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

Cheryl A. Falvey
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October 17, 2008

Mr. Kevin M. Burke
President and CEO
American Apparel & Footwear Association
1601 North Kent Street
Suite 1200
Arlington, VA 22209

Dear Mr. Burke:

I write in response to your letter of October 14, 2008. You are correct that I have discussed in several of our public meetings the definitions of children's toys that were provided under section 108 of the Consumer Product Safety Improvement Act ("CPSIA"). The slides I used at the most recent presentation (and which are publicly available on our website) are attached to this letter and contain the different definitions of toys subject to the interim and permanent bans on phthalates in section 108. While those definitions are worded broadly, I have stated that my interpretation is that shoes are not toys because they are not intended to be played with by a child. This is reflected on the last slide where we indicate that a shoe intended for a child would be a children's product for purposes of the lead provisions of the CPSIA but not a toy within the meaning of section 108's limits on phthalates unless it has some play value, e.g., a shoe made for a doll.

The views expressed in this letter are my own and have not been reviewed or approved by the Commission. They are based on the best available information at the time they were written. They may be superseded at any time by the General Counsel, by the Commission, or by operation of law.

Sincerely,

A handwritten signature in black ink that reads "Cheryl A. Falvey". The signature is fluid and cursive, with the first name "Cheryl" and last name "Falvey" clearly distinguishable.
Cheryl A. Falvey

Phthalates Definitions and Testing

Permanently Banned Phthalates

- **Children's Toy** – consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays
- **Child Care Article** – consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething

This presentation has not been reviewed or approved by the Commission and may not reflect its views.

Phthalates Definitions and Testing

Interim Ban

- “. . . any children’s toy that can be placed in a child’s mouth or child care article . . .”
- “For purposes of this section a toy can be placed in a child’s mouth if any part of the toy can be brought to the mouth and kept in the mouth by a child so that it can be sucked or chewed. If the children’s product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or a part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.”

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Children's Product vs. Children's Toy for Phthalates Certification

	Children's Product	Children's Toy
Decorative Room Accessories	Yes	No, unless item has play value
Shoes	Yes	No, unless item has play value
Children's Jewelry	Yes	Maybe
Sporting Goods	Yes	Maybe

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October 14, 2008

Ms. Charyl Falvey
Office of the General Counsel
4330 East West Highway
Room 523
Bethesda, MD 20814

Dear Ms. Falvey:

On behalf of the American Apparel & Footwear Association (AAFA) – the national trade association of the apparel and footwear industries and their suppliers – I am writing to request an immediate formal written opinion to be issued which would explicitly exclude children's footwear from the phthalate ban.

At the past two public conferences on the Consumer Product Safety Improvement Act (CPSIA), several different CPSC staff members have publicly announced that the definition for “children's toys” as described in the phthalate provision (section 108) in the CPSIA does not include children's footwear. In fact, on the slide titled “Children's Products vs. Children's Toy for Phthalate Certification” in the “Mandatory Third Party Testing for Children's Products” power point presentation (October 2 conference), children's shoes were listed as children's products but not as children's toys. This is consistent with a plain reading of the statute which provides that the term “children's toy” means a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays. Based on the prior public statements of the CPSC staff members, as well as the plain language of the statute, many of our footwear manufacturers concluded that children's shoes do not fall within the definition of children's toy and therefore are exempt from the phthalate ban.

However, retailers are apparently concerned over the lack of clear guidance from the CPSC. As a result, several of our footwear members have received letters from retailers (such as the one attached) stating that they will no longer accept **any** children's products with phthalates. This goes well beyond the scope and intention of the CPSIA.

The financial consequences to our members of having to remanufacture products – products that our members felt confident were CPSIA compliant based upon prior public comments by the CPSC – would be significant. In light of the financial challenges already being faced by the industry due to the current economic crises, our members, many of whom are small manufacturers, need clear guidance from the CPSC stating that the phthalate ban simply does not apply to children's shoes. It is important for the CPSC to show consistency in order to prevent a significant disruption of business. Therefore, I am requesting a formal opinion to be issued by the CPSC reiterating what has already been said publicly by CPSC staff, that children's footwear is excluded from the phthalate ban. Because manufacture decisions on product design and composition are made many months before the product actually appears on retail shelves, it is important that this opinion be published as soon as possible and not wait for the December 4 phthalate conference.

Thank you for your time and consideration in this matter. If you have any questions, please contact Rebecca Mond with my staff at 703-797-9038 or at rmond@apparelfootwear.org.

Sincerely,

Kevin M. Burke
President and CEO