United States
Consumer Product Safety Commission

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chair Alexander D. Hoehn-Saric
Commissioner Peter A. Feldman
Commissioner Mary T. Boyle
Commissioner Douglas Dziak

ITEM:

Request by Dreamland Baby Co. for Retraction of Information Pursuant to Section 6(b)(7) of the Consumer Product Safety Act (Part 2)

(Ballot vote package dated August 21, 2024, OS No. 0319)

DECISION:

The Commission voted 2-0-2 on this matter. A majority was not reached, and no action will be taken. Chair Hoehn-Saric and Commissioner Boyle voted to take other action (see attachment for complete text).

Commissioner Feldman and Commissioner Dziak abstained from the vote and issued a joint statement regarding this matter.

For the Commission:

Alberta Mills

Alberta E. Mills
Secretary

*Ballot vote due August 29, 2024
(Chair Hoehn-Saric extended the vote due date from August 27 to August 29, 2024).

Chair Hoehn-Saric voted on August 29, 2024
Commissioner Feldman abstained from voting on August 29, 2024
Commissioner Boyle voted on August 29, 2024
Commissioner Dziak abstained from voting on August 29, 2024

Attachments: 1. Take Other Action Text
2. Joint Statement by Commissioners Feldman and Dziak

U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814
cpsc.gov

National Product Testing & Evaluation Center
5 Research Place
Rockville, MD 20850

Commissioner Trumka voluntarily recused himself from the Commission's decision on this retraction request and did not participate.

OS# 0319 – Request by Dreamland Baby Co. for Information Retraction Pursuant to Section 6(b)(7) of the Consumer Product Safety Act – Statements by Commissioner Trumka

TAKE OTHER ACTION

Deny Dreamland Baby Co's July 23, 2024, request to retract Commissioner Trumka's statements, social media posts, and communications (collectively statements) regarding weighted blankets and swaddles because, as described below, such retractions are unwarranted.

Section 6(b)(7) of the CPSA governs requests for retraction. It provides that if the Commission finds that in the administration of the CPSA, it has publicly disclosed inaccurate or misleading information that reflects adversely upon the safety of any consumer product or class of consumer products, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner equivalent to that in which such disclosure was made, take reasonable steps to publish a retraction of such inaccurate or misleading information. 15 U.S.C. § 2055(b)(7).

Here, there is no basis for retraction. None of the statements that Dreamland challenges contain the name of Dreamland or any other manufacturer or private labeler. Therefore, the identity of the manufacturer or private labeler of a particular product cannot be "readily ascertained" within the meaning of the CPSA and Commission regulations, and the advance notice and comment requirements of CPSA section 6(b)(1) do not apply. See also 16 C.F.R. § 1101.13.

Further, the challenged statements were neither inaccurate nor misleading. The statements cite the safe sleep guidance from CPSC, NIH, and CDC warning against the use of weighted blankets and swaddles. These agencies have collaborated on safe sleep guidance over 30 years through the Safe to Sleep® campaign, a collaboration between federal health agencies, including NIH, CDC, and CPSC along with the AAP, and other outside organizations.

Finally, Commissioner Trumka's letters to retailers did not function as a "stop sale directive for all infant and weighted sleep products and blankets, including Dreamland's." Only the Commission or a court can order a manufacturer to cease distribution in an administrative or judicial proceeding. CPSA § 15(c)(1)(A). Here, Commissioner Trumka acted in his own capacity requesting voluntary actions that retailers could disagree with or ignore and did not mention specific brands or manufacturers.

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

STATEMENT OF COMMISSIONERS PETER A. FELDMAN AND DOUGLAS DZIAK ON THE RETRACTION OF INFANT SLEEP PRODUCTS STATEMENTS

AUGUST 30, 2024

Dreamland Baby Company (Dreamland Baby) has requested a retraction of statements on the Commission's website and by an individual commissioner related to weighted infant sleep products. The company has alleged that the statements violate Section 6(b) of the Consumer Product Safety Act. Section 6(b) is not a gag order, but rather provides due process for the timely disclosure of safety information to ensure it is "accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act."

Among other things, the process in this matter was inadequate to develop the necessary factual record. Dreamland Baby sent one letter, and Commission staff proposed a response, but without an opportunity for parties to rebut assertions and for commissioners to ask questions, weigh evidence, or deliberate as a body.

The relief sought by Dreamland Baby in this matter raises separate concerns, particularly with respect to the remedy, which requires a retraction "in a manner equivalent" to the original method of dissemination. If the Commission found a commissioner violated Section 6(b), it could compel retractions on that commissioner's letterhead and social media accounts. We do not take such relief lightly. Without a fully developed evidentiary record, we are concerned about the precedent such a finding could create. We have seen other independent agencies attempt censorship of the minority views of its commissioners and are aware of how these efforts contribute to concerns about the honesty and integrity of the senior leadership at those agencies.[1]

Dreamland Baby is not without additional recourse. In our view, the publication of the statements constitutes final agency action.[2] Given the procedural deficiencies in this matter, we believe that the relief sought is best obtained through an Article III court.

Accordingly, we abstain.

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[1] *See* Christine Wilson, *Why I'm Resigning as an FTC Commissioner*, WALL ST. J., Feb. 14, 2023, https://www.wsj.com/articles/why-im-resigning-from-the-ftc-commissioner-ftc-lina-khan-regulation-rule-violation-antitrust-339f115d.

[2] *See* Co. Doe v. Tenenbaum, 127 F. Supp. 3d 426, 465 (D. Md. 2012) (holding that CPSC's publication of a report constitutes final agency action), *rev'd on other grounds sub nom.* Co. Doe v. Pub. Citizen, 749 F.3d 246 (4th Cir. 2014).

The views expressed in this statement are solely the views of Commissioners Feldman and Dziak and do not necessarily reflect the views of the Commission.