪ Colored tape	▪ Fabric scraps
▪ Craft rocks	▪ Glitter
▪ Plastic buttons	▪ Plastic tubes / straws
 - c. EVA foam products are extremely difficult to mark without damaging the shape and function of the piece.

4. Competition with Existing markings – On smaller pieces manufacturers may already mold in the manufacturer name and country of origin. On a medium to very small piece, adding the date of manufacture will most certainly impact the aesthetics of the piece. There is only so much room on some of small or miniature figures and many existing rules are already competing for that precious space.

Question 1B: The extent to which different factors apply to including labels on packaging.

1. Risk – Not all products need to be tracked. For example, a bag of plain wooden craft sticks in an art supply category would have a very low risk factor. Marking every craft stick is not practical for any number of reasons. We would say that marking this type of product would do absolutely nothing to improve the safety of the product. A few other items in this category would be: natural fabrics, natural sea shells, natural rocks or pebbles, craft paper, newsprint paper, yarn, thread, paper, tissue paper.
2. History of problems – The types of products above should be held to scrutiny of a historical review of any safety concerns that they may have been involved in. In my 23 in this industry, I have never seen a **safety** concern arise. Based on the lack of evidence of historical safety concerns, adding tracking marks to such products would increase cost dramatically, would not be practical to mark directly on the product and would have not impact at all on making the product safer in any way.
3. Damage to mold - Small pieces can have a mold with 10-20 different cavities, which means changing every mold cavity on every production run. Changing the date on the mold every time the manufacturer produces the small product will certainly wear down the mold much sooner than it normally would. Every time you touch the mold the possibility of damaging the mold is dramatically increased.
4. Supplier – We do not manufacture all the components in our products. We purchase components from a wide variety of industries and carefully assemble them into sets for educational purposes. If the supplier does not necessarily market their component for children under 12 yrs, they are reluctant to have to mark their products for only one of their customers. In these cases we would be forced to manufacture the product ourselves, change the design of our product and add the DOM at that time. This is impossible to achieve in the time frame allowed in the CPSIA.

5. Assembled in the USA – On sets that contain 20 or more different small components assembled into an educational set here in the USA, the visual pollution of these DOM on the individual poly bags is discouraging. We feel strongly that a customer’s impression of the quality of our products is impacted by the experience they have when they open the box for the first time. Since most of these small miniature components cannot be marked on the product itself, they are marking the poly bags. Opening a box with 30-40 DOM markings in various fonts, sizes, colors, etc. is very off-putting and speaks immediately to the quality of the product. As an educational materials supplier of high quality products, we feel we should be able to mark the overall assembled set with a DOM, as long as we continue to have an effective back-end tracking system to know when and where each individual piece on that set assembled on that day was produced.

Question 2: How permitting manufacturers and private labelers to comply with labeling requirements without standardized nomenclature, appearance, and arrangement of information would affect:

2a. Manufacturers’ ability to ascertain the location and date of production of the product:

We deal with over 1109 vendors and almost every one of those vendors has a different method of tracking and controlling their inventory going in and out of their factory. Setting the desired goal and allowing manufacturers to meet that goal in any number of ways would be the least disruptive approach to requiring marking.

2b. Other business considerations:

Confidentiality of manufacturers is a serious concern with marking. As the Importer of Record on over 85% of our products we want to maintain that confidentiality while still allowing for the best possible tracking of the products’ production dates. On those products we already have our name and contact information on the packaging and often on the product itself (where practical). Allowing this information to be on the product, but not necessarily on the tracking mark has the same final outcome.

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

As long as the manufacturer or private labeler’s specific method of marking is indicated on the recall press release notification letters, store posters, etc – the customers should be able to locate and identify the recalled item without difficulty.

Question 4: How, and to what extent, the tracking information should be presented in English or other languages, or whether presentation should be without the use of language.

In our experience, using a non-language based tracking code allows easy identification by all. Allowing the reference key to be available to the public seems logistically impractical. An online system would need to be established whereby each code for the over 19,000 products we carry is posted. Who would maintain this listing, who would have time or money or expertise to set it up, where would it be set up, etc.? This concept may “sound good” and give the impression of transparency, but for the majority of small businesses this would be financially impossible to maintain.

Question 5: Whether there would be a substantial benefit to consumers of products were to contain tracking information in electronically readable form and if so, in which cases this would be most beneficial and in which electronic form.

This is completely outside the realm of practicality for our company, and I do not think we are alone in this position. Large, giant toy companies may have the funds to implement such as technological scenario, but most of the bread & butter businesses would not. I will leave this to others to comment more fully on. We would not be able to comply with such a regulation for many years and feel that it would be completely unfair practice to require such technical system that is currently beyond our ability. It does nothing to increase the safety of the product, but spends money on a “nice-to-have” system. As long as the product is properly marked the consumer should have no problem identifying the information.

Question 6: In cases where the product is privately labeled, by what means the manufacturer information should be made available by the seller to the consumer upon request.

If the tracking marks are on the product, and the manufacturer and/or private labeler has the ability to easily access the DOM information, customer should be able to be given that information immediately via email, fax or phone. We see no reason for this information to be available to the consumer at point-of-sale. But if the DOM code is imprinted on the final packaging and the seller has the reference code available, the information should also be available upon request. However, we do feel that this would be a very cumbersome and troublesome process at the retail level. Most DOM code reference materials are held at headquarters and not distributed on every product to every store. Making retail personnel responsible for this is unreasonable and in our history we have NEVER had a consumer ask for this at the point-of-sale.

Question 7: The amount of time needed to implement/comply with marking requirements once they are prescribed.

We are working with 1109 different vendors to add marking codes in one way or another to over 19,000 products. This is a formidable task indeed. If we are given 12 months to comply, that still means we have to complete about 100 vendor product lines per month. We have an extremely limited quantity of employees with the knowledge required to conduct this negotiation with each of our suppliers / manufacturers for each different style of product they produce. At our current capacity we feel we could fully comply by January 2011, or 18 months after the official guidelines are provided. Some product lines will be easy to implement and others will be much more complex.

Thank you for this opportunity to shed some light on the challenges that tracking marks are having in our industry of educational products. We continue to work one by one with our vendors, toward the goal of tracking marks on our products.

Sincerely,

Terra Anders
Director of Product Safety & Testing
Lakeshore Learning Materials
(310) 537-8600 X2100

Lakeshore Learning Materials

These are visual examples of products that we consider impractical to mark on every single piece:

Small, felt, finger puppet sets sold separately. Each piece is 1 to 1.5 inch:

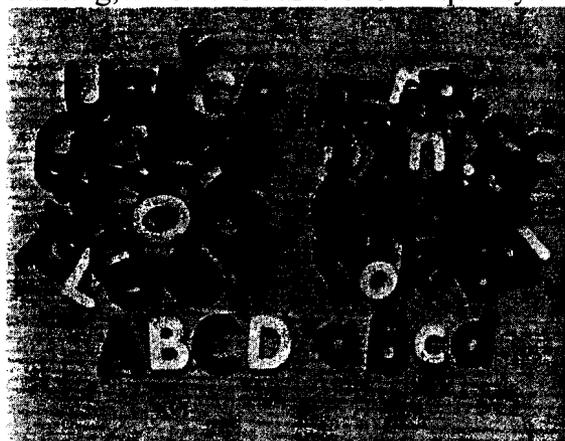


Used like this

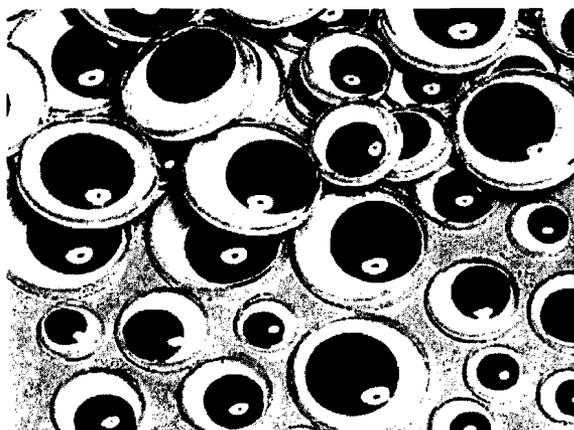


Suggest labeling the packaging rather than each piece. These are all small parts, and labeled as such. Overall this item has an extremely low safety risk hazard.

Plastic letters: marking every letter with DOM would damage molds, or at least wear them out sooner than necessary. Damage to molds can result in plastic flashing, which decreases overall quality and safety.



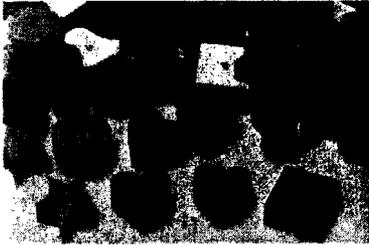
Bulk pack Wiggly Eyes in various sizes are impossible to mark individually.



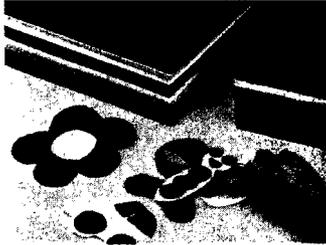
Components of arts & craft kits for children under 12 would be impossible to mark per piece. These should be exempt from marking, or considered impractical to mark. Allow DOM information to be marked on header card, box or other packaging.

These products are made with EVA foam.
 Difficult in marking arises in both the material used, and the quantity used in each set.

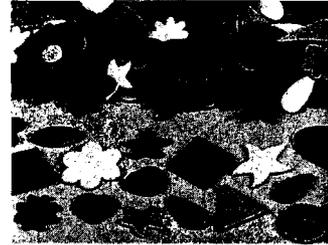
Foam Stringing shapes



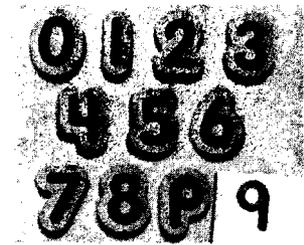
Sheets of EVA art foam



Foam art shapes

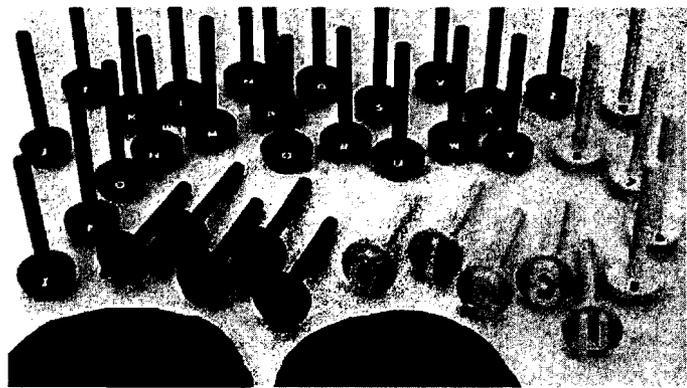
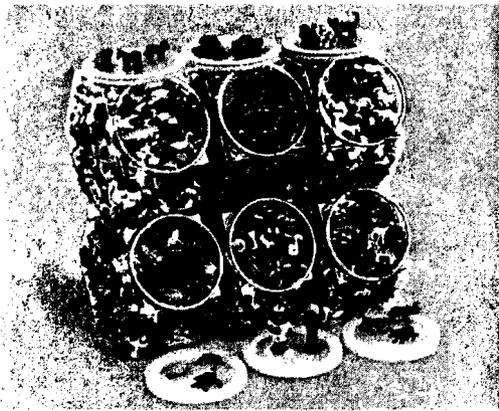


Foam number stamps



Miniature Math Counters & Sorting Tubs:
 Too small to practically mark.
 Too numerous to mark each figure individually.
 Suggest being able to mark the label on the packaging.

Plastic Dough Stampers: Here is an example of another bulk item where marking each individual parts would be impossible. Country of Origin and vendor name Already shares the precious little space on the handle.



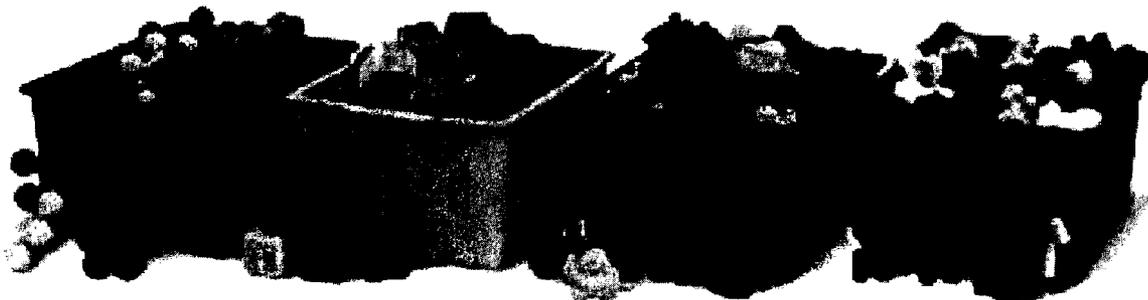
Early Years Manipulative Tubs.
 Changing the mold on every piece on every production run will certainly be highly expensive and damage to the molds are likely. Aesthetics are impacted dramatically as well. In some of the cases, these designs have no more room to mark a DOM without changing the mold and design completely. Marking these sets in the permanent packaging label would be desirable. The tub and pieces are manufactured at different suppliers and assembled in the USA.

LA521

LA848

LA874

LA534



This is an ASSEMBLED IN USA example. This alphabet teaching educational product contains over 120 different components manufactured by over 30 different vendors/suppliers at various times. Marking every miniature product is not practical. Marking every single polybag (if there is one) is visual discouraging to the consumer. We would ask that we be allowed to mark the DOM on the actual assembly date, as long as we continue to have behind-the-scenes tracking methods to know when and where each individual component was produced.



Stevenson, Todd

From: Terra Anders [TAnders@lakeshorelearning.com]
Sent: Monday, April 27, 2009 10:45 PM
To: Tracking Labels; gmullan@cpsc.gov
Subject: Tracking Labels - Section 103
Attachments: Response to CPSC section 103.pdf

Please see the attached comments regarding Section 103 of the CPSIA.
Thank you.

Terra Anders

Director of Product Safety & Testing
Lakeshore Learning Materials
(310) 537-8600 x2100
Tanders@lakeshorelearning.com

2009-0010-0129

HONG KONG AMERICAN CHAMBER OF COMMERCE
(HK AMCHAM)
APPAREL & FOOTWEAR COMMITTEE ("AFC")
PRODUCT SAFETY SUBCOMMITTEE

April 27, 2009

Via Email: Trackinglabels@cpsc.com

Via Fax: +1-301-504-0127

Office of the Secretary
Consumer Products Safety Commission
Room 502
4330 East-West Highway
Bethesda, Maryland
20814
U.S.A.

Re: Request for Comments: Tracking Labels for Children's Products, Section
103 of the Consumer Products Safety Improvement Act (CPSIA)

HK AMCHAM AFC represents the interests of a wide variety of textile & apparel companies that are impacted by the recently passed consumer product safety legislation known as the CPSIA. The AFC companies supporting this effort wish to express the strongly and uniformly held view that product safety is a fundamental priority in the design, development, manufacture, and distribution of textile & apparel products for U.S. consumers. The companies urge the CPSC to develop a reasonable, flexible and practical tracking label protocol that weighs the relative benefits to consumers against the costs and burdens to the industry. The AFC companies further emphasize that their principal goal is to fully comply with the new tracking label requirements while limiting their potentially negative impact on the manufacturing process, the supply chain, and the flow of goods to the U.S. consumer.

In the passages below, members of the HK AMCHM AFC provide summary comments for the Commission's consideration regarding the new tracking label requirements. In addition, certain members have posed questions regarding the definitions of critical concepts which may be responded to by the Commission in context of these comments.

- Exclusions/Waivers: As a general principle, since the intent of the new regulations is to provide US consumers with assurances that products containing certain material inputs (e.g., lead & phthalates) are safe; the tracking label requirements should be waived for products demonstrated to have no traces of such materials and/or no inherent health and safety risks. Likewise, where it is impossible or impractical to affix labels to a product, due to its construction, geometry or other physical restrictions, the labeling requirements should be waived. These waivers can be granted in the context of product exclusions and lead content determinations by the CPSC.

- Format: There is general consensus amongst AFC members that standardization is not only impractical given the vast variety of product types and manufacturing processes used, but would create undue burdens to many manufacturers/processors where standard labels are not easily affixed to the product. Further, there is general consensus that, as a general policy, CPSC should permit simple PO, R/N or similar identifier numbers to be used which can then be traced via company websites or other publicly accessible means to individual products and production runs/batches. The exact format, nature and content of these identifier numbers would be left to individual companies, depending on their specific product types, configuration and manufacturing processes.

- Stay of Enforcement: AFC strongly supports a minimum one year stay of enforcement of the new tracking label requirements, as requested by other interested parties. Given the short lead time before implementation, the technical and logistical difficulties in complying with the new tracking label requirements and the existence of inventories containing non-compliant product, it is simply not practical for companies to meet the new statutory requirements by the August 14, 2009 deadline. During the stay period, the CPSC can work with industry to clarify and further define the content, format and nature of the tracking labels and grant general exceptions or waivers for products which are inherently risk free (or otherwise qualify for exclusion).

- Definitions: AFC members ask for interim guidance on certain definitions under the CPSCIA. For example,
 - What specifically constitutes a “manufacturer”? A “private labeler”?
 - What does “ascertain” mean, in the context of allowing consumers to “ascertain” the ultimate manufacturer or private labeler? What efforts should be required of the end consumer to “ascertain” this information?

- What is the format of the factory name? Can factory designation codes be used? Does a full factory name need to be listed? Do addresses need to be listed? If multiple factories (upstream and/or downstream) are involved in the production of an item do all facilities need to be identified or otherwise traceable via the tracking labels?
- Business Proprietary Information: Can this concept be defined such that certain information or data be waived from disclosure if demonstrated to be confidential or business proprietary in nature?
- Packaging: If the packaging is designed in a way that the consumer can readily access and read the tracking label on the product inside, can the outer packaging then be excluded from the labeling requirements?
- Date of Manufacture: How specific does the date need to be?
- Source: How specific does the source need to be?
- Permanent labeling: Can there be more detailed information or definitions of what constitutes permanent labeling for the life of the product?

Finally, the AFC members herein acknowledge and give their full support and acceptance to the comments filed today by the American Apparel and Footwear Association (AAFA) with which the AFC has worked closely in exploring and isolating the many issues and problems inherent in the new regulations, and their implementation. These comments more specifically detail the issues and positions of AFC members and are incorporated by reference herein.

The AFC members appreciate the opportunity to comment on the new tracking label requirements and look forward to responses by the CPSC.

Respectfully submitted,

HK AMCHAM
Apparel & Footwear Committee
Product Safety Subcommittee

**GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP
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TELECOPIER COVER SHEET

OUR REFERENCE:

FAX SENT BY: ELAINE F.
WANG
 ORIGINAL WILL FOLLOW

<u>RECIPIENT</u>	<u>COMPANY</u>	<u>FAX NUMBER</u>
Office of the Secretary	Consumer Products Safety Commission	1-301-504-0127

**SENDER: ELAINE F. WANG ON BEHALF OF ANDREW B.
SCHROTH**

DATE: APRIL 27, 2009

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 4

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MESSAGE: