U.S. CONSUMER PRODUCT SAFETY COMMISSION
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Further Supplemental Statement of Commissioner Robert Adler on the Consumer Product Safety Commission's Provisional Acceptance of a Settlement Agreement with Williams-Sonoma, Inc.

May 22, 2013

While I doubt that my colleague, Commission Nord, will ever relinquish having the final word regarding any issue on which she and I have voiced disagreement,[1] in this one instance, I will depart from my usual acquiescence to clarify a point that she persists in misstating.

My colleague claims to welcome my disclaiming the view that prior voluntary recalls always present grounds for the inclusion of a compliance program. Of course, since I had never expressed such a view, disclaiming it was easy.

What I would welcome from my colleague would be some acknowledgement that her oft-expressed view that the Commission must disregard a company's voluntary recall history when it comes to crafting remedial measures is overly restrictive. Evidently, she still clings to the belief that, absent formal determinations that recalls involve "violations," the Commission should not consider a firm's recall history.

In fact, my colleague doubles down on this position in her latest statement. Her new argument is that because Fast Track recalls do not involve preliminary determinations of an actionable risk, seeking a compliance provision for companies that engage in Fast Track recalls jeopardizes the future of the program. She states that "[i]f such recalls will subject the company to some future penalty expansion, then the incentive for doing them is greatly reduced." With all due respect, this is unpersuasive. The Commission's Fast Track Program was never designed to be an amnesty program; in fact, the Commission on a number of occasions has pursued civil penalty cases against manufacturers who have conducted Fast Track recalls. Nor was Fast Track designed to be an amnesia program – the Commission, appropriately, gets to remember previous Fast Track recalls when it assesses whether to seek formal compliance provisions.

[1] Not a matter worth fighting about, as far as I am concerned.

Companies pursue Fast Track recalls because such recalls are in their best interest – and the public's as well. Nothing in the Commission's thoughtful and measured pursuit of a compliance provision for some repeat offenders changes that fact. [2] Fast Track has been and will remain an extremely useful program both for the Commission and for firms that manufacture and distribute consumer products.

With respect to my colleague's endorsement of a policy on compliance provisions developed through notice-and-comment rulemaking, I have already stated that I consider such an approach to be within the Commission's discretion. Unlike my colleague, I do not view it as the only path to enhanced compliance, but I certainly am open to such a policy. I wish my colleague showed similar flexibility in her approach to protecting the public.

[2] My colleague seems particularly disturbed that we have now imposed "identical" compliance programs on two different companies with different histories. I find no inconsistency or impropriety here. Once the Commission determines that a compliance program is warranted, I think it praiseworthy for the agency to hold companies to the same safety obligations in the future.