

From: Geoff Jones [gjones@Excelligence.com]
Sent: Friday, April 24, 2009 5:48 PM
To: Tracking Labels
Subject: Request for comments on Tracking Labels

Pursuant to the Consumer Product Safety Commission request for input on Section 103 of the Consumer Product Safety improvement Act of 2008, also known as the CPSIA, submitted herewith are my comments for implementation of Tracking Labels.

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.

Aspects such as size, shape, material composition, unit count, and product complexity, are some considerations for physically labeling a product.

- **Size** – The product size is a significant factor in determining the space available for physically labeling a product. A small bead, 10mm, represents a serious challenge to physically label. The small surface area provides a limited opportunity to place tracking information on the bead itself. In the case of a bucket of beads where there may be 500-5000 pieces in a container, it isn’t very practical to label each individual bead. Even if each bead were labeled it could be very difficult for a consumer to discern any useful information as the printing on any object of that size would be very difficult to read. It would seem practical to provide guidance on the size limitations (L x W x H) where it would not require a physical labeling on objects smaller than a certain size. There are several pieces of information that are required under the law and those elements will require sufficient space so that any physical labeling could be easily read by a consumer. When considering the guidance provided for labeling of toy and game advertisements there was a minimum size requirement. Similarly there should be a minimum size requirement for tracking labels that could be used to define the minimum object size. Experience tells us that physically labeling an object with any flat surface less than 1 square inch provides too limited an area to effectively label. Due to the amount of information required it is suggested that the minimum size for any physical label be 1.5 square inches. This would allow sufficient space to adequately physically label a product and still be readable. Any object where there isn’t 1.5 square inches of space available would only require the tracking label information to be included on the packaging.
- **Shape** – the shape of an object similarly provides challenges for labeling. Spherical shapes present problems since labeling a small spherical object is much more challenging than labeling a flat sided object. It is much easier to label a die than a marble. Spherical objects conforming to the size limitation of 1.5 square inches would represent difficult problem to label. This is not to suggest that it is impossible to do so, but from a practical matter a small spherical object of a diameter less than 2 inches would be difficult to physically label and should therefore be labeled on the product packaging. At issue is the laws requirement for “permanent” label. Many surface coatings would not withstand the “permanent” requirement, necessitating the need to stamp the object. If there were to be some guidance on what marking materials would be considered “permanent” (defined in Webster’s as : continuing or enduring without fundamental or marked change) or how long the commission feels would satisfy the meaning of “permanent” (2 years, 5 years, 100 years, etc.). It is an important issue considering that the useful life of many children’s product is probably a couple of years at best. To mark something with a “permanent” coating or ink would likely last for a reasonable period of time and would not require as much space to label as a stamp.
- **Material composition** – Certain materials can be physically labeled, however to label the product would compromise the aesthetics of the product. For example a transparent object can be easily labeled, but it would ruin the aesthetics of the product. Some products are not easily labeled like a crystal ball. Adding a physical label to the product is clearly possible, but it would ruin the finish of the product and may cause the product to become fragile or prone to breakage. In cases where a physical label would weaken the material or disrupt the aesthetic of the product we would suggest that labeling the product packaging would be appropriate.

- **Unit count** – When a product is sold with a high unit count, 500 count of beads or 100 army men, it would seem practical to label the packaging, rather than label each individual piece. In a situation with a recall the entire product would be recalled, not individual pieces, therefore it seems reasonable that for products that have a unit count over a certain number that the product packaging is labeled, not necessarily each individual piece. Our suggestion is that if there are more than 10 pieces in a package, that the package be labeled.
- **Product complexity**- Products that have several parts that are mass assembled should only contain a single tracking label. For a product as simple as a tricycle you could have 3 wheels manufactured from different lots, two different hand grips, a frame, handlebars, pedals, seat, etc. In cases where a product is assembled from component pieces to make a final product we would suggest that the finished product bear the tracking label.

We agree in the principle of placing tracking labels on products, however we see a certain short-sightedness in the law as written. We would like to have guidance from the CPSC that would give us some guidelines to follow so that we can comply with this new requirement. As stated above certain attributes of a product can impact the practicality of physically labeling a children’s product. In those cases we would like the latitude to use judgment in labeling the product packaging, instead of physically labeling the product.

As a seller of products to children we have hundreds of items that will require labeling. In many of those cases it is not practical to label the product itself. In cases where the product cannot be labeled due to the physical size of the object we propose that only the container or packaging materials be labeled. We would ask that the Commission provides guidance on a minimum size that would require individual labeling. Similarly we would encourage the commission to explore guidance that would limit the labeling of the object itself to instances where the object size would permit a clear label to be placed on the product. Placing a physical label on small objects may be possible; however it is not practical owing to the amount of information that needs to be placed on the object itself. In cases where the object is under this size limitation we would recommend that only product packaging would need to carry the tracking label. In many cases the product is so small that any label applied to the product would not be easily readable by anyone (consumer or retailer). Due to the cost constraints of the product (i.e. under \$1 per unit) it would not be feasible to use RFID technology for labeling, similarly for products that come in a package of 500 or 1000 pieces it would be prohibitively expensive to use such a technology for tracking. In those cases we propose using a product label on the original packaging.

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;

It would be confusing to consumers and retailers if manufacturers didn’t have a standardized nomenclature to use. With thousands of manufacturers there is the possibility of thousands of different labeling conventions. We would suggest that the agency define a standardized system for labeling or consider the use of existing labeling conventions to provide the industry with acceptable nomenclature.

b. Other business considerations relevant to tracking label policy.

Like many other importers we use manufacturers that provide “off-the-shelf” products to us and to other importers. The use of standardized nomenclature would allow us and other importers to continue to use these “off-the-shelf” vendors because their products would be suitably labeled for sale. Additionally by having a standardized nomenclature it would provide better information in the event of a recall. Since these “off-the-shelf” vendors supply many different importers, but sell to them from their existing inventory, a recall of the product from multiple resellers would be possible. The product can be identified easily and labeling of the product could identify the lot or batch number associated with recalled product. A consumer would be able to determine if an item they purchased (from any of the importers) had been recalled.

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.

It is our opinion that without standardized nomenclature, pictograms or other system, the consumer would be confused. Having a standardized system would allow the consumer the ability to differentiate between products from different countries of origin, date of manufacture or product loyalty (brand recognition). They could only benefit from this approach if there was a standardized system in place for manufacturers to follow. As in question #2 we support the use of a standardized system or nomenclature for 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).

The English language requirement may be useful, however the use of pictograms or alpha numeric codes is better suited for a larger audience. Even if a customer doesn't understand English they can usually understand pictograms. As in question #2 there needs to be a standardized nomenclature so that there is minimal confusion on the part of customers, retailers and distributors.

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.

In our operations it would not be beneficial to use electronically readable information, such as a bar code or RFID technology. Both require the use of additional equipment to elicit useful information and this additional equipment can come at a considerable cost. Bar codes are not free, nor are the technologies to store the information located within a bar code. Using a system such as GS1 that encodes data into a system owned by a Non-Governmental Organization (NGO) requires extra expense that may not be affordable to smaller businesses. If the CPSC were to require a "bar code" it is possible that people would simply "make-up" a code to comply with the regulation. There are several systems that will allow you to do this, the problem is that these systems are not always linked to a central system (such as GS1). These codes would not be linked to the central database and could cause wholesale confusion. The consumer wouldn't know where to get the correct data. The distributor or reseller could also be confused by a code that isn't registered because it could be interpreted as a UPC code when it isn't. This could have terrible inventory consequences since systems like GS1 rely on using a proprietary database to track what product is assigned what number.

It is likely that any system that "requires" using an electronically readable information would need to be administered by the CPSC to assure that businesses could comply without needing to pay an NGO. The logistics for resolving complaints, ensuring compliance and tracking the security of the data would be complicated. In our opinion the use of an electronically readable system does little to help the consumer determine the origins and disposition of products they purchase. It may be useful for some manufacturers who already have the necessary equipment to comply, however it could be prohibitively expensive for some manufacturers to comply, most notably small operations that have small batch sizes.

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.

Having the information electronically (via the internet) or by toll-free number are appealing concepts. Point of sale could be problematic since we are unaware of a unified system for getting the right information to the customer. If the consumer was able to go to a company sponsored web-site and enter information from the packaging or product that would provide them the required information would the Commission consider this a system to allow the consumer to "ascertain" the relevant information? It would be akin to the systems used for Certificates of Compliance. The agency has already accepted that a certificate is "available" if there is a mechanism on a company web-site to provide it.

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

Once there was a common nomenclature system to use, changes could be accomplished within 9-12 months. A nomenclature format would need to be provided before the changes could be implemented. The lead time required would be to have new molds made, have new copy created for packaging and get systems up and running to comply with information requests. All of these functions would need to be changed to align with the accepted nomenclature system.

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

Other commercial enterprises use tracking labels to monitor their products. They are better suited for mass produced items and may not represent the niche markets that are supported by children's product manufacturers. For example the pharmaceutical industry can place RFID tags on bottles of their product because they can recover the cost of the technology by charging more for the product. A consumer is typically willing to pay this additional expense because they need the product. On the other hand many children's products are relatively inexpensive to manufacture (a bucket of army men for example). Using technology like RFID would not be useful in this case since the manufacturer cannot recover the cost of the technology. If adding an RFID tag to a bucket of army men raised the production cost from \$2 per bucket to \$3 per bucket, it would likely raise the selling costs as well. This is a cost the consumer may not be willing to bear because they don't "need" the army men like they "need" medication. Consider the canning industry. Almost all canned vegetables are canned and labeled with product codes. It helps the manufacturer in the event of a product recall. This model again works well for mass produced industries like processed foods, but the model isn't as easy for a handcrafted doll, hand-knitted jacket or other unique article of clothing. Each piece is its own lot. It is the uniqueness of the industry, and unfortunately the broadness of the law that, in our opinion, is causing so many unforeseen issues.

Geoff Jones

Director, Quality Assurance
Excelligence Learning Corporation
831-333-5557
gjones@excelligence.com

 Please consider the environment before printing this e-mail

This email is intended only for the person or entity to which it is addressed and may contain Excelligence Learning Corporation's confidential and/or privileged material. Any unauthorized review, use, disclosure, distribution or reproduction is strictly prohibited. If you are not the intended recipient, please contact the sender and destroy or delete all copies of the original message.

BATTAT

Toysmith

2009-0010-0093

DAMERT

TO : Mr. John "Gib" Mullan
Director, Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission

4/24/09

FROM : Martin Crowley, Product Manager, Safety & Compliance
Toy Investments Inc
3101 West Valley Hwy East
Sumner, WA 98390
1-800-356-0474

RE: CPSIA Sec 103 Request for Comments.

Dear Mr. Mullan,
In response to the request for comments regarding the CPSIA tracking label requirement, we would like to respectfully offer our comments.

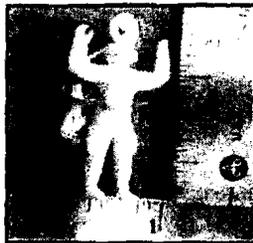
Toy Investments Inc (Toysmith) is an importer , distributor and wholesaler of novelty and impulse toys. We offer for wholesale, approximately 2,000 SKU's that are sold to a wide ranging variety of retail stores. The channels of distribution include, but not limited to, Specialty Toy and Gift Stores, Mass Market, Discounters, Museum Stores, Zoo and Aquariums, and Convenience Stores.

To the extent practicable :

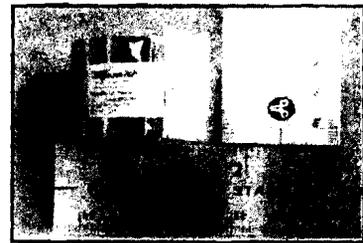
The majority of the products we offer for sale are small, non OEM children's product. They represent a wide range of materials and manufacturing processes. The product comes in many shapes, sizes and materials that make it impracticable to permanently mark the actual product with any type of information. Below are examples of such product :



TPR stretch novelty



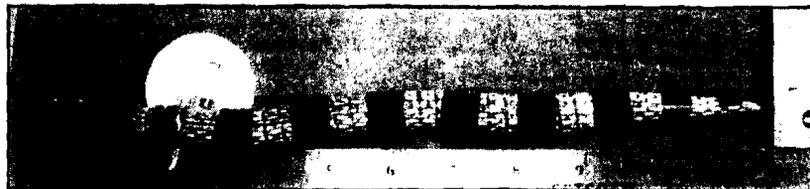
Mini Plastic Parachuter



Metal Spring (similar to a Slinky)



Novelty "Ooze"



Novelty Wood Snake (cut for life like movement)



gifts for all seasons



BATTAT**Toysmith****DA MERT**

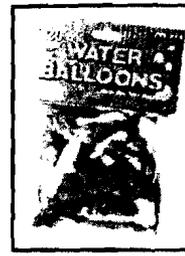
Toysmith--CPSIA Sec 103 Request for Comments.



49mm Rubber Bounce Ball



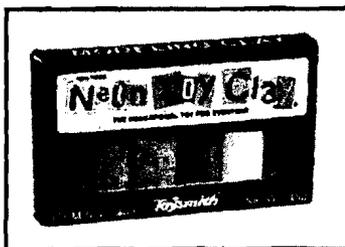
TPR Bounce Ball



Water Balloons



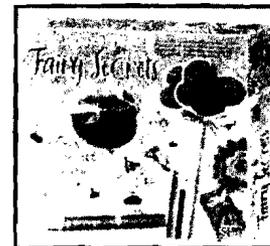
Fabric Jump Rope



Modeling Clay



Activity Sets



Craft Sets

The conditions and circumstances that should be considered are evident in the images above. In some cases, it would be impossible to mark the actual product. We strongly urge the Commission to consider the following factors when deciding how to implement this requirement :

- Size of the product.
- Scope of consumer products considered to be "children's product"
- Manufacturing methods
- Product packaging.
- Value of the product
- Multi component kits
- Intended use of the product

Toysmith urges the Commission to take a minimally acceptable approach to this issue. The law was written to give the CPSC great latitude in promulgating rules. "To the extent practicable" should be the guiding principle when it comes to rule making.

In addition to already established labeling laws, Toysmith believes that a requirement that includes a numeric code arranged in a format that allows for the identification of the date of manufacturing and manufacturer code is minimally acceptable. In situations where the actual product cannot be permanently marked with the numeric code, we believe that incorporating the numeric code on the packaging is sufficient to meet the requirements.

If the Commission finds it necessary to pursue additional feedback from various stakeholders, Toysmith would welcome the opportunity to be included in such discussions.

We can be reached at 1-800-356-0474.

Sincerely,
Martin Crowley, Product Manager, Safety & Compliance



Stevenson, Todd

From: Rich Ockwell [richo@toysmith.com]
Sent: Friday, April 24, 2009 6:34 PM
To: Tracking Labels
Cc: Martin Crowley
Subject: FW: John Mullan letter scan
Attachments: Mr. John Mullan letter.pdf

Sent on behalf of Mr. Martin Crowley. (martinc@toysmith.com)

SICPA

Michael Walsh
Business Development Manager

SICPA Securink Corporation
8000 Research Way, Springfield, Virginia 22153 USA
Direct +1 914 534 6004 Cell +1 914 519 7905
Fax +1 703 372 3681
mike.walsh@sicpa.com www.sicpa.com

SICPA

2009-0010-0094

SICPA Solution for Practical Toy Safety

Tracking Labels for Children's Products

Pub. Law 110-314.sec. 103 CPSIA: Request for Comments
and Information

Presented to: Consumer Product Safety Commission

Presented by: Mike Walsh

Date: April 24, 2009

Presentation Agenda

- SICPA Introduction, Background and Solutions
- Scope of the Toy Safety Problem
- SICPA's Technologies uniquely qualifies us to offer Practical Solutions for Certification and Labelling Compliance

SICPA's Mission and Goals

- To Continuously Develop the Most Advanced and Unequaled Security Inks and Integrated Security Solutions that Protect Consumers and Businesses in a Spirit of Trust, Mutual Understanding and Innovation
- Protect Currencies, and Consumer Products from Counterfeiting, Forgery, and Tampering
- Increase Confidence and Reduce Illicit Trade



Decades of Security Experience

- Founded in 1927
 - Privately owned, family run company
- Leading global provider of security solutions and security inks
- Based in Lausanne, Switzerland
 - Operations in 20 countries
 - 4 North American locations
- 1300+ employees in security activities worldwide
 - 115 employees in North America

SICPA

Decades of Security Experience

- Unique technologies protecting:
 - Majority of the world's travel documents (passports and visas) and ID cards
 - Most of the world's currency including US\$, €, etc.
 - Billions of branded products, in 185 countries
- Technical advisor to central banks and governments worldwide to:
 - Combat fraud, smuggling and counterfeiting of excise products
 - Detect illicit trade
 - Protect tax revenues

A Global Business

SICPA HOLDING SA

Security Inks

Banknotes,
Documents and Products of Value

Product Security

Government Tax Revenues and
Product Verification

Our Research Laboratories

PhD qualified experts in:

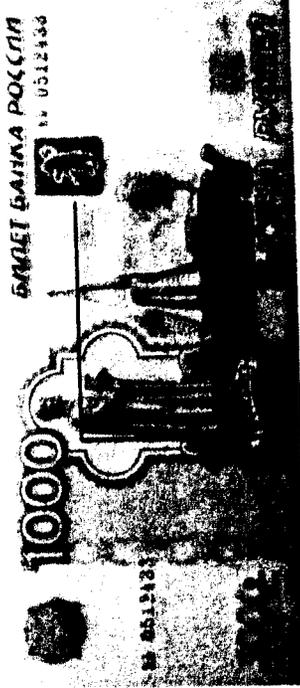
- Chemistry
- Physics
- Opto-electronics
- Material science

Patents in:

- Ink Technology
- Security features
- Protection systems
- Production technology and processes

Banknote and Value Document Inks

- Heritage of banknote printing
- Anti-duplication and anti-tampering technologies
- Covert and overt authentication for passports, tickets, certificates, licenses, etc.



Color Shifting Ink Technology

SICPA

Color-Shifting Authentication Technologies

- High-security overt authentication features
- Distinctive color-shift depending on viewing angle
- Based on optical interference and / or selective reflection
- Sophisticated materials science, but ergonomic and immediate/unambiguous authentication
- Increase consumer confidence
- Additional, semi-cover polarization effect (SICPA OASIS®)



Machine Authentications: Covert Technologies

- Scientific approach of using uncommon compounds is less widely understood—strong counterfeit protection
- Unique invisible security signatures applied on each product
- Each system uses specially developed readers to confirm authenticity
- Process can be fitted to automated processing equipment
- Authentication through lightweight battery-operated readers that detect presence of security feature



Track and Trace — SICPATRACE® Systems

Main components of SICPATRACE®:

- Banknote-grade technology to **securely mark** products to monitor production and supply chain
- **Proprietary coding and activation system** based on unique covert identifiers on each item
- **Central database** for production and movement data storage
- Monitoring system for **real-time reconciliation** of production and distribution
- **Hand-held devices** for immediate validation of any item at any stage of the supply chain



SICPA

SICPA's Vision of Compliance for Toy Safety

Global Toy Market

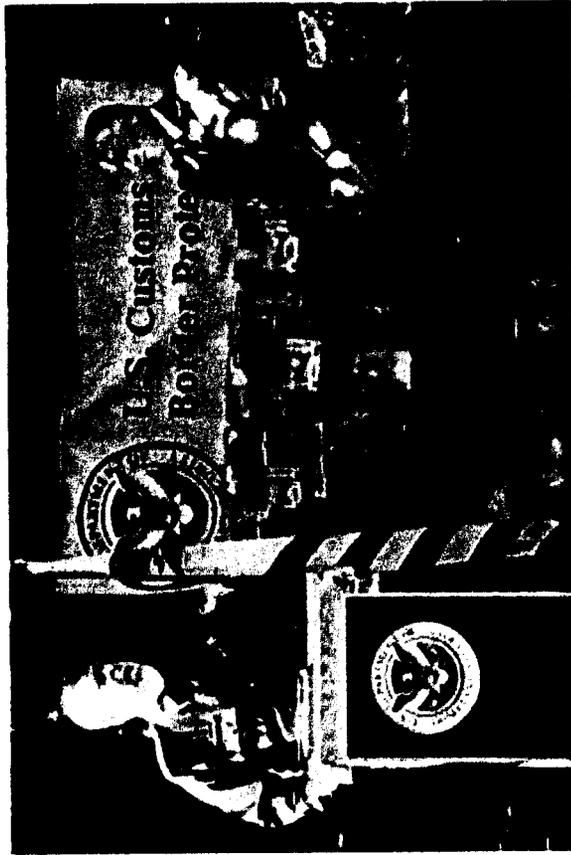
- An estimated 3 billion toys are sold in the U.S. each year - \$22 billion in 2007
- **29 million toy units were recalled** via 84 separate recall notices
- 500+ companies, who account for 85% of domestic toy sales and \$19 billion in sales based on 2007 retail volume
- In January 2009, U.S. Customs and Border Protection reported **China** was the top trading partner for IPR seizures **accounting for 81% of the total value**
- **IPR seizures of goods from China rose 40% by value in FY2008**



Recent Counterfeit Toy Seizures in the US

U.S. Customs and Border Protection Seizes \$800,000 in Counterfeit Toys at Arizona Ports of Entry

- In November 2008, CBP seized more than 125,000 toys that were either counterfeit or suspected of trademark infringement at the ports of entry in Tucson, Arizona.
- The shipments included items that closely resembled and were of competing quality to Barbie, Belinda, and Bratz dolls, Winnie the Pooh, Legos, and items with U.S. Olympic Committee markings.



CPSIA

- SICPA Offers Practicable, Proven Solutions
 - As a result of compliance restoring the confidence of the consumer, government, retailer in toy safety
 - Support U.S. Federal law for mandatory testing and on product labeling
 - Proactively coordinate and implement a trusted certification system tied to secure related product labeling of toy products
 - Rapid deployment of our affordable, proven solutions

SICPA

Issues

- **Identify Unsafe Toys** (made with dangerous, unapproved materials)
- **Requirement of Tracking Labels** for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act (effective August 14, 2009)
- **Counterfeit Toys or Trademark Infringement**
- **Greater compliance** with new toy safety regulations

Objective

- Provide a sustainable system to provide reasonable verification that toys meet applicable mandatory U.S. toy safety standards.
- Enable the U.S. toy industry and its suppliers to meet requirements of the new Consumer Product Safety Improvement Act (CPSIA).
- Help parents identify safe toy products that are part of a “trusted system”.
- Reinforce and protect the credibility of the certification for government, industry and consumers.

CPSIA Program Requirements

Upon successful completion and verification of applicable requirements, the toy is certified and the product label is coded related to certification.

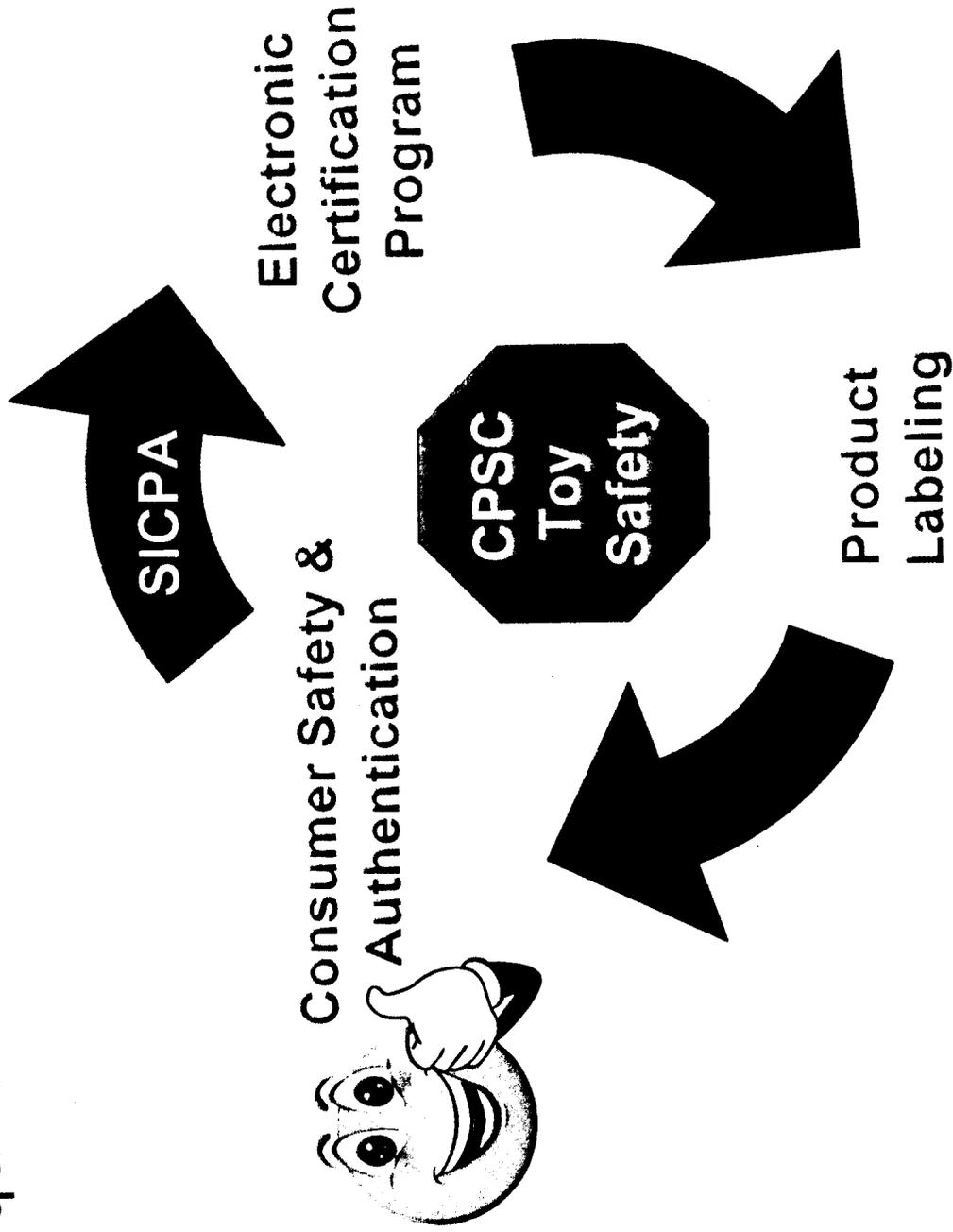
- SICPA can **assist in the design and implementation** of a secure label containing encrypted information for the purposes to tracking and tracing the product and protecting it throughout the distribution channel
- SICPA's secure label will also provide the technology necessary to **immediately identify, track, and trace recalled products** at the unit level beginning on toy production lines

SICPA: Solutions for Toy Safety

- **Support and leverage electronic certification platform** with SICPA's banknote-grade technology. Printing a coded on product label related to certification.
- SICPA's solutions include overt, semi-covert, and forensic security features that can be tailored to meet the **unique requirements of its clients** with multi-layered security responses to address optimal safety concerns
- SICPA's solutions **secure and protect products at the production line** and throughout the distribution system, integrating existing **Electronic Reporting Program** systems and providing fast, reliable, and secure access to data as well as management or audit reports
- Our solutions address these issues:
 - Increased **Consumer Confidence** - products are **safe** and **authentic**
 - Enhance **Brand members confidence** - products are protected against fraud

SICPA

SICPA's Solutions Addresses CPSIA Requirements and Provide Additional Benefits



Stevenson, Todd

2009-0010-0095

From: Stephanie Stewart [stephanie@armbibs.com]
Sent: Saturday, April 25, 2009 4:20 PM
To: Tracking Labels
Subject: tracking labels - CPSIA

RE: Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act; Notice of Inquiry; Request for Comments and Information – Federal Register Feb 26, 2009

CPSIA's requirement for a universal, permanently attached label on all children's products is flawed and in need of immediate reform that considers both *product* and *production* specific engineering issues. Manufacturers already producing safe products well within the newest safety standards set by CPSIA are contracting and withdrawing from the market because of this expensive, complicated labeling requirement. This effectively means this requirement is reducing access to safe products, not increasing access to them. My own company is happy to supply full provenance for every component of our product, but attaching a permanent tag is awkward, at best and likely to price us out of our market, at worst. The regulatory uncertainty surrounding this issue has left us no other option than to halt all production and cease all expansion efforts for the foreseeable future.

Tagging is a complicated business that requires *product* specific engineering. Many products have specific labeling regulations and product specific exemptions set by the Federal Trade Commission; the FTC has already navigated these complicated waters, and there are product and industry specific standards for labeling in place which CPSIA ignores. Do you want a tag in your sock? Neither does a baby. But under CPSIA, baby socks and all sorts of other goods where permanently affixed labels are unrealistic and undesirable will have to have permanently affixed labels.

I'd like technology to play a larger, more accredited role in communicating labeling information to my company's customers. Our product can fairly legibly have one line of text, like our company's web address, knit-in (but not the six lines of text required by CPSIA); my packaging (although removable) can host all sorts of information on it; full disclosure can be made on my website in a manner that could even put customers in direct contact with my suppliers WITHOUT burdening the product with a tag that is so awkward it will likely be cut off by the user.

Tagging also requires *production* specific engineering. Makers of one-of-a-kind, and small batch goods cannot batch number and label their goods without being priced out of the market. Labels are printed and sold in minimum quantities which small batch and one-of-a-kind crafters won't meet. My own company's product is seemingly mass-produced, but it is done in very small runs (600 pair per batch). Our product is made by an American sock knitting mill... they knit, they don't sew (attaching a label requires sewing). The entire sock industry knits, it doesn't sew. By in large, American hosiery knitting facilities are not set-up to deal with permanently attached labels; the FTC has never required them to *produce* or *attach* permanently attached labels. The largest manufacturers can, post production, ship their knit products to Asia (in batches of 60,000 pairs +) to have labels sewn on them at a per-piece price that will keep their final product's price within the realm of reasonable from a consumer's perspective. But, small and mid-sized producers like my own company cannot. Early estimates indicate attaching a permanently affixed label to our product will increase our Cost Of Good's between 30 and 50% (assuming I can find a location on my totally stretchy product where a tag won't interfere with its function). The price of my product is already at the top end of what consumers will pay for it and I've sacrificed profit margins to manufacture this product in the US; so I don't have room for a 30-50% increase in my COGs. My company is now faced with the choice to either: 1) move production to Asia, despite a long list of legitimate concerns about production in Asia (including safety, environmental and human rights issues) or 2) go out of business. All for a product that poses absolutely minimal safety risk.

I respectfully request that the CPSC work quickly to promulgate labeling rules informed by both product and production specific engineering issues. Please allow for flexibility in the labeling choices manufactures have for compliance, so that we may choose a labeling method based upon our unique *production methods* and *product* specific issues. For all products formally exempted from the lead and phthalate testing requirements, I suggest these products also be

removed from the labeling requirements. I also respectfully suggest that labeling compliance for US-based crafters and related “cottage industries” producing unique or small batch items should be completely voluntary.

Stephanie Stewart
Founder
www.armbibs.com

1121 SE 50th Ave
Portland, OR 97215
503-236-6190
stephanie@armbibs.com

Request for Comments and Information
Section 103 of the Consumer Product Safety Improvement Act (CPSIA)
Requirements for tracking labels for children's products

In response to the CPSC's request for comments to the requirements for tracking labels for children's products, the Promotional Products Association International (PPAI) offers the following observations about the impact on our industry.

PPAI—the promotional products industry's only international not-for-profit trade association—offers education, tradeshows, business products and services, mentoring, technology and legislative support to its more than 7,500 global members. Promotional products are a more than \$19.4 billion industry and include wearables, writing instruments, calendars, drinkware and many other items, usually imprinted with a company's name, logo or message. PPAI created and maintains the UPIC (Universal Promotional Identification Code), the industry's only free identification system and universal company database.

The domestic industry consists of approximately 28,000 distributors and 4,800 suppliers. The distributor develops solutions to marketing challenges through the innovative use of promotional products and is a resource to corporate buyers, marketing professionals and others. A supplier manufactures, imports, converts, imprints or otherwise produces or processes promotional products offered for sale through distributors and the distributors' sales force, known as promotional consultants. Additionally, there are tens of thousands of manufacturers on an international basis who generally produce "blank" products.

The promotional products industry differs in several ways from a traditional manufacturer to retail supply chain, but the most important distinction lies in the process of customizing the products through various forms of decoration (imprinting, embroidery, etching, engraving, or embossing). Products in the promotional products industry are either manufactured in the U.S. or imported, decorated, and sold by suppliers to or through distributors that have obtained an order for the decorated products from businesses (end buyers) that have their company logos and messages decorated on the products.

The decorator applies a company logo, advertising message or other information to assist the end buyer purchaser in creating brand awareness. Products may be provided to fill a specific order or inventoried by one or more parties until an order is entered into the supply chain from an end buyer to a distributor to a supplier. This process may take several months.

What is Practicable?

Our first concern relates primarily to the phrase "*to the extent practicable*, the placement of permanent, distinguishing marks on children's products."

We believe the CPSC should provide some bright line tests or safe-harbors for the phrase “to the extent practicable.”

The most valuable aspect of a promotional product is the amount of “real estate” available on the promotional product for decoration. The sole reason to purchase promotional products is for their use as “mini-billboards,” as one of our members describes it.

While PPAI members have developed innovative processes for applying decorations to some challenging surfaces, there is only a finite amount of space on a promotional product for labeling.

The CPSC has experience with the size of warnings for small parts. The CPSC knows the amount of space necessary to convey a message that it deems adequate in size to be read. It can calculate how much space would be necessary to convey all of information required by Section 103. We would submit that if that minimum label size determined by the CPSC exceeds more than 10 percent of the available space for decoration on a promotional product, it is not practicable to require it.

As such, any determination of what “to the extent practicable” must take into account the available surface on a promotional product after it has been decorated.

What type of tracking or labeling methodology?

A second concern relates to the method or process used to provide the necessary tracking information for the products. We urge the CPSC to adopt a rule that provides the maximum flexibility to achieve what we believe is the intended goal of Section 103: to facilitate the recall of products when necessary. To that end, we believe the overriding consideration should be to identify a responsible party for the product quickly and efficiently. We believe the CPSC should allow for the adoption of coding systems, such as an alphanumeric code or a mark that can be accessed by the CPSC and others to obtain the essential information required by Section 103.

As noted, PPAI already has such a coding system for the industry, the Universal Promotional Identification Code (UPIC). Established in 1999, the UPIC is available, at no charge, to all companies in the industry, not just PPAI member firms. Currently, PPAI maintains a database and online directory of nearly 30,000 industry firms, with each firm assigned a distinctive alphanumeric symbol. The directory is available to all industry companies to obtain contact information about other companies and *could* be adapted to include the product databases and accompanying product information in the future.

We believe the CPSC should allow for the ultimate use of a mark that can be “read” by the ultimate purchaser through a database. Having said that, the requirement that it must allow the “ultimate purchaser to ascertain” the information has tremendous consequences for our industry. It turns a 100-plus-year-old business operations model on its head.

Unless it is done in an appropriate manner, consistent with our business operations practices, it could have economic consequences for our industry that can only be characterized as extreme. While we support the goals of the law, the construction of a database and electronic marking system is not imminent in our industry. The August 2009 deadline for implementing the requirement for tracking labels is not only daunting, it is practicably unrealistic for all but the largest and most sophisticated firms in our industry, and unlikely even for them.

For small suppliers, the costs are prohibitive to adopt some sort of technology on their own. For all suppliers, the cost of an electronic mark could easily exceed the production costs of the promotional product itself.

For the foreseeable future, the assumption has to be that the information will be applied using our same application processes but with actual information conveyed in plain language, rather than by the use of some code.

Additionally it will be extremely difficult for suppliers to match specific information (e.g., batch or run numbers) for products they have manufactured or imported to specific and typically smaller shipments of decorated items. There is a great deal of blending of products from different production cycles during the decoration process.

Labeling blanks, or undecorated products, is not a solution. Many promotional product "blanks" are not intended for children's products, and even those that might commonly be considered children's products might not be so in their decorated promotional product program. It would be very expensive to have all "blanks" labeled with the information; more significantly, any unnecessary information on a promotional product defeats the purpose of the product. It "distracts" from the purchaser's message.

In conclusion, we understand that tracking labels are required by law, but we must continue to emphasize that fixing a permanent and conspicuous label directly contradicts the purpose for which a promotional product is acquired. Purchasers want *their* message or logo prominently displayed. Why buy a promotional product otherwise?

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Slagle". The signature is written in a cursive, flowing style.

Steve Slagle, CAE
President and CEO

PROMOTIONAL PRODUCTS ASSOCIATION INTERNATIONAL

Steve Slagle, CAE | President and CEO

3125 Skyway Circle North

Irving, Texas 75038

p 972.258.3090 | f 972.258.3016

www.ppai.org



® This is PPAI

Stevenson, Todd

From: John S Satagaj [email@jsatlaw.com]
Sent: Saturday, April 25, 2009 5:03 PM
To: Tracking Labels
Subject: Comments
Attachments: TrackingLabelComments.pdf

Attached please find the comments of the Promotional Product Association International. Thank you.

John S Satagaj
General Counsel
Promotional Products Association International
1100 H Street NW Suite 540
Washington, DC 20005
202-639-8888
email@jsatlaw.com

2009-0010-0097

Stevenson, Todd

From: productsafety@jrousek.com
Sent: Monday, April 27, 2009 2:29 PM
To: Tracking Labels
Cc: Shannon McMurry; Karie Bentley; Joe Rousek; Angenette Aukee
Subject: Comments on Tracking Labels
Attachments: Photos of Representative Products.pdf; Mock Sample of Proposed Tracking Label.pdf

Dear CPSC Staff:

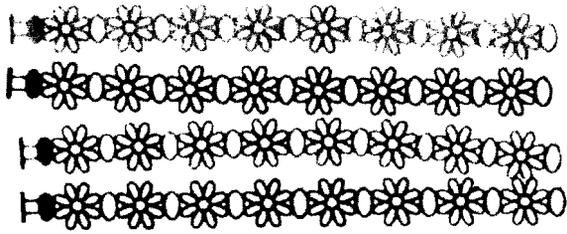
J. Rousek Toy Company, Inc., is a small business that imports toys from China and Taiwan. We carry an estimated 376 items that would require tracking labels.

As a company specializing in the sale of small toys, it is not financially feasible to add the tracking information to each piece of every children's product we sell. Most of our products simply do not have sufficient area for the tracking information in the product mould (see photo of Flower Bracelet in attached "Photos of Representative Products" pdf file). We requested quotations for a few of our larger items that might have sufficient area for this type of labeling and received a vendor quote of \$2,000 per mould. The total cost for changing the moulds for our children's products would be at least \$752,000. Moreover, we would need to change the moulds each time we order an item since the date of manufacture would change each time we order. On average, we purchase a few thousand dollars of an item at a time, which we then sell to our customers for \$0.15-\$1.50 per piece. In this type of market it is impossible to pay \$2,000 for a mold--even once, let alone for each shipment--and stay in business.

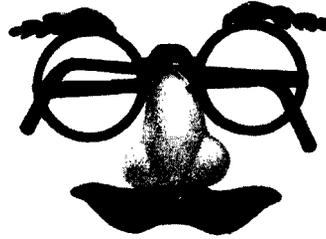
The option of printing tracking information directly onto item packaging also presents costs that would have a detrimental effect on our company's ability to sustain profitability. We received a vendor quotation of \$60 for the film printing charge per item in addition to a charge of \$0.01 per bag. Usually the minimum run for bags with custom printing is around 10,000 pieces. Thus the per-bag charge would cost an estimated \$100 per item, even though we would only use less than half of the 10,000 bags for a given order. The total cost for printing tracking information directly onto the packaging of our 376 children's products would be at least \$60,160 (\$60 film printing charge plus \$100 bag charge per item). Again, we would need to pay this amount for each item every time we order due to the new date of manufacture. If we order each of our 376 items just twice a year, our production costs just for printing tracking information onto the packaging would be \$120,320.

We propose placing tracking labels onto the packaging of the smallest unit we sell for each item. A label which could be printed in bulk and stored for future use would be more cost effective. The label would be stamped with the date of manufacture for each shipment. The consumer would have the same access to tracking information that they would have if the information were printed directly onto the packaging. Please see the attached pdf file for a mock sample of the proposed tracking label.

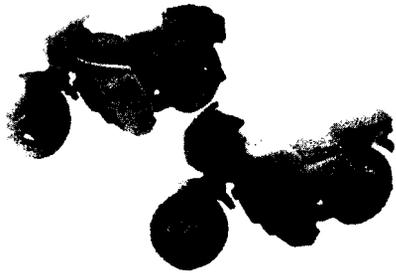
Best regards,
Product Safety Department
J. Rousek Toy Company
Phone: 760-873-8319
Fax: 760-873-4149
Email: productsafety@jrousek.com



Flower Bracelet - 7" length



Disguise Set - 4" Overall size



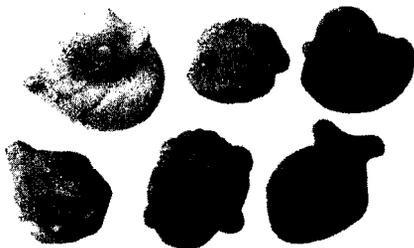
Motorcycle - 2 1/2" size



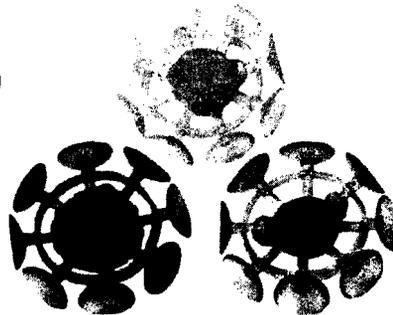
Teeth 2 1/2" size



Sticky Monster - 2" size



Bath Toys - 2 1/2" - 4" sizes



Suction Cup Wheel - 1 3/4" size

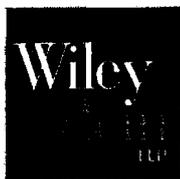


Yo-Yo - 1 1/2" size

10
Westcott

104
[Illegible text]

2009-0010-0098



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
MCLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

April 27, 2009

William A. McGrath
202.719.3146
wmcgrath@wileyrein.com

VIA E-MAIL TRACKINGLABELS@CPSC.GOV

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

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

Dear Mr. Stevenson:

These comments on implementation of tracking label requirements under the Consumer Product Safety Improvement Act (CPSIA) are submitted on behalf of my client, a manufacturer of children's hair accessories. We appreciate this opportunity to comment on the significant challenges faced by CPSC and industry in implementing the tracking labels provisions of the CPSIA.

Product safety is my client's primary concern. However, the tracking label requirements have the potential to pose tremendous operational and financial burdens on hundreds – if not thousands – of children's' product manufacturers. Virtually all of these burdens stem from the requirement that the tracking information be placed on the product itself, as well as the packaging. CPSC's interpretation and application of these provisions will ensure that manufacturers are able to engage in a thorough and orderly implementation, thus furthering the public safety goals of the statute.

For example, my client manufactures and distributes a wide array of hair accessories for children, including pony tail bands, barrettes, head bands, twisters, and a variety of other products. While these products vary dramatically in shape, size and composition, they share a number of common elements: their primary components are fabric, elastics, stones and beads. They are most often packaged attached to small cardboard display cards that bear no more than branding, UPC codes, any required small parts warnings, and the information required by the Fair Packaging and Labeling Act (FPLA). These products are usually sold in assortment packages, which may contain individual products from a number of manufacturing batches.



Mr. Todd Stevenson
April 27, 2009
Page 2

Our comments on the most challenging of the areas where CPSC has asked for comment are as follows:

Interpretation of the term "practicable".

The CPSIA requires, to the extent *practicable*, each children's product and its packaging to bear permanent, distinguishing marks to enable

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

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

The term "practicable" gives CPSC significant flexibility in implementing this provision. We respectfully suggest that, in so doing, CPSC must be particularly sensitive to the following areas:

- **Size** – clearly, a large number of children's products are sized to make their marking with tracking information not only impracticable, but impossible. The hair accessories noted above have no area suitable for marking. For numerous other products in the marketplace, even if marking were practicable, it would be virtually illegible. CPSC must include size exemptions and requirements for products subject to marking in order to make the system at all workable.
- **Composition and Use** – certain materials make marking impracticable, for example, products made of elastics, fabrics, or beads. Further, on certain products that may be visible from all sides, product marking may significantly reduce the marketability of the product. For example, twister hair bands may be used on either side, are often ruffled or patterned, and are intended to be twisted, exposing all sides of the band. Even the most subtle product markings would reduce the product's attractiveness, and ultimately, its utility.



Mr. Todd Stevenson

April 27, 2009

Page 3

- **Assortment Packages** -- Numerous children's products are sold in multiple parts, or in large assortments of small items. Individual product markings would be impossible in a multitude of products beyond ours, including bags of marbles, construction and educational building toys, and toys with an assortment of small parts that need to be assembled. CPSC needs to provide reasonable exemptions for such products, or they may be driven from the market.
- **Permanence** -- the concept of permanence also raises significant practical issues. For many manufacturers, a strict definition of permanence will create substantial operational and financial burdens. A vast number of children's products are manufactured by injecting plastic or other substances into a mold. Many of those substances may not be able to retain printed markings when subjected to reasonable wear and tear. Requiring the retooling of new molds for every batch change will result in significant operational difficulties, substantial costs passed on to consumers, and the potential removal of products from the marketplace. The agency must provide guidance on suitable forms of marking (labels, tags, etc.) that it will deem permanent.
- **Packaging** -- Many children's products are sold on display cards or other types of small packages. In many cases, inclusion of full tracking information on packaging may be impossible. Where that is the case, numerous federal agencies have previously provided for the abbreviation or omission of required information in order to make such labeling practicable, i.e., FDA food and cosmetic labeling regulations. Similar regulatory exceptions must be developed by CPSC.

The Need for Standardized Nomenclature

Industry needs significant guidance from CPSC on the nomenclature, size, and appearance of tracking information on products and packaging. To date, absent guidance from CPSC, retailers have driven the establishment of requirements for a number of CPSIA provisions. Allowing that to occur here will result in varying marking requirements, making manufacturer compliance untenable or impossible. Non-uniform markings will also cause consumer confusion, rendering the information useless to third parties. CPSC must establish a single system for



Mr. Todd Stevenson
April 27, 2009
Page 4

conveying required information, taking into account the necessary variations like those discussed above.

In so doing, CPSC may want to consider a standardized coding system that will provide an abbreviated means of tracking but provide guidance to the manufacturer or consumer. The CPSIA has already established the foundation for such a system in the form of the General Certification of Compliance and Third Party Testing certificates required under the Act, each of which must contain a unique identification number. Using that number, in connection with a means of internet or telephone support from the manufacturer or importer, will allow those further down the supply chain, including the consumer, to access relevant information without creating an entire new layer of identification requirements that will need to be translated, communicated and tracked by the manufacturer.

Finally, coding and disclosure requirements must take into account both the proprietary concerns of manufacturers and importers and the avoidance of repetition. The requirement that manufacturers and importers provide the location of manufacture, if interpreted to mean the location of the actual plant where the product was made, would reveal confidential commercial information traditionally protected by CPSC. Regardless of the fact that the product vendor's name will not be included, competitors will in many instances be able to identify those vendors based on location.

Further, this information is of no use to distributors, retailers or consumers, who will in fact contact the location listed on the package under the FPLA to report any complaints. CPSC must interpret the manufacturer identification requirements to mean the name and place of business required by the FPLA. Further, utilizing the existing information would avoid duplication and reduce at least some of the marking obstacles noted above.

Lead Time For Implementation

CPSC must provide a reasonable time for implementation of the CPSIA tracking requirements. While the entire industry has been developing and working on compliance plans since passage of the CPSIA, the lack of any firm rules has rendered development of consistent and workable plans virtually impossible. Even if rules or guidance were to be announced within days after this comment period closes, few would be able to implement those requirements by the current August 14, 2009 deadline. Packaging for items to be manufactured on or after that date



Mr. Todd Stevenson

April 27, 2009

Page 5

needs to go to press immediately in many cases, and the operational adjustments discussed above cannot reasonably be implemented by August. CPSC has previously recognized the untenable time frames imposed by the Act. This is one area where it is especially important for CPSC to provide additional time through a stay of enforcement or some other means to allow implementation to occur in a reasonable and orderly fashion.

We appreciate your consideration of these comments and look forward to continuing to work with the Agency in implementing the Act.

Respectfully submitted,

A handwritten signature in black ink, which appears to read "Bill McGrath". The signature is written in a cursive style with a large, prominent "M".

William A. McGrath

Stevenson, Todd

From: McGrath, William [WMcGrath@wileyrein.com]
Sent: Monday, April 27, 2009 2:14 PM
To: Tracking Labels
Subject: Comments re Tracking Labels for Children's Products, 74 Fed. Reg. 8781 (Feb. 26, 2009)
Attachments: Comments re CPSIA Tracking Labels 042709.pdf; mg_info.txt

Importance: High

Dear Sir or Madam -- enclosed please find comments on the above-referenced Federal Register notice. Please contact me at the number below should you have any questions. Thank you for your consideration --- Bill McGrath

William A. McGrath • Wiley Rein LLP • 1776 K Street NW • Washington, DC 20006 • tel 202.719.3146 • fax 202.719.7049

**BEFORE THE
UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION**

CPSIA, section 103;)	
Tracking Labels for Children's Product;)	
Request for Comments)	
)	CPSIA Notice of Inquiry
74 Fed. Reg. 37,8781-8782 (February 26, 2009))	
)	
)	
)	

**COMMENTS OF THE SPECIALTY VEHICLE INSTITUTE OF AMERICA &
MOTORCYCLE INDUSTRY COUNCIL**

The Specialty Vehicle Institute of America (SVIA) and Motorcycle Industry Council (MIC) respectfully submit these comments to the Notice of Inquiry for "Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act; Notice of Inquiry; Request for Comments and Information," published by the Consumer Product Safety Commission ("CPSC") on February 26, 2009.

SVIA is a not-for-profit industry association sponsored by Arctic Cat Inc., BRP USA, American Honda Motor Co. Inc., Kawasaki Motors Corp., U.S.A., KTM North America Inc., KYMCO USA, Polaris Industries Inc., American Suzuki Motor Corp., Tomberlin Group, Tomoto Industries Inc., and Yamaha Motor Corp., U.S.A. Since 1983, SVIA has promoted the safe and responsible use of all-terrain vehicles (ATVs) through rider training programs, public awareness campaigns, and government relations. SVIA also serves as a resource for ATV research, statistics, and vehicle standards.

MIC is a not-for-profit industry association representing over 300 manufacturers and distributors of motorcycles, scooters, parts and accessories for powersports vehicles, and members of allied trades. MIC's members include the major manufacturers and distributors of off-highway motorcycles: Honda, Kawasaki, KTM, Suzuki and Yamaha.

SVIA and MIC submit that existing powersports product markings meet the intent and function of a tracking label, and thus no additional label or reformatting should be required. Such is the case with ATVs, off-highway motorcycles and other similar products that use a standardized Product Identification Number (PIN) or Vehicle Identification Number (VIN).

A PIN is assigned by the manufacturer as prescribed in SAE ICS – 1000 SEP04, Recreation Off-Road Vehicle Product Identification Numbering System. A VIN is assigned by the manufacturer as prescribed in Title 49 CFR, Ch. V Part 565 or ISO 3779-1983. A PIN and VIN are each characterized as a unique set of 17 alphanumeric characters assigned to a complete vehicle by the manufacturer for identification purposes. Both PINs and VINs contain similar components, which include the following:

World Manufacturer Code/ World Manufacturer Identifier – The first field of the PIN/VIN, alphanumeric code designating the manufacturer of the vehicle.

Vehicle Descriptor Section – VDS – Second field of the PIN/VIN, comprising information describing the vehicle.

Check letter/digit Section – CL – The third field of the PIN/VIN, consisting of a character in the 9th position based on a calculation of the remaining 16 characters in the PIN/VIN and determining its validity.

Vehicle Indicator Section – VIS – The last field of the PIN/VIN, distinguishing, in conjunction with the WMC/WMI and VDS, one vehicle from another by designation. This section includes vehicle model year, plant of manufacture, and a number sequentially assigned by the manufacturer in the production process.

Other terms and definitions used in association with PINs/VINs include:

Vehicle type - Means a class of vehicle; i.e., ATV, snowmobile, off-highway motorcycle, dune buggy, etc.

Make - Means a name that a manufacturer applies to a group of vehicles or engines.

Manufacturer - Means an entity manufacturing/producing or assembling the vehicle.

Model - Means a name that a manufacturer applies to a particular vehicle.

Model year - Means the year used to designate a discrete off-road vehicle model, irrespective of the calendar year in which the off-road vehicle was actually produced, so long as the actual period is less than two calendar years.

Plant of manufacture - Means the plant of final assembly where the manufacturer affixes the PIN/VIN.

Additional requirements for both PINs and VINs include: a requirement for a unique number for each product or vehicle and that the PINs or VINs of any two vehicles manufactured within a 30-year period shall not be identical, and a requirement that the PIN or VIN of each vehicle shall appear clearly and indelibly upon either a part of the vehicle that is not designed to be removed except for repair or upon a separate plate or label that is permanently affixed to such a part.

Products bearing a PIN or VIN comply with the requirements of a tracking label under section 103 of the Consumer Product Safety Improvement Act (“CPSIA”). Both PINs and VINs provide the means to ascertain manufacturer, date and place of manufacture, and cohort information that may be useful in identifying other characteristics of the product. The PIN/VIN schema has been widely and successfully used to identify products for registration and titling purposes in states as well as for law enforcement and vehicle insurance purposes. Moreover, a PIN or VIN is required for ATV identification as part of the newly mandated ANSI/SVIA 1-2007 standard under the CPSIA. Additionally, in the infrequent circumstances when product recalls are needed, affected products are identified and consumer notifications have been made using these same identifying marks.

To assist consumers it is possible for manufacturers to provide PIN/VIN code descriptions and cohort information or model designations in their web-based database to allow users to determine if their vehicle is subject to a recall.

Finally, SVIA and MIC believe that adding a different tracking label to these vehicles in addition to the established PIN/VIN would be redundant and have the potential to cause confusion for consumers and potentially dealers as the PIN/VIN system of vehicle tracking is well integrated into the distribution and retail chain. Requiring a different tracking label would also impose additional unnecessary costs and burdens on vehicle manufacturers.

CONCLUSION

CPSC should promulgate a final rule deeming the above-described PIN/VIN system as satisfying the Tracking Label requirement of section 103 of the CPSIA.

Dated: April 27, 2009

Respectfully submitted,



Paul C. Vitrano
General Counsel
Specialty Vehicle Institute of America &
Motorcycle Industry Council
2 Jenner, Suite 150
Irvine, CA 92618

Stevenson, Todd

From: Paul Vitrano [pvitrano@svia.org]
Sent: Monday, April 27, 2009 1:40 PM
To: Tracking Labels
Subject: Comments of SVIA and MIC
Attachments: Comments from SVIA-MIC re Tracking Label - 04-27-09.pdf

Please see attached.

Paul C. Vitrano
General Counsel
Specialty Vehicle Institute of America
Motorcycle Industry Council
2 Jenner Street, Suite 150
Irvine, CA 92618
949-727-4211 x3119
Fax: 949-623-1143
pvitrano@mic.org

<<Comments from SVIA-MIC re Tracking Label - 04-27-09.pdf>>

2009-0010-0100



15000 Commerce Parkway
Suite C
Mt. Laurel, NJ 08054
856-439-0500 (T)
856-439-0525 (F)
mbiordi@ahint.com

April 27, 2009

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

HIA COMMENTS ON SECTION 103 OF THE CPSIA: TRACKING LABELS

The CPSC staff has requested comments on implementation of Section 103 of the Consumer Product Safety Improvement Act of 2008 requiring tracking information for children's products (See: 74 Fed. Reg. 8781; Feb. 26, 2009). The Halloween Industry Association ("HIA" or the "Association") is a national trade organization representing the interests of manufacturers, importers and distributors of Halloween products (notably costumes) marketing under their own brands to consumers. HIA promotes the safe celebration of Halloween within the industry and general public and supports member interests through advocacy, awareness and education. The Association believes the new federal requirements for "marking" an children's Halloween costumes, accessories and/or packaging with tracking information must be implemented in a reasonable fashion, that does not inadvertently burden the industry and recognizes that costumes and accessories are often intended for people of many ages (as opposed to "primary children's products").

HIA urges that the CPSC rule on the pending multi-industry request for a stay of enforcement and that any process adopted provide for a flexible marking solution as part of a common sense process. Small manufacturers, importers and retailers need flexibility and advanced notice of new regulatory requirements. We reserve the right to supplement these comments.

General Comments

Section 103 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") requires tracking labels on children's products manufactured After August 14, 2009 by "placing permanent, distinguishing marks on the product and its packaging, to the extent practicable, that will enable" the manufacturer and consumer to ascertain sourcing information regarding the product. The purpose of this requirement is simply to ensure that manufacturers and consumers have sufficient information to easily "enable" a consumer to ascertain whether the product they possess is subject to a Recall [See: new Section 2063(a) (5) which outline the purposes of such

marking and the legislative history of the statutory provisions]. Provided that markings on a children's product or its packaging identify by any reasonable means the manufacturer or private labeler, a way by which the manufacturer can identify its production, and a reasonable way for consumers to make contact, the purposes of the labeling requirement relating to reasonably being able to ascertain "recalled product" is achieved¹.

The Commission has not yet issued guidance so we are providing these comments to promote a clear understanding of CPSIA Section 103 that recognizes congressional intent to allow flexibility for product marking. The Association urges the Commission to adopt a practical approach, since manufacturers only need place marks on products "to the extent practicable". We note there very different types of product, packaging and labeling systems. Ultimately flexibility for "distinguishing marks" is required. Costume Apparel and accessories are manufactured many months in advance and components (like labels) are sourced even earlier. Even if the CPSC were to issue guidance today, companies would have only 3 ½ months to learn about and integrate the new requirements into their supply chains and undo any non-compliant labeling. As a result, any further restrictions or changes to the tracking label requirement must be implemented with adequate advanced notice to avoid costly adjustments to their labeling schemes and internal tracking systems. In doing so the Commission should make it absolutely clear to retailers that whatever effective date is codified applies to only to goods "manufactured" after that date. Currently, in the absence of guidance from CPSC, some retailers are using shipping dates instead of the required manufacture date. CPSC needs to make it clear that this regulation only applies prospectively.

The Phrase "To the Extent Practicable" Requires Flexibility

The Commission should consider that any system that enables a consumer to reasonably determine whether a recall affects its product is suitable. The Commission should recognize manufacturer will mark the product packaging, display or tagging as may be appropriate for particular product categories. In some products a manufacturer should be allowed discretion to designate one part of the product in a set of products. CPSC should also recognize existing tracking information, as is currently required under existing mandatory and voluntary standards as compatible with the statutory requirements. The Association's related concern involves products consisting entirely of small pieces, such as decorations, ribbons, paper, costume jewelry, etc. The Association's members believe it should be sufficient under Section 103(a) to place an appropriate mark just on the packaging — such as the cardboard header card, sets of materials, accessories, novelties, bin and counter top product racks, product end caps, bulk vended products, textiles, buttons, belts and jeweled or other adornments. For the reasons discussed above, it would be impracticable to include a tracking label, for these kinds of products, on the individual product components. Similar considerations apply to small accessories for electronics, paper books and packaging materials where the packaging and content are the same, CDs, DVDs or other novelties sold as accessory products This was contemplated by legislators when they noted: "To the extent that small toys and other small products are manufactured and shipped without individual packaging, the Conferees recognize

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

that it may not be practical for a label to be printed on each item.”² It is simply not practicable to include Section 103 labeling information on products that are individually packaged yet consist of small parts as defined by dimensional criteria as used in 16 CFR 1501, et seq. which do not inherently provide for easy labeling of the product.

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

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

Marking

The CPSC should reconsider making it clear that for products where package labeling is permitted, in lieu of product labeling, that existing textile identification labels, whether sewn, adhesively applied or on hangtags is suitable, since these are no different than disposable packaging on such products.

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

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

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

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

Existing Government Marking Schemes & Exemptions Should be Recognized

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

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

Guidance must also begin to exempt products that are not practicable to label. In making an initial determination for products that are not practicably labeled, the CPSC should consider the following factors: Whether products are exempt from tracking labels under the Federal Trade Commission's (FTC) Textile and Wool Act; some products do not have tags, labels, or markings due to the product function, design or size of the product and are individually sold without packaging or in bulk. To the extent that the U.S. department of Homeland Security, Customs and Border Protection's (CBP) Country of Origin Marking requirement recognizes these exemptions. Similarly CPSC should also create a "safe harbor" and recognize marking schemes already enacted in its own standards. Many CPSC regulations, commercial textile standards and ASTM

standards contain marking requirements that merit recognition and indicate that a variety of flexible coding systems are appropriate. CPSC should recognize such markings as suitable and provide a "safe harbor" for products subject to and in compliance with such requirements. The Commission also should consider recognizing that, a marking on the product in addition to the packaging may not be practicable.

Given the flexibility that Section 103 allows, manufacturers should also be permitted to mark children's products with a "recognizable mark" such as a trademarked. This is useful for both smaller products and products that, in addition to presenting practical limitations, are made in limited production runs so as to enable consumers to determine whether or not they are subject to a recall. The CPSC should recognize that a manufacturer in choosing this option accepts the risk that a recall could extend more broadly to the entire production. For many small companies the option of recalling a broader array of product in lieu of costly small batch marking requirements should be permitted. Please act quickly to clarify these issues. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Stanley Geller". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stanley Geller
HIA Chairman

Stevenson, Todd

From: Nicole Stifnagle [nstifnagle@ahint.com]
Sent: Monday, April 27, 2009 10:14 AM
To: Tracking Labels
Subject: Section 103 Comments from the Halloween Industry Association
Attachments: HIA Section 103 Comments_Tracking Labels.pdf

Good Morning -

We appreciate due consideration of the Halloween Industry Association's comments on Section 103 of the CPSIA which are attached.

Regards,

Nicole Stifnagle on behalf of

Michele Biordi
Executive Director
Halloween Industry Association



INTERNATIONAL
SLEEP
PRODUCTS
ASSOCIATION

2009-0010-0101

April 27, 2009

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

Re: Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act

The International Sleep Products Association (ISPA) submits the following comments to the Consumer Product Safety Commission (CPSC) on behalf of the mattress manufacturing industry in response to the Commission's request for comments on the children's products tracking label requirements under Section 103 of the Consumer Product Safety Improvement Act (CPSIA) (74 FR 8781).

Section 103 of the CPSIA provides that:

[T]he manufacturer of a children's product shall place permanent, distinguishing marks on the product and its packaging, to the extent practicable, that will enable—

(A) the manufacturer to ascertain the location and date of production of the product, cohort information (including the batch, run number, or other identifying 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).

Congress' objective in enacting the tracking label requirements was to allow a children's product to be traced to its manufacturer in the event of a recall.

As discussed in detail below, ISPA urges the CPSC to recognize that the existing product labeling requirements for all mattresses under 16 CFR Part 1633 are sufficient to meet the requirements of Section 103.

Existing Labeling Requirements Under 16 CFR Part 1633

16 CFR Section 1633.12 requires that the product label attached to all new mattresses meet the following requirements:

(a) Each mattress set subject to the Standard shall bear a permanent, conspicuous, and legible label(s) containing the following information (and no other information) in English:

(1) Name of the manufacturer, or for imported mattress sets, the name of the foreign manufacturer and importer;

(2)(i) For mattress sets produced in the United States, the complete physical address of the manufacturer.

(ii) For imported mattress sets, the complete address of the foreign manufacturer, including country, and the complete physical address of the importer or the United States location where the required records are maintained if different from the importer;

(3) Month and year of manufacture;

(4) Model identification;

(5) Prototype identification number for the mattress set;

(6) A certification that the mattress complies with this standard.

The CPSC mandates that the mattress label contain this information in part for the very same reasons underlying Congress' intent in enacting Section 103 of the CPSIA: to allow the CPSC, retailers and consumers to "track" or identify defective products in the event that a product recall or other corrective action is necessary. The name of the manufacturer and (if relevant) importer identifies the source of the product. The month and year of manufacture identifies when the product was made. The "model identification" and "prototype identification number" distinguish different products made by the same company. Finally, the label must be permanent, and 16 CFR Section 12(e) provides that it may be removed only by the ultimate purchaser.

With respect to the requirement in Section 103 that the tracking information appear on both "the product and its packaging, to the extent practicable," it is important to note that most mattresses are packed in clear plastic wrapping material. The label would therefore be visible through the packaging material.

For these reasons, we urge the Commission to conclude that mattress manufacturers may meet the requirements of Section 103 of the CPSIA by meeting the mattress labeling requirements set forth in the mattress flammability standard. To require further labeling would be wholly redundant, wasteful, and would not improve product safety.

Response to CPSC Staff Questions

ISPA offers the following responses to the specific questions regarding Section 103 that the Commission posed in its request for public comment (74 FR 8782):

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.

ISPA urges the Commission to recognize that a product subject to an existing mandatory product labeling requirement that mandates the same information required by Section 103 also meets the new requirements of the CPSIA. Further, to require a separate tracking label just to meet Section 103 would be redundant, wasteful, and costly, and therefore impracticable. We urge the Commission to conclude that a children's mattress would be deemed to satisfy the requirements of Section 103 if it bears the label required by 16 CFR Section 1633.12. Likewise, if the packing material around the product is sufficiently clear to allow the product label to be read, we urge the Commission to conclude that no additional packaging label be required.

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.

Since mattress manufacturers already meet the labeling requirements of 16 CFR Part 1633, ISPA offers no comments on this question.

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.

The requirements of 16 CFR Part 1633 specify certain standard nomenclature, fonts and arrangement of text. A consumer would be able to identify a recalled mattress model based on the name of the manufacturer (and/or importer, if relevant), the date of manufacture and the model and prototype identification, all of which is already required on the mattress label specified in 16 CFR Part 1633. To the best of our knowledge, these formats have posed no problems. Therefore, we urge the Commission to make no changes to the label required by Part 1633.

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).

ISPA urges the Commission to allow manufacturers the option of using language or alpha-numeric code on the product label, as well as translating this information into other languages. Under the requirements of 16 CFR Part 1633, the mandatory information must be in English, but a manufacturer may provide the same information in other languages on the reverse side of the label. ISPA supports this voluntary approach.

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.

ISPA supports the optional use of new technologies that could streamline product labeling requirements, but has no specific comments to offer in this regard.

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.

Regardless of whether a product is privately labeled or otherwise, the existing labeling requirements set forth in 16 CFR Section 1633.12 already require that the mattress label specify the actual manufacturer's name. Therefore, the existing mandatory label requirements for mattresses already meet these requirements.

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

Mattress manufacturers will need no additional time to meet the labeling requirements if the Commission concludes that the existing labeling requirements under 16 CFR Part 1633 are sufficient to meet Section 103 of the CPSIA.

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

As discussed above, the labeling requirements under 16 CFR Part 1633 are already in use and are sufficient to meet the requirements of Section 103 of the CPSIA.

ISPA Comments on Section 103

4/27/09

Page 4

Summary

ISPA urges the Commission to find that the tracking information already required by existing mattress labeling rules under 16 CFR Part 1633 also meets the requirements of Section 103 of the CPSIA. The information included on existing mattress labels includes all of the data required by Section 103, and is sufficient for a consumer, retailer or CPSC staff to determine if a mattress is subject to a recall or other corrective action. Requiring a separate, duplicative label for mattresses would be redundant, wasteful, costly and not "practicable."

Sincerely,

A handwritten signature in black ink, appearing to read "CHUDGINS".

Christopher Hudgins

Vice President, Government Relations & Policy

Stevenson, Todd

From: Chris Hudgins [CHudgins@sleepproducts.org]
Sent: Monday, April 27, 2009 12:12 PM
To: Tracking Labels
Subject: Tracking Labels
Attachments: ISPA Comments on Tracking Labels.pdf

Please see attached comments from the International Sleep Products Association regarding the CPSIA Section 103 tracking label requirements.

Chris Hudgins
Vice President, Government Relations & Policy
International Sleep Products Association
501 Wythe Street
Alexandria, VA 22314
Ph: (703) 683-8371 x1113
Fax: (703) 683-4503
www.sleepproducts.org
"Start Every Day With a Good Night's Sleep ™"



2009-0010-0102

CASIO AMERICA, INC.
570 Mt. Pleasant Avenue
Dover • NJ 07801
973.361.5400
www.casio.com

April 27, 2009

VIA EMAIL TO TrackingLabels@cpsc.gov

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

Re: Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act

Dear Mr. Stevenson:

Casio America, Inc. ("Casio") respectfully submits the following comments regarding the tracking label requirements of the Consumer Product Safety Improvement Act of 2008 (the "Act") in response to the Consumer Product Safety Commission's ("Commission's") Notice of Inquiry published in the February 26, 2009 Federal Register.

As you may know, Casio is a global leader in the consumer electronics industry and manufactures and sells a variety of consumer products, including products designed for educational purposes such as calculators and electronic pianos/keyboards.

Product safety is a fundamental policy of Casio, and Casio is committed to ensuring product safety so that customers can always use Casio products with peace of mind. Product safety is firmly integrated into Casio's product development, from product planning and design to manufacturing and shipping. Casio has formulated a detailed product safety program that sets safety management actions and procedures to be taken -- including gathering of product incident information, appropriate reporting and disclosure of such information, and product recalls, where necessary -- in response to product incidents. Casio's safety incident response system establishes procedures to fully and promptly gather and forward information on incidents, inform customers and the competent authorities, respond quickly and properly, ascertain the causes, and take steps to prevent recurrence. In this respect, Casio's proactive efforts with respect to product recalls have been acknowledged and applauded by Consumer Reports.¹

Casio fully appreciates Congress's intent in mandating tracking labels on children's products. Given Casio's fundamental commitment to product safety and its experience in protecting the consumer, Casio welcomes this opportunity to share with the Consumer Product

¹ See, *Casio gets recall promotion right*, http://blogs.consumerreports.org/safety/2007/04/casio_gets_reca.html.

Safety Commission ("Commission") Casio's concerns regarding the implementation of this requirement of the Act.

Enumerated below are the topics that the Commission has indicated in the Federal Register that it is interested in receiving comments on, followed by Casio's comments:

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.

One consideration in determining whether it is practicable to have tracking labels on children's products is the size of the product and the packaging. There is limited space available on small products and packages, and there is a host of additional regulatory labeling requirements faced by manufacturers of electronics. Casio recognizes the importance of product labeling, particularly with respect to product safety and environmental issues. However, consideration should be given to the impact that labeling has on the ability and difficulty to use the product. Labeling also can interfere with the aesthetic design of products. These impacts may have an unintended effect of deterring a child from using and learning from an educational product. The Commission may also consider avoiding standardized requirements for label size and font size, and provide manufacturers the flexibility needed to incorporate labeling into small products and packages.

The Commission should also take into account that importers often repack products based on the requests of retailers. Repacking in accordance with product and package labeling requirements is an administratively difficult task to ensure that the proper tracking information is applied to the repackaged goods. Repacking would be especially difficult when the labeling is required to be "permanent." However, the use of stamps and stickers on the product and packaging, including in the repackaging, would alleviate some of the administrative and logistical problems that would be encountered.

Another consideration is the additional cost borne by manufacturers in labeling the products. Generally, electronics are sold at a small profit margin and retail prices are set at low amounts. Thus, even small increases in the manufacturing, shipping and labeling costs can have a significant impact on the profitability of consumer electronics.

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.

Casio manufactures and sells products under its own brand, and maintains records regarding the location and date of production for its products. As part of Casio's safety incident

response system, Casio can identify production information for its products without the use of standardized label content. In the event of a product recall, Casio can identify products and production information based upon the model number and, on occasion, the serial number of its products. Moreover, the exact date of manufacture is not necessary in order to identify products that may be subject to a recall. As part of its quality control measures, Casio records the month and year of manufacture for its product. This level of detail has shown to be adequate for the purposes of quality control and, where necessary, product recall. A requirement to keep track of the "day" of manufacture would instead amount to an administrative burden on the manufacturing facility without a corresponding increase in quality control.

There are other business considerations relevant to tracking label policy. In some instances, a brand owner may contract with an independent manufacturer for the production of goods. In such instances, the name of the brand owner should be considered the manufacturer for the purposes of labeling. The name of the independent manufacturer is confidential business information and is not necessary to be made public for the purposes of implementing the product safety/quality control program because quality control information remains with the brand owner.

In addition, labeling requirements regarding the location of manufacture should be limited to the country of manufacture. A product can be simultaneously manufactured in multiple factories, and a product can change factories over the course of its production. Records are regularly kept to match the product with its factory. However, labeling consisting of detailed production location information would be overly complicated and unnecessarily expensive because the descriptions on the labels would need to be changed very frequently. Moreover, inclusion of the precise location of a product's manufacture on a label does not add any measurable benefit because these records are routinely kept and easily ascertainable based on the product model and serial number. One option is to define "cohort information," in guidance materials or by regulation, in a flexible manner that would enable manufacturers to respond to a variety of manufacturing models.

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.

The ability of consumers to identify recalled items would not be enhanced by additional tracking labels requirements. Casio's existing product labeling has shown to be effective in managing production quality and product recalls. Existing labeling includes the Casio brand name, the model name, the country of manufacture, and depending on the product, the serial number or lot number. In the past, product recalls have been identified simply by model number or, on occasion, model and serial numbers. Recalled products can be easily identified by the consumer based on these existing markings. In addition, Casio maintains the ability to identify cohort information for quality control purposes based upon these existing markings.

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).

Alpha-numeric code is the ideal method of tracking information. The Act states that the manufacturer must mark the product and its packaging to enable the manufacturer and the ultimate purchaser to "ascertain" certain information. It is therefore not a statutory requirement that the label itself include this information. A manufacturer or third-party can maintain an internet web site where this information can be accessed by entering the alpha-numeric code on the product/packaging. The Commission should be mindful of the international efforts to promote a global standard of product traceability. Any regulatory efforts should be flexible to allow a manufacturer to use its own alpha-numeric code and also adapt to a global system when adopted.

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.

Casio does not see any substantial direct benefit to consumers if tracking information was available in electronically readable form unless consumers had the devices to translate the electronic data.

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.

Casio does not use a private labeler and therefore offers no comment on this topic.

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

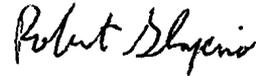
Compliance with new marking requirements can require a significant amount of time and resources and, therefore, sufficient lead time is necessary. However, it is difficult to comment on the precise amount of lead time necessary, because it would depend on the type of marking requirements implemented. A flexible approach that would enable manufacturers to base the marking requirements on their current quality control and product safety systems would help to ensure a smoother transition to the labeling requirements.

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

As mentioned above, existing product labeling, consisting of the brand name, model number, the country of manufacture and depending on the product, serial number or lot number, has shown to be effective in managing production quality and, when necessary, product recalls.

Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Robert Shapiro".

Robert Shapiro
General Manager
Legal Affairs & Compliance

Blogs Safety

Pop on, it's official: DOT rule will require stability control by 2012 »

April 09, 2007

Casio gets recall promotion right

Bang the drums. Blow the trumpets. Pound the piano.

We want to take a moment to give proper tribute to Casio Inc. for the way it's publicized its recent recall of an electronic musical keyboard, model CTK-710. The recall involves 12,000 units; the problem: these keyboards can overheat when in use, posing a fire hazard. The company has received five reports of overheated keyboards, including two incidents that resulted in fires.



Although it's a relatively small recall, the company has mounted an aggressive advertising campaign, publishing repeated notices in major metropolitan newspapers around the country. Typically such aggressive advertising is usually confined to large recalls and is part of a negotiated agreement with the CPSC. For example, the recent recall of 2.3 million Maytag and Jenn-Air dishwashers, also for being a fire hazard, was also advertised in newspapers.

But CPSC officials said Casio volunteered to launch the newspaper advertising campaign on its own. Casio spokeswoman Melissa Keklak said the company was determined to reach out to as many people as possible because so many of the keyboards were purchased as gifts.

The keyboards were sold for \$70 to \$150 at between May 2006 and February 2007 by musical instrument stores, Wal-Mart, Best Buy, in catalogues and on Web sites.

As a result, Keklak said the company knew it had to do more than post recall notices only in music stores.

We applaud Casio's decision — and hope it encourages other manufacturers to be as aggressive if and when they have they a recall to announce.

Print This Page

SU

Join today & (> Expert Rate > M

SU

About this blc
Consumer Rep
editors, and ter
new developm
- Report a proc
- Latest recalls

RSS Feed
Subscribe to l

Recent Posts
- Latest recal
Toys 'R' Us
cribs
- Five produc
Recalls rerr
Kids in Dan
Food safety
to state
- This week l

Stevenson, Todd

From: Shapiro, Robert [bshapiro@casio.com]
Sent: Monday, April 27, 2009 12:20 PM
To: Tracking Labels
Attachments: 20090427112116119.pdf

<<20090427112116119.pdf>>

Robert Shapiro
General Manager
Legal Affairs & Compliance

CASIO AMERICA, INC.
570 Mt. Pleasant Avenue Dover, NJ 07801
973-361-5400 ext: 1352 Fax: 973-537-8905
e-mail: bshapiro@casio.com
www.casio.com

This e-mail has been scanned by MCI Managed Email Content Service, using Skeptic(tm) technology powered by MessageLabs. For more information on MCI's Managed Email Content Service, visit <http://www.mci.com>.

Stevenson, Todd

2009-0010-0103

From: Roger Urbanski [rurbanski@cognitivesolutions.com]
Sent: Friday, April 24, 2009 12:22 PM
To: Stevenson, Todd; Tracking Labels
Cc: Jim Chester; Cave, Carol; SAUCEDA, CATHY J; Stan Dunn; Amy Frede
Subject: RE: Tracking Labels
Attachments: CPSIA Labeling Comments April 27, 2009.doc

Importance: High

Thank you Mr. Stevenson for your prompt response!

Our written response to the Federal Register notice is attached to this message.

We greatly appreciate this opportunity to comment on this most important consumer product health and safety issue.

Roger

Roger R. Urbanski
Executive Director,
Global Customs Compliance & Product Assurance
Cognitive Solutions

813-420-4711
rurbanski@cognitivesolutions.com

From: Stevenson, Todd [mailto:TStevenson@cpsc.gov]
Sent: Friday, April 24, 2009 10:33 AM
To: Roger Urbanski
Cc: Jim Chester; Cave, Carol; SAUCEDA, CATHY J
Subject: RE: Tracking Labels

This is the information from the February FR notice. The comments require no specific format and there is no extension.

ADDRESSES: Comments should be emailed to TrackingLabels@cpsc.gov. Comments also may be mailed, captioned "tracking labels," preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504-7923). Comments may also be filed by facsimile to (301) 504-0127.

FOR FURTHER INFORMATION CONTACT: John "Gib" Mullan, Director, Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission,

4330 East West Highway, Bethesda, MD
20814; telephone (301) 504-7626.

Todd Stevenson
Director, Office of the Secretary
Division of Information Management
Office of Information and Technology Services
US Consumer Product Safety Commission
(301) 504-6836, Fax (301) 504-0127

From: Roger Urbanski [mailto:rurbanski@cognitivesolutions.com]
Sent: Friday, April 24, 2009 8:24 AM
To: Tracking Labels
Cc: Jim Chester; Cave, Carol; SAUCEDA, CATHY J
Subject: Tracking Labels
Importance: High

To whom it may concern at the CPSC,

We intend to submit comments concerning the CPSC requirement for product tracking labels pursuant to the Notice in the Federal Register on February 26, 2009.

We understand that our comments must be submitted by April 27, 2009.

We would like to be advised concerning any preferred format for our comments, any extension of the deadline for filing and any filings made to-date?

Please advise if there is an individual with whom we might speak this morning concerning the Tracking Label comments due April 27, 2009 and the requirement itself as of August 14, 2009?

Thank You!

Roger

Roger R. Urbanski
Executive Director,
Global Customs Compliance & Product Assurance
Cognitive Solutions

813-420-4711
rurbanski@cognitivesolutions.com

*****!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page: <https://www.cpsc.gov/cpsclist.aspx> *****!!

The following comments are submitted by Cognitive Solutions of Clearwater, Florida pursuant to the notice in the Federal Register on February 26, 2009 by the Consumer Product Safety Commission (CPSC) and concerning the Tracking Label requirements for Children's Products under Section 103 of the Consumer Product Safety Improvement Act (CPSIA) effective August 14, 2009.

Cognitive Solutions believes that implementation of the CPSIA requirement of permanent distinguishing marks on children's products and packaging as required by that law is essential to consumer product health and safety. We believe that it is wholly and entirely practicable for importers and manufacturers to meet the statutory deadline for the placement of marks on children's products for the manufacturer (or importer) 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.

Cognitive Solutions believes that the overwhelming, bi-partisan support and passage of the CPSIA was a watershed in the progress toward consumer product health and safety in the United States and by US leadership in and among our major trading partners in Canada, elsewhere in the Americas, in the European Union (EU), China, India and throughout Asia and the world. Public (constituent and consumer) demand for the protections begun with the CPSIA must be met by the wholehearted implementation of its requirements by the CPSC and other Executive Branch agencies. Where necessary, additional Congressional action may also be required and, as expressly recommended in the CPSIA itself, by the Fifty (50) States of the United States.

The CPSIA labeling requirement that the ultimate purchaser can ascertain the manufacturer or private labeler, location and date of production of the product, and cohort information (including batch, run number, or other identifying characteristic) is the only reasonable and sufficient standard by which to insure consumer confidence in the health and safety of children's products at the point of purchase and, in particular for the most vulnerable of our society-newborn infants and babies and in the weakest world economy since the Great Depression.

Consumer anxiety, which is the result of recalls that average one every two days in the nine months since passage of the CPSIA cannot be ignored or assuaged by anything less than the most stringent interpretation of the CPSIA and its implementation in regulation and reality.

The CPSC is authorized by rule to require the use of traceability labels (including permanent labels) on any consumer product. Cognitive Solutions believes that product integrity-authentication and assurance are core brand or product values born at product origin. These attributes must be tracked from that point in place and time through to consumption and beyond in order to maintain their value and provide consumers information essential to the proper handling, use and, ultimately, disposition of physical goods by means of responsible recycling, re-use and/or reclamation in a world increasingly concerned with the environmental impact of unregulated or unknowable consumption.

Where traceability labels are required by rule under CPSIA Section 14 © and a covered product is privately labeled, the product must carry a code mark permitting the seller to identify the manufacturer upon a purchaser's request. Cognitive Solutions believes that this provision is a reasonable precaution against product tampering, diversion and fraud and is a value additive in the fight against intellectual property rights (IPR) theft.

The public interest in a tracking label approach with other national and regional jurisdictions and numerous foreign trade partners with similar concerns (and especially Canada and the EU) is essential to a broad based approach to current concerns for health and safety and to regions and specific countries of

predominant production. Certainly, consumers will be better informed and better able to intelligently and timely respond in the event of a recall by the extent to which uniform approaches to permanent product labeling, tracking and recall notification are identified, promulgated and practiced.

Cognitive Solutions believes that a determination of the "extent practicable" to have tracking labels on children's products and the extent to which different factors apply to labeling on packaging should be established by means of the instant process of public response to the CPSC request for comments. Current technology and advanced technological capability should be determinative of practicability and cost will be less than anticipated and effort minimal if affected in the context of the total effort at product authentication and assurance that Cognitive Solutions proposes.

Cognitive Solutions believes that permanent labeling and tracking will be enhanced by the development of standardized nomenclature, appearance and arrangement of the information required, but does not believe that the August 14, 2009 requirement should be delayed in whole or part in favor of any study to produce these.

Manufacturers and brand owners must now be able (and in the context of the many supply-chain enhancement efforts such as the C-TPAT program implemented since 9/11) to ascertain the location and should be able to establish the date of production of the product now. In short, if "born on dating" is possible for beer it must be realized for newborn and infant products.

Other business considerations relevant to tracking label policy all point to the distinct advantages in evaluating the reliability and timeliness of current sources of supply; their cost and production efficiency; the exact nature of the supply-chain and movements within by air, sea, rail and overland from origin to consumption; the value of after initial sale marketing and product registration to brand loyalty and customer satisfaction and intellectual property protection and anti-counterfeit and piracy effort that strongly support permanent labeling and tracking.

Consumer ability to identify recalled items can be enhanced by a Cognitive Solutions system that provides for cell phone texting of product unique label information to ascertain the status at the point of purchase of any product hazard, warning or especially, imminent or actual product recall. A transparent system of product labeling and public disclosure-as mandated in the CPSIA-can only enhance the predictability of consumer decisions to purchase, properly use and dispose of product.

Cognitive Solutions believes that a combination of easily readable tracking information should be made available in the English language first and in other languages dependent on the market in which the product is primarily sold or to be marketed and sold. This information is enhanced by an alpha-numeric, product unique numbering system that allows regulators and consumers access to all of the data currently required within the CPSIA and to regulators to the degree to which necessary and though a "single window" such as that proposed in the International Trade Data System (ITDS) of US Customs and Border Protection (CBP) and the developing Automated Commercial Environment (ACE) for US importers.

One of the most substantial benefits to consumers under the current provision of law and its implementation is the availability of data in electronic form to an increasingly capable and "wired" consumer base and-especially among young parents and their children so adept at retrieving data via the Internet, from text messaging and other "instant" services. Given the exponential rate of development in this area, the CPSC probably cannot act quickly enough to expand this capability nor further afield than consumers are prepared and capable of reaching. The most beneficial area in which "electronic" data should be available in the opinion of Cognitive Solutions is with regard to any where urgent and thorough

detail is essential to health and safety-such as in the case of proper product use, hazard, warning and recall.

Cognitive Solutions believes that all manner of electronic, Internet, phone, FAX, text and other communication should be available-at the consumers option-at the point of sale to encourage its use and regarding that information now reasonably expected by consumers as to the origin, date and place of manufacture of children's products (and other consumer goods).

Cognitive Solutions does not believe that any further "lead time" is required by manufacturers or importers to comply with the labeling requirements of the CPSIA and effective August 14, 2009.

Cognitive Solutions has a successful model for an adequate tracking label and will be pleased to demonstrate it to the CPSC, other interested Executive and Legislative Branch agencies, members and committees and the public at-large at any time.

In conclusion, Cognitive Solutions believes that the labeling requirements of the CPSIA are practical and prudent and that their timely application and practice will significantly enhance the health and safety of US consumers, newborn infants and children most vulnerable to the slightest error in product content, assembly, packaging, use and potential abuse. The CPSC has been given a Congressional mandate and must now achieve consensus with a public well ahead of policy makers in their determination that they will not risk any consumption absent the minimal details necessary to assure that doing so is of an authentic and assured item that is without risk.

MINTZ LEVIN

2009-0010-0104

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-434-7300
202-434-7400 fax
www.mintz.com

Quin Dodd | 202 434 7435 | qdodd@mintz.com

April 27, 2009

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

Re: NBVA Comments on Tracking Labels for Children's Products Under Section 103 of the CPSIA

Dear Mr. Stevenson:

Please accept these comments, on behalf of the National Bulk Vendors Association, in response to the Commission's Request for Comments and Information regarding Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act of 2008. 74 Fed. Reg. 8781 (February 26, 2009).

Please feel free to contact me with any questions.

Sincerely,



Quin Dodd, Esq.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

BOSTON | WASHINGTON | NEW YORK | STAMFORD | LOS ANGELES | PALO ALTO | SAN DIEGO | LONDON

OFFICERS

Randy Chilton, President
Steven Siegel, Vice President
Bernie Schwarzli, Treasurer
Mark Pogue, Secretary



"United effort for individual security"

Representing the Bulk Vending Industry Since 1950

April 27, 2009

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

Re: Comments on Tracking Labels for Children's Products Under Section 103 of the CPSIA

The National Bulk Vendors Association ("NBVA") commends the Consumer Product Safety Commission ("Commission" or "CPSC") for soliciting comments and information about implementation of Section 103 of the Consumer Product Safety Improvement Act ("CPSIA"), Public Law 110-314, in its February 26, 2009 Request for Comments and Information.^{1/} Section 103 requires that, effective August 14, 2009 "the manufacturer of a children's product shall place permanent, distinguishing marks on the product and its packaging, to the extent practicable," to enable manufacturers and consumers to ascertain certain information regarding the manufacture of the product. While the NBVA appreciates and supports the congressional intent of this provision - to enhance recall effectiveness - the Association is very concerned about the provision's possible application to children's bulk vended products, or "vended products."^{2/}

The mandates in Section 103 of the CPSIA would constitute a unique burden on the bulk vending industry, one which the industry simply could not sustain and one which Congress clearly did not intend the industry to even attempt to undertake. It would simply not be technologically or economically feasible (and certainly not practicable) to place tracking labels on such vended products. In fact, if applied literally to vended products, this statutory requirement will likely deal a death blow to the bulk vending industry, which is already suffering from the poor economy and other factors. The result of this will be fewer consumer options for toys and related products for children with no increase in public safety. This is of particular concern for lower income children and their families who may not have other alternatives than to purchase such vended products.

Therefore, based on the legislative language and intent of Section 103, and the other facts and arguments set forth herein, the NBVA respectfully requests the Commission to explicitly grant a total exemption from the Section 103 requirements for "vended products." In lieu of granting this request, we respectfully request, at minimum, a one year stay of enforcement be granted by the Commission to give the Commission and industry sufficient time to examine the issues more thoroughly.

^{1/} See 74 Fed. Reg. 8781 (February 26, 2009).

^{2/} The NBVA suggests the following definition of "vended products": "low-cost children's toys and other children's products that are less than five inches in diameter that are randomly and mechanically or electrically dispensed from a vending machine." This definition, we believe, captures all or virtually all of the types of products that our members and similar companies sell, and includes, we believe, those products that provide the most compelling case for the arguments asserted herein.

NATIONAL BULK VENDORS ASSOCIATION

7782 East Greenway Road, Suite No. 2, Scottsdale, AZ 85260

Toll Free: (888) NBVA-USA ■ Fax (480) 302-5108 ■ www.nbva.org ■ admin@nbva.org

I. The National Bulk Vendors Association and Vended Products

The NBVA is a national not-for-profit trade association established in 1950. It is comprised of manufacturers, distributors and operators of bulk vending machines and vended products. The Association represents approximately 360 companies, although there are thousands of additional small operators across the country operating on a full-or-part-time basis who are not members of the NBVA.

Bulk vending refers to the sale of vended products. These inexpensive items include such products as small toys, novelties, stickers, temporary tattoos, *etc.* Vended products are dispensed individually or via an acorn-shaped capsule. Bulk vending represents less than one percent of the total vending industry (most of which consists of food and beverage vending). It is important to note that, unlike the machines that vend the type of bulk vended products defined above, the electrical vending machines that vend most food, beverage and other products can easily adjust the price that the consumer must pay to obtain those items. Bulk vending machines, by contrast, typically take quarters to mechanically dispense a product and so cannot be readily adjusted for price, and then only by quarter (or in some cases dollar) increments.

The bulk vending industry provides numerous opportunities for a variety of entrepreneurs in the U.S., from importers to distributors to “mom-and-pop” retail vendors. At each stage of the intricate distribution process, from manufacture to final sale, thousands of jobs are produced and sustained across the country. First, bulk vending supports numerous jobs at U.S. ports of entry, where millions of individual products shipped to the U.S. for vending machines are received in hundreds of cargo containers annually. Second, most of the capsules that deliver vended products to the consumer from the machine are manufactured domestically. Third, the capsules are then shipped to facilities where the actual toys and other products are inserted into the capsule, thereby creating additional U.S. jobs. Members of the NBVA directly contract with numerous charitable organizations, both for placing the product in the acorn containers and for the placement and maintenance of vending machines. One such organization, Lighthouse for the Blind, provides thousands of workers with sight disabilities with gainful employment. Other charities include the American Cancer Society, Hugs Not Drugs, and Center for Missing and Exploited Children, among many others. These organizations receive proceeds from the sale of vended products not just from placing the products in the capsules, but also from a portion of the proceeds of the vending machines themselves. Machines are frequently labeled with the charity’s name and information, indicating that proceeds from the sale of the vended products benefit that organization. Finally, the capsules containing the products are distributed directly to vending machine companies and operators who service their respective routes.

Most importantly, vended products provide smiles to millions of American children every year. Simply put, the vending experience, often the first consumer transaction for a child, provides quality toys, a family experience and, for the operator, a sense of the American entrepreneurial spirit. These machines are part of the American shopping landscape as they are found in virtually every type of retail location. In short, they have become an integral part of American culture.

II. Section 103(a) Contemplates Exemptions to the Provision for Vended Products

The plain language of the CPSIA provides for exemptions to the tracking labels requirement for vended children’s products. Section 103(a) of the statute states:

Effective 1 year after the date of enactment of the Consumer Product Safety Improvement Act of 2008, the manufacturer of a children's product shall place permanent, distinguishing marks on the product and its packaging, *to the extent practicable*, that will enable... (emphasis added).^{3/}

While it is not obvious from the statutory language, congressional intent indicates that the language "to the extent practicable" in the provision modifies both "the product," and "its packaging." Any other interpretation would be inconsistent with express legislative intent. Thus, when Congress included "to the extent practicable" in the provision, it provided the Commission with the power to grant necessary exemptions to the tracking label requirement for both products and its packaging. This modification of "the product" and "its packaging" is particularly applicable to vended products. In its current "Basic Summary" document for Section 103, the CPSC staff has already recognized the inherent problem of placing tracking labels on small products that are manufactured and shipped without individual packaging.^{4/} The document states:

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

The NBVA believes that by inserting "to the extent practicable" into the tracking label provision of Section 103, Congress referred to products where compliance with the requirement would not be technologically or economically feasible. Indeed, the CPSIA contains other provisions which refer only to "technological" feasibility, such as the Section 101(a)(2)(C) requirement referring to a lead substrate limit of 100 ppm.^{5/} However, in this provision, Congress used broader language "to the extent practicable," clearly intending "practicability" to encompass consideration of economic factors as well.

A. Technological Feasibility and Vended Products

Small articles, especially vended products, typically lack the requisite surface area for the placement of a tracking label. It would be virtually impossible to place tracking label information on a product's surface area where the product is typically one-inch or less in height and diameter (see, *e.g.*, Figures 1 and 2). Where such flat surface area does exist suitable for a molded (permanent) label of some sort, it would likely be at the base of these products. On average, such flat surfaces are approximately ¼" x ½" (see, *e.g.*, Figures 3 and 4). Thus, printing a full tracking label in English lettering and numbering would necessitate an extremely small font size, perhaps as small as 1/32 of an inch per line.^{6/} Not only would such lettering be unreadable to the naked eye but, given current molding technology used for vended products, it would be virtually impossible to place such labels, even where there exist flat surfaces suitable for such labels. This is particularly true when such a label must be combined with costs of origin labeling, *i.e.*, "MADE IN CHINA" or "CHINA."

Even assuming, *arguendo*, that readable tracking labels could be physically printed somewhere on the limited surface area of these products, the label may significantly impair the aesthetic appearance, and therefore, appeal of the vended product. For example, the outside appearance of children's jewelry would be

^{3/} See Consumer Product Safety Improvement Act, Pub. L. No. 110-314, § 103(a) (2008).

^{4/} See "Section 103 Tracking Labels for Children's Products Basic Summary" at <http://cpsc.gov/about/cpsia/summaries/103brief.html>

^{5/} See Consumer Product Safety Improvement Act, Pub. L. No. 110-314, § 101(a)(2)(C) (2008).

^{6/} The information required of a tracking label would include the following lines of information: Manufactured by: XYZ Corp.; Hong Kong, China; September 2009; Lot # 1234567

permanently impaired as tracking label information would distort or destroy any artistic design (see, *e.g.*, Figure 5). Moreover, any raised information printed on the inside of a ring might provide discomfort or irritate a child's finger. Likewise, there are some vended products whose functionality would even cease to exist with the printing of a tracking label. For example, printing information on game dice (see, *e.g.*, Figure 6) or on a miniature sports ball made with team logos and colors would impair the actual function of the product, especially when added to required country of origin labeling.

Further, the shape, small size and material composition on many vended products make it physically impossible to place such a tracking label of any size anywhere on the product (see, *e.g.* Figure 7). For example, a manufacturer cannot place a tracking label on a link of a chain necklace (see, *e.g.*, Figure 8) or on a "sticky" creature (see, *e.g.*, Figure 9) due to their unique shapes and lack of flat, rigid surface areas.

B. Technological Feasibility and the Capsule

In addition to the technological impracticability of placing a tracking label on vended products, printing the product's tracking label information on the acorn capsules themselves (if the product has a capsule) would be impracticable as an alternative. Capsules are not packaging, but rather a method for product delivery to the consumer. Vended products are shipped to the U.S. individually, and then paired with a random capsule much later in the chain of distribution. Capsules are typically manufactured domestically, several million at a time, and always come from a different production source than the product. The capsules are sold and distributed in bulk by the millions across the country, where each individual supplier randomly matches a product with a capsule. Just as fast food restaurants do not pair plastic utensils with a particular food, meal or customer, it would be impossible to predetermine the pairing of the capsule and vended product in any meaningful way.

As a result, even if the Commission were to consider capsules to in fact constitute packaging, it is absolutely not practicable to print specific information about the individual product it contains on the capsule. Moreover, as the capsules are generally discarded as soon as the purchase is made by the consumer from the vending machine, there would be little trade and no consumer purpose served by attempting to place such labels on capsules. Additionally, most capsules are small and do not themselves have much more surface area than the products they contain (see, *e.g.*, Figure 10). Therefore, printing the products tracking label information on the capsule is a not a practicable option or alternative.

C. Economic Feasibility

Any requirement that would mandate the placement of a tracking label on vended products would render such products economically untenable. For a vended product that retails for twenty five cents, a general rule of thumb for the industry is that the cost to the manufacturer of each individual product is approximately five cents. The average cost of a mold to produce these products is approximately ten-thousand dollars. An average manufacturing run produces approximately 500,000 units. Therefore, to change the molding for such products, on average, would cost approximately two cents per product, or an increase of forty percent for that product.

It is critical to understand that such an incremental shock to the cost of these items is simply not transferable to customers as is the case with most other products sold for retail. If the manufacturer's cost increases by forty-percent as indicated above, the increase in cost for a quarter item could only be passed on as a 100% increase in price to the consumer (from one quarter to fifty cents). The cost to the manufacturer simply cannot be passed onto the consumer in proportion due to the typical quarter increments of vending machines. This unique situation for vended products makes the added costs prohibitive to the manufacturer.

If there were ever a case where permanent distinguishing marks to be printed on a small product would not be “practicable,” either technologically or economically, it would be for small vended products, and the capsules that facilitate their delivery to consumers.

III. Congressional Intent of Section 103(a) Supports an Exemption for Vended Products

A. General Intent of Section 103(a)

The legislative history of Section 103(a) supports granting an explicit regulatory exemption to the tracking labels requirement for vended products. The congressional report language that accompanied each respective House and Senate version of the CPSIA bill, as well as the Conference Report that accompanied the CPSIA during final passage, all make clear that exemptions may be granted where the placement of tracking labels is not practicable due to the “small size of the product”.

The Conference Report accompanying the final version of the CPSIA, as enacted into law, contains explanatory language on the tracking labels requirement of Section 103.^{7/} The report states:

“To the extent that small toys and other small products are manufactured and shipped without individual packaging, the Conferees recognize that it may not be practical for a label to be printed on each item.”

If this expression of congressional intent has any meaning at all, it compels an exemption from the mandate of Section 103 for vended products, which are among the smallest and least expensive consumer products on the market.

In addition, both the Senate and House included similar report language on tracking label exemptions in their respective versions of the legislation before conference. The Report filed with the Senate passed bill, states that, “to the extent that small toys and other small products are manufactured and shipped without individual packaging, the Committee recognizes that it may not be practical for a label to be printed on each item.”^{8/} The Report filed with the House passed bill, explains that, “in determining the feasibility of placing distinguishing marks on products, as opposed to their packaging, the Committee expects that manufacturers will give primary consideration to the product's size.”^{9/} Thus, both the Senate and House contemplated exemptions from the tracking labels requirement due to the small size of a product and included their rationale in report language. Therefore, the legislative history of Section 103(a) affirms Congress’s intent behind the insertion of “to the extent practicable” into the tracking labels requirement.

B. Recall Effectiveness

Congress included Section 103 in the CPSIA primarily to enhance and facilitate product traceability in the event of a recall. The tracking labels are intended for the manufacturer to “facilitate ascertaining the specific source of the product by reference to those marks,” and for consumers to “ascertain the manufacturer of the product, locate and date of production of the product and cohort information.”^{10/} Ultimately, given the intent behind Section 103, a total exemption from the tracking label requirement for vended products will not adversely affect children’s product safety or recall efforts due to the inherent nature of vended products

^{7/} H.R. Rep. No. 110-787, at 67 (2008) (Conf. Rep.).

^{8/} S. Rep. No. 110-265 at 32 (2008).

^{9/} H. Rep. No. 110-501 at 32 (2007).

^{10/} See Consumer Product Safety Improvement Act, Pub. L. No. 110-314, § 103(a) (2008).

and the proposed remedy in case of a recall. In past recalls of vended products, the CPSC has instructed consumers to simply discard their vended products. This remedy negates the utility of a tracking label and its information on a vended product as there would be limited use for product traceability to the consumer.

The CPSC has previously recognized that bulk vended products are disposable toys with a short life span and that many of these products never even make it back to consumers' homes. Since the cost of these products is negligible, those that do make it back to the home are usually discarded relatively soon after purchase. In the event of a recall, then typically weeks or months after purchase, if the consumer has any question as to whether or not their vended product has been recalled (if they still hold the product at all) it is reasonable to conclude from prior recalls that the CPSC will again advise consumers to simply dispose of the product.

As stated, the CPSC has, in fact, instructed consumers to discard their vended product in the event of a recall. For example, in 2004, when the CPSC announced a large recall of 150 million pieces of toy jewelry sold in vending machines across the country, the CPSC instructed consumers to "throw away recalled jewelry."^{11/} Similarly, in 2007, when the CPSC recalled four million units of children's bracelets distributed through vending machines, the instructions were, "consumers should immediately take the recalled bracelets away from children and discard them."^{12/}

Thus, it is clear that since the driving intent behind Section 103(a) was and is to enhance recall effectiveness, *i.e.*, to increase the number of products returned by the consumer for a refund, replacement or repair, Section 103(a) is wholly inapplicable to vended products where the typical remedy directed by the CPSC itself is to simply discard the product.

IV. Conclusion

Vended children's products are among the smallest and most affordable products sold to U.S. consumers today. Yet, despite their small size and low cost, these products still support thousands of American jobs and provide affordable amusement and consumer empowerment for all American families, particularly those of limited means. Simply put, the result of a literal application of Section 103(a) of the CPSIA to vended products would mean the end of the bulk vending industry, with no discernable enhancement to consumer product safety whatsoever. The NBVA contends that Congress did not intend this harsh result. Congress inserted the words "to the extent practicable" into Section 103(a) of the CPSIA because it contemplated situations exactly like this one where it would not be technologically or economically feasible to place a tracking label on a product or its packaging.

As described above, the placement of tracking labels is not technologically feasible due to the vended products having little to no surface area for the placement of such information. Likewise, the placement of the tracking label information on the product's capsule would be virtually impossible as the vending products are shipped individually and are not paired with domestically manufactured capsules until later in the distribution chain. Additionally, placing tracking labels on vended products would not be economically practicable as the costs of additional molds to manufacture the vending products would be unsustainable and prohibitive for members of the bulk vending industry and their consumers. The increased costs for the

^{11/} See Press Release, CPSC, "CPSC Announces Recall of Metal Toy Jewelry Sold in Vending Machines," (Originally issued July 8, 2004). <http://www.cpsc.gov/cpsc/pub/prereel/prhtml04/04174.html>

^{12/} See Press Release, CPSC, "A & A Global Industries Recalls Children's Bracelets Due to Lead Poisoning Hazard," (April 3, 2007). <http://www.cpsc.gov/cpsc/pub/prereel/prhtml07/07144.html>

manufacture of vended products cannot be passed onto the consumer, as is the case with other retail products, including most other vending machine products other than those discussed in this comment.

The legislative intent behind the provision clearly supports an exemption for small vended products distributed through bulk vending machines. Congress noted in report language that, “it may not be practicable for a label to be printed on *small items*” (emphasis added), and the rationale for having tracking labels is not applicable for products with a short life span that are easily discarded in the case of a product recall. If this express intent of Congress is to be given any effect at all, a total exemption for vended products is the only logical and viable decision the Commission can make.

The NBVA, therefore, respectfully requests a total exemption to this tracking labels requirement for vended children’s products: low-cost children’s toys and other children’s products that are less than five inches in diameter that are randomly and mechanically or electrically dispensed from a vending machine. In lieu of granting this request, we respectfully request, at minimum, a one year stay of enforcement be granted by the Commission to give the Commission and industry sufficient time to examine the issues more thoroughly.

Thank you for considering our comments. Please feel free to contact me if you have any questions on this submission.

Sincerely,



Randy Chilton
President
National Bulk Venders Association

Figure 1

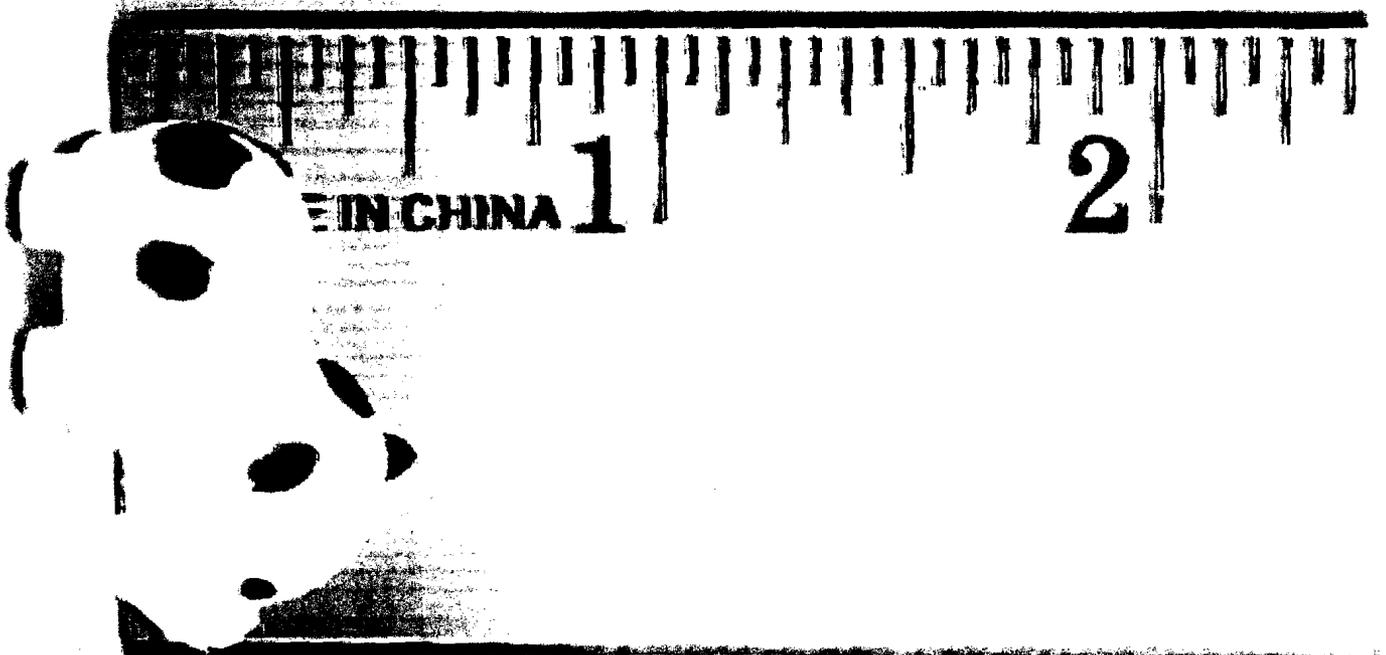


Figure 2



Figure 3

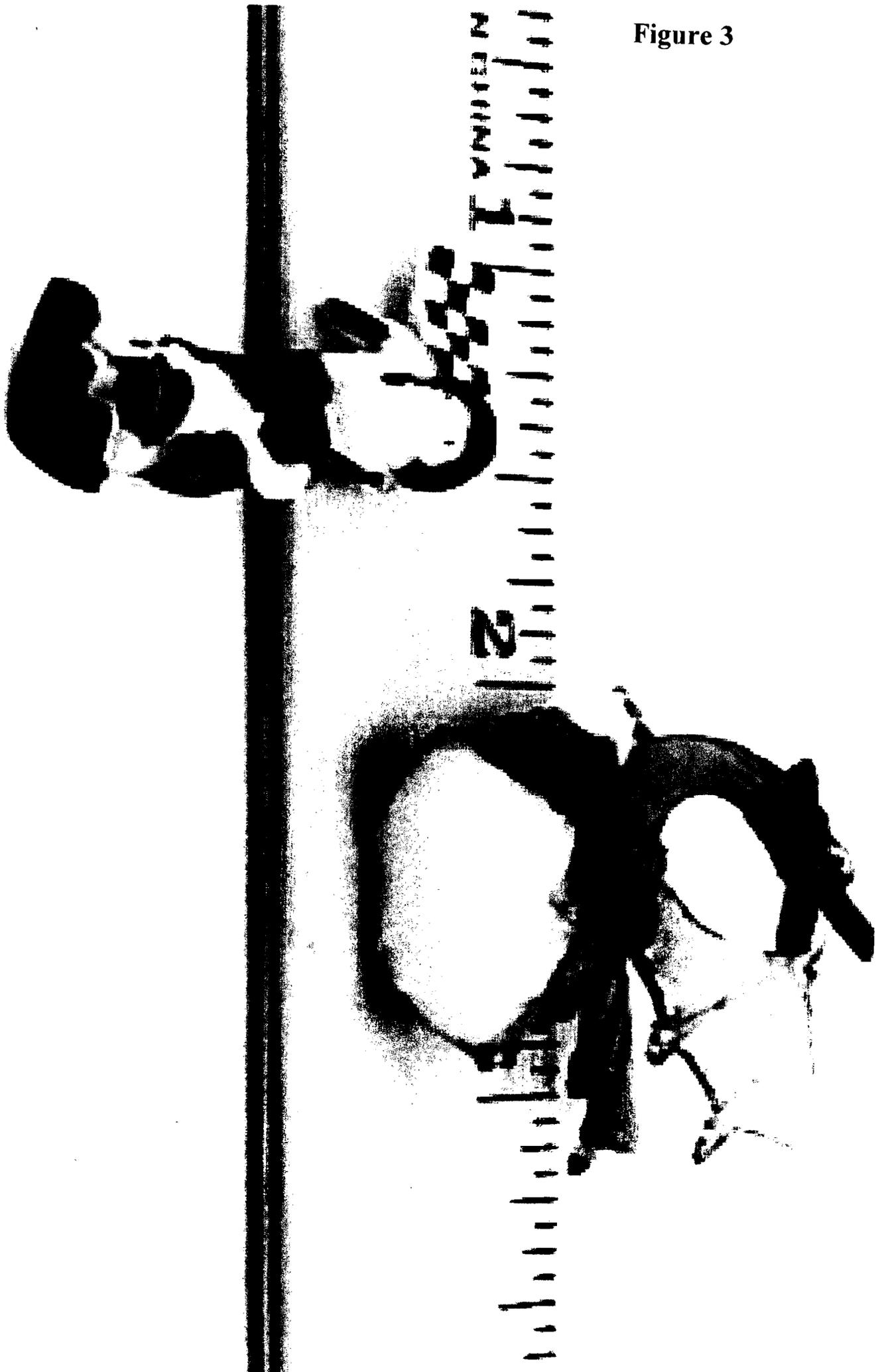


Figure 4

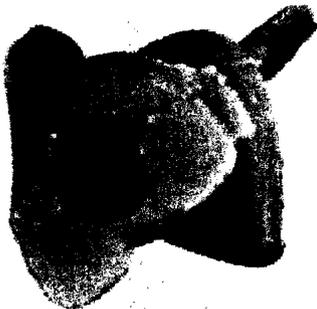


Figure 5

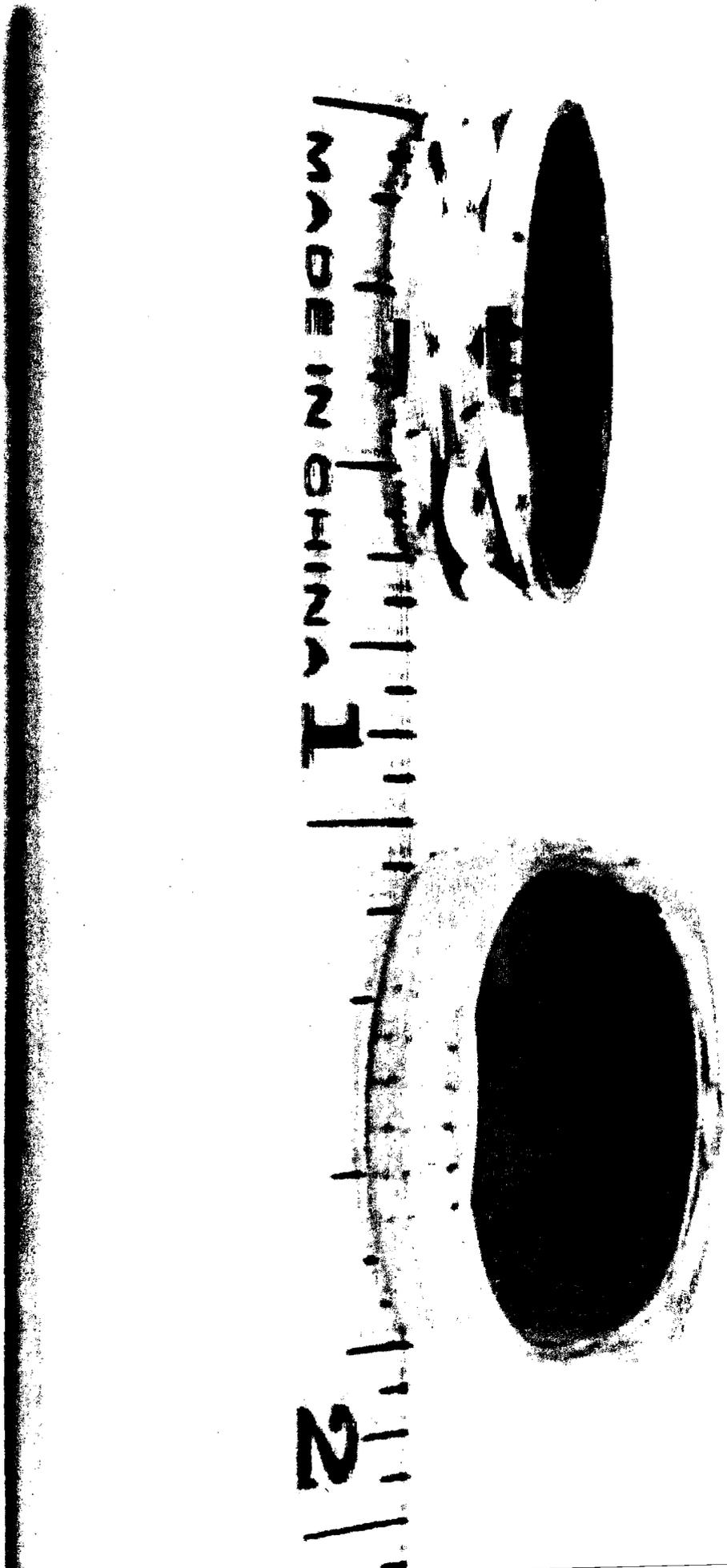


Figure 6

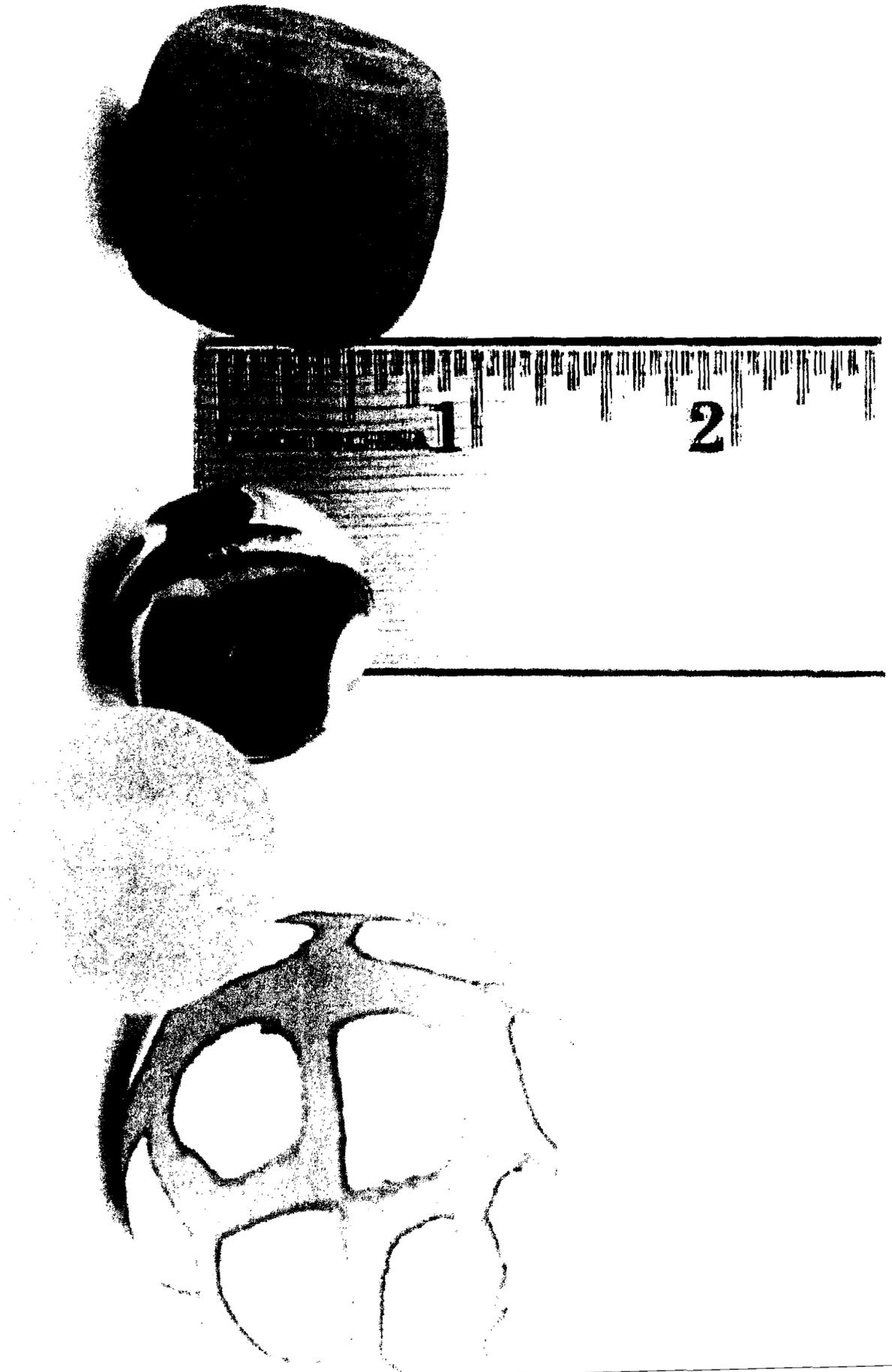


Figure 7

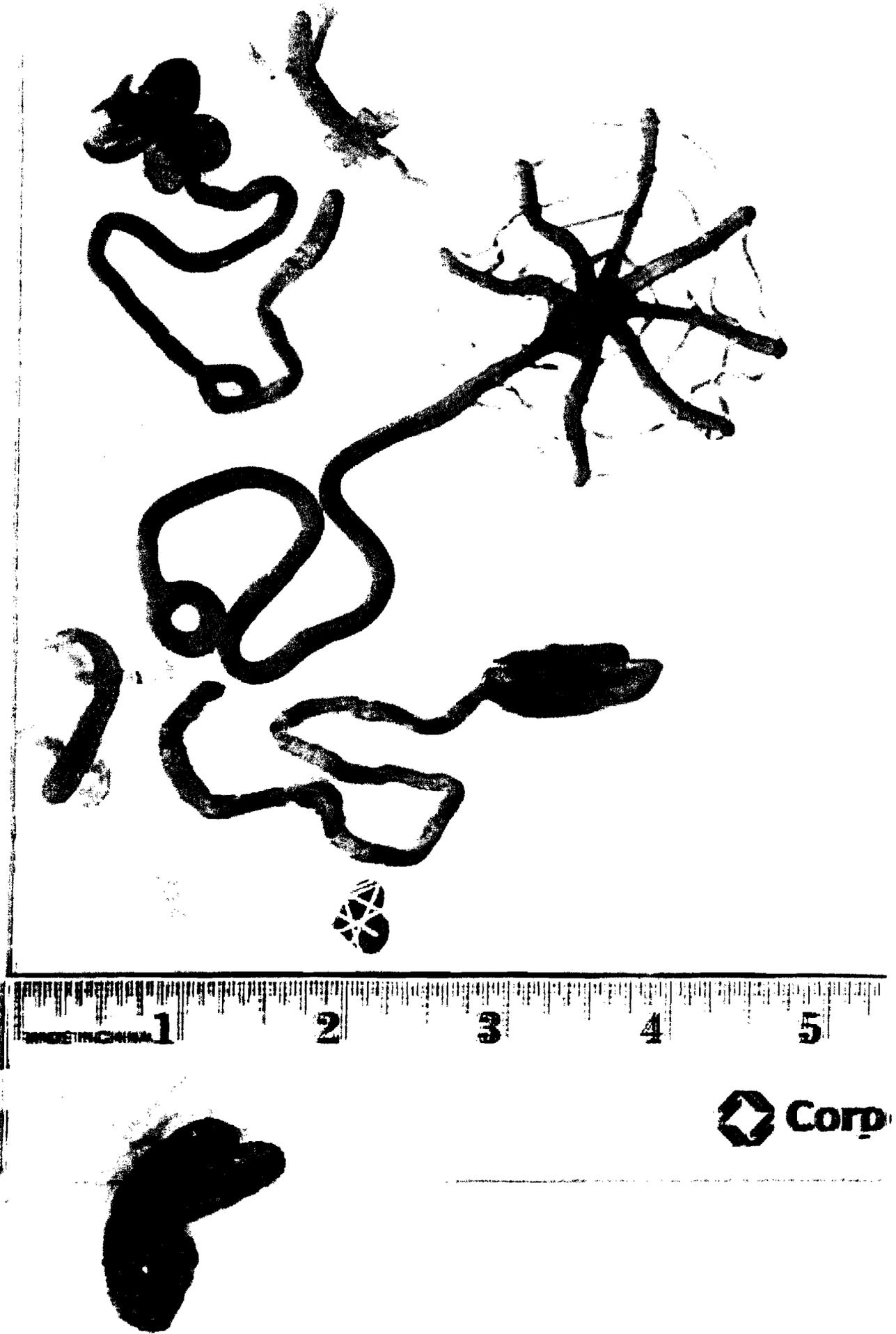
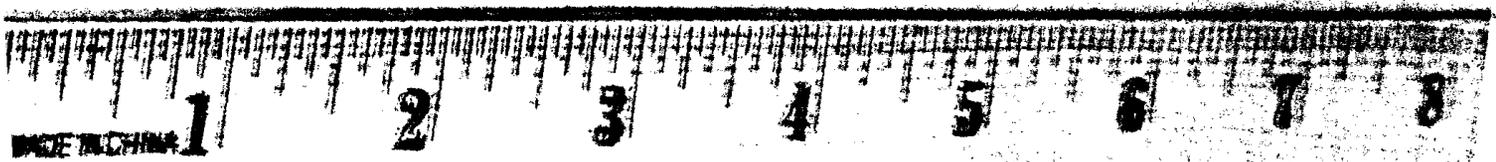
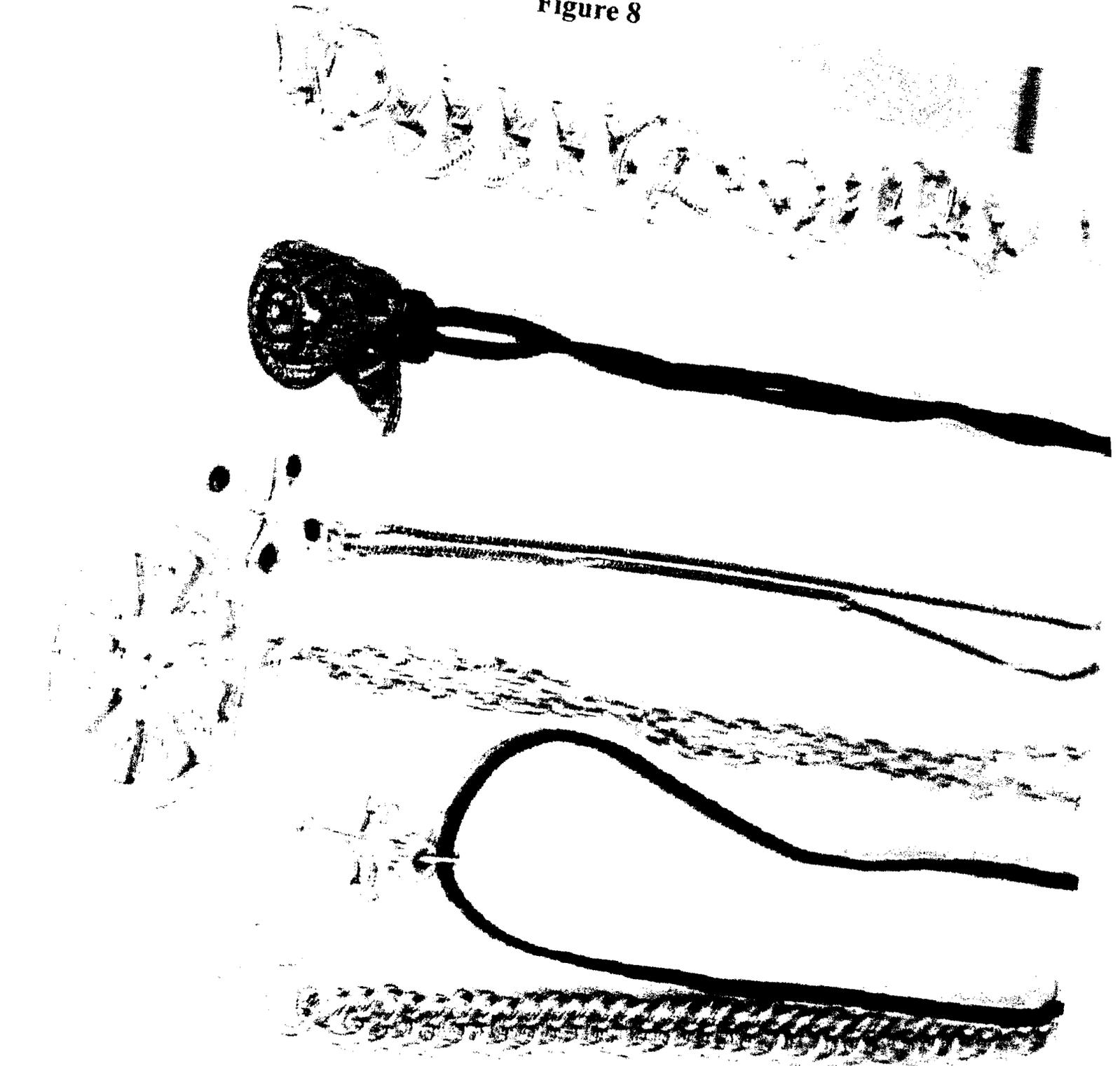


Figure 8



 Corporate Express

Figure 9

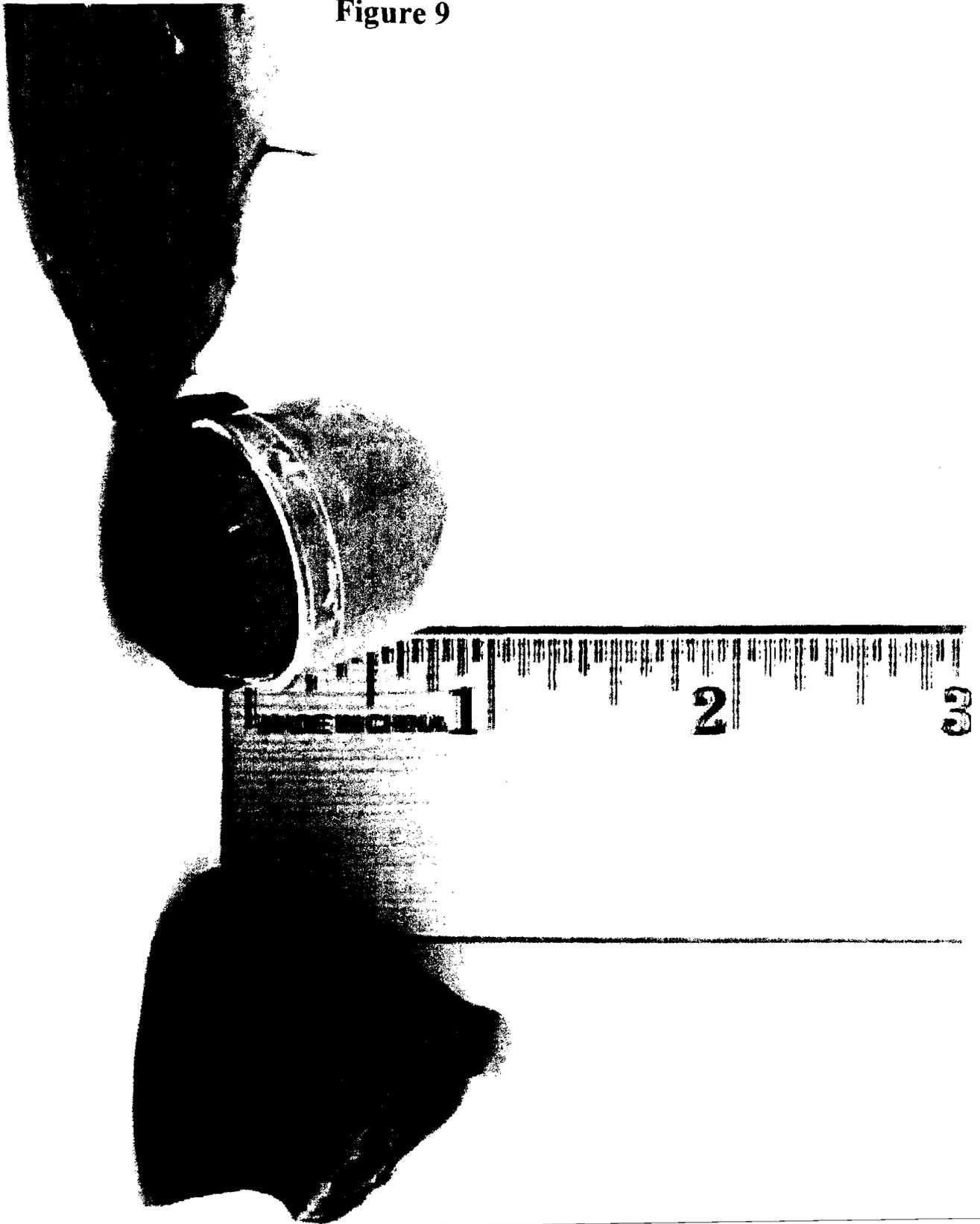
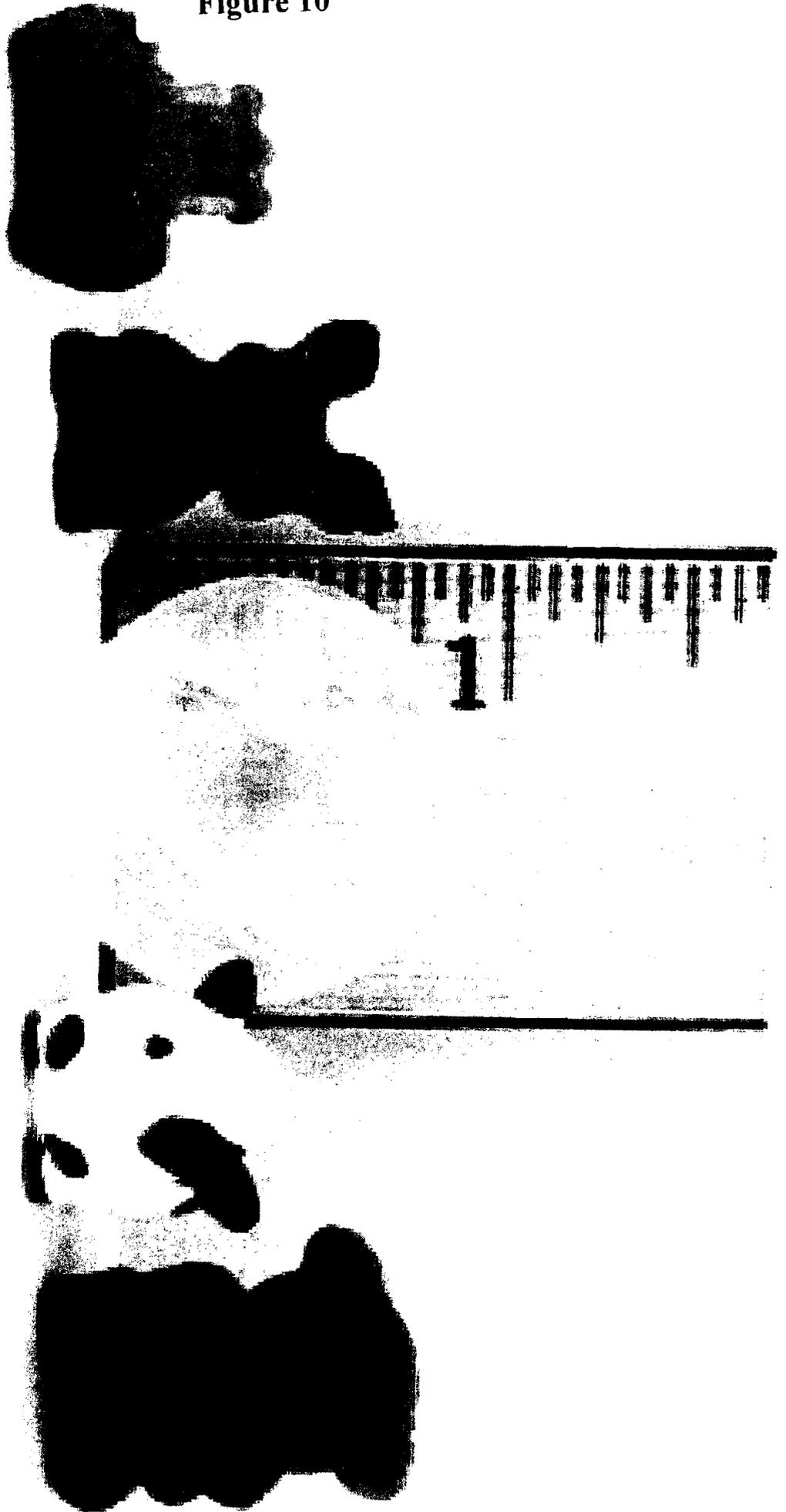


Figure 10



MINTZ LEVIN

Quin Dodd | 202 434 7435 | qdodd@mintz.com

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-434-7300
202-434-7400 fax
www.mintz.com

May 4, 2009

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

Re: Supplement to NBVA Comment on Tracking Labels for Children's Products Under Section 103 of the CPSIA

Dear Mr. Stevenson:

Please accept this supplement to the National Bulk Vendors Association's comment of April 27, 2009, in response to the Commission's Request for Comments and Information regarding Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act of 2008. 74 Fed. Reg. 8781 (February 26, 2009).

Please feel free to contact me with any questions.

Sincerely,



Quin Dodd, Esq.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

BOSTON | WASHINGTON | NEW YORK | STAMFORD | LOS ANGELES | PALO ALTO | SAN DIEGO | LONDON

OFFICERS

Randy Chilton, President
Steven Siegel, Vice President
Bernie Schwarzli, Treasurer
Mark Pogue, Secretary



"United effort for individual security"

Representing the Bulk Vending Industry Since 1950

May 4, 2009

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

Re: Supplement to Comments on Tracking Labels for Children's Products Under Section 103 of the CPSIA

The National Bulk Vendors Association ("NBVA") hereby requests that its submission of April 27, 2009, "Comments on Tracking Labels for Children's Products Under Section 103 of the CPSIA," be supplemented with the following:

If, after reviewing the main NBVA comment referred to above, the Commission determines that it would not be practicable to place a tracking label on a vended product,^{1/} the Commission should not require, in the alternative, that tracking labels or similar information on labels be placed on the vending machine itself through a display panel or otherwise.

A "display panel" is typically a piece of a cardboard that fits inside the front glass of the bulk vending machine (see, e.g., Figure 1). The display panel typically advertises the vended product that is being sold inside the vending machine to the consumer. A vending machine "operator"^{2/} purchases a display panel for the vending machine from the manufacturer upon ordering a supply of vended products. The operator will not typically order additional display panels upon replenishing the same vended product in the machine unless the display panel has been damaged.

A mandate by the Commission that would require tracking labels or similar information on labels be placed on vending machines themselves via a display panel or otherwise would be neither a permissible nor feasible alternative to placing tracking labels on vended products because:

1. Section 103(a) of the CPSIA does not provide for this alternative;
2. The legislative intent of Section 103(a) indicates low cost, disposable vended products should be explicitly and completely exempted; and
3. A requirement to place the tracking label information on each vending machine would be impracticable and overly burdensome for the bulk vending industry.

^{1/} The NBVA suggests the following definition of "vended products": "low-cost children's toys and other children's products that are less than five inches in diameter that are randomly and mechanically or electrically dispensed from a vending machine."

^{2/} An "operator" purchases vended products from the manufacturer (supplier) to service a vending machine, or a route of multiple vending machines, and is the entity with which retailers, where vending machines are located, have the primary business relationship.

NATIONAL BULK VENDORS ASSOCIATION

7782 East Greenway Road, Suite No. 2, Scottsdale, AZ 85260

Toll Free: (888) NBVA-USA ■ Fax (480) 302-5108 ■ www.nbva.org ■ admin@nbva.org

I. Statutory Language of Section 103(a)

Section 103(a) mandates that the required tracking label be placed on “the product and its packaging, to the extent practicable.” Nowhere in this provision, or in the legislative history of the CPSIA, did Congress evidence any contemplation of the placement of the tracking label in a location other than “the product or its packaging.”

Indeed, Congress and the Commission have previously required the placement of particular information on display panels on vending machines in other statutes and implementing regulations, but did not do so here. For example, Section 24(a)(1) of the Federal Hazardous Substance Act (“FHSA”) explicitly requires certain labeling information (*i.e.*, the small parts warning label) be placed on vending machines for “bulk sales of such toys or games when unpackaged.”^{3/}

Congress did not include similar language or requirements in Section 103(a) of the CPSIA, nor did it contemplate such being required by the CPSC. As stated in our April 27 comment, the legislative history of Section 103(a) indicates that Congress intended exemptions to be granted where the placement of tracking labels is not practicable due to the small size of the product.^{4/} Thus, since Congress, understanding that it could have required the same information be placed on vending machine display panels, intended there to be a complete exemption for these types of consumer products and their dispensing mechanisms because it is not, in fact practicable - in any sense of that word - to place such labels on vended products, their dispensing capsules, or on the vending machines themselves.

II. Legislative Intent of Section 103(a)

As the legislative history of Section 103 indicates, Congress intended the tracking label mandates of Section 103(a) to both assist the Commission in locating the manufacturer of a recalled product and to ensure that consumers have access to sufficient information to ascertain whether or not the products they purchased are subject to a recall.

With respect to the first objective, *i.e.*, better enabling the CPSC staff to ascertain the manufacturer of a recalled product, a determination by the Commission that would require the tracking label information to be placed on a vending machine would not enhance product traceability because the CPSC compliance staff has historically been able to readily locate manufacturers of vended products. As is the current practice, the manufacturers (suppliers) typically print their contact information on display panels on the vending machines (see, *e.g.*, Figure 2). Many vending machine operators also place their contact information on the machines. In addition, the retail stores where vending machines are typically found maintain vending machine operator information that can be readily retrieved. The operator can, then, supply specific information about the suppliers of the vended products in specific machines.

Nor would tracking label information on the display panel of a vending machine (or anywhere else) significantly enhance recall effectiveness with respect to consumers. Vended products are low cost, disposable products (as discussed in our previous comment). In the event that a vended product is recalled, the remedy typically prescribed by the CPSC is for the consumer to simply discard the vended product.

^{3/} The packaging of any toy or game intended for use by children who are at least 3 years old but not older than 6 years...any descriptive material which accompanies such toy or game, and, in the case of *bulk sales of such toy or game when unpackaged*, any bin, container for retail display, or *vending machine* from which the unpackaged toy or game is dispensed shall bear or contain the cautionary statement...(emphasis added).

^{4/} H.R. Rep. No. 110-787, at 67 (2008)(Conf. Rep.).

Because of this fact, and due to the very low price points of vended products, it is not significant whether or not the consumer can identify the exact vended product being recalled. Since the consumer discards the vended product, the congressional intent of Section 103(a), enhancing recall effectiveness, is therefore largely inapplicable to low cost vended products. And, in any case, consumers do, in fact, have reasonable means to access the identity of the actual manufacturer, through general supplier or operator information available either on the vending machines themselves and/or maintained at the store. However, what is not readily available is the kind of comprehensive information about every vended product in every vending machine, which Congress did not contemplate nor intend for vended products, precisely because it is not practicable to do so.

III. Impracticability

A mandate or interpretation by the Commission that tracking label information, such as location and date of manufacture and lot or batch number, be placed on each vending machine display panel for all vended products inside would be wholly impracticable.

Typically, vending machine operators purchase and receive display panels for the vended product being sold inside the machine only *once* from the manufacturer (unless an existing display panel has been damaged). An operator does not generally purchase additional display panels upon buying more of the same product for the vending machine when the machine is in need of a product refill. Thus, the display panel has general information regarding what product is contained inside the machine, in addition to the manufacturer's contact information, as described above.

If an operator were required to place a display panel on the vending machine containing the cohort information for each product of a differing run, to the extent such information could even be obtained, the vending machine would have to be able to accommodate numerous display panels, each bearing detailed information about a specific product in that machine, and, it should be remembered, on machines that randomly dispense products to the consumer. This would be extraordinarily burdensome for the operator and manufacturer to do, as a vending machine would not have the surface area to accommodate numerous display panels for every product of a different run. Even if such were attempted, it would result in vastly more consumer confusion than useful information about the specific products inside the individual machines as these machines would have an ever expanding and changing array of cards and information to try and decipher on the front of the vending machines, all for a purchase of a product that costs, on average, under one dollar.

Moreover, an operator may service his machine frequently with vended products from multiple manufacturers, not just the original supplier. Thus, the operator may receive a display panel for the vended product from the first manufacturer upon the initial purchase order. However, as is typically the case in the industry, operators purchase similar products to fill the machine from subsequent manufacturer(s). Thus, the vended products are mixed from different manufacturers. Attempting to constantly and physically update display panels with additional manufacturers, as noted above, would constitute a logistical nightmare for operators and be of little, if any, benefit to consumers. In addition, please note that it would be virtually impossible to place any information for the capsule^{5/} on the display panel because the capsules in the

^{5/} Capsules are typically acorn-shaped plastic holders that serve as the delivery method for the vended product.

vending machine are likely to be from one manufacturer, while the display panel on the vending machine and vended products inside the capsules are from another.^{6/}

IV. Conclusion

If the Commission determines that it would not be practicable to place a tracking label on a vended product or on its capsule, the Commission should not require, in the alternative, that tracking labels or similar information on labels be placed on the vending machine itself through a display panel or otherwise. Section 103(a) mandates that the required tracking label be placed on “the product” or “its packaging,” and does not provide for the option of placement on the vending machine itself. Moreover, the legislative intent of the provision, to enhance product traceability and recall effectiveness, is either served by current industry practice (the manufacturer’s contact information is on the vending machine display panel) or is inapplicable due to the disposable nature of vended products. And finally, the placement of tracking label information, such as the cohort information, on each vending machine for all vended products inside would be wholly impracticable and burdensome for the industry and of little if any value to consumers in terms of recall effectiveness.

Thus, for the reasons discussed at length above, the Commission should not require the tracking labels or similar information on labels be placed on the vending machine itself.

Thank you for considering our comments. Please feel free to contact me if you have any questions on this submission.

Sincerely,



Randy Chilton
President
National Bulk Venders Association

^{6/} There are manufacturers who sell their domestically produced capsules to competitors in the industry. The buyers of these capsules then place their manufactured vended products inside. This routine mixing and matching of capsules and products, from multiple manufacturers, would make displaying all product information highly impracticable if not functionally impossible.

Figure 1

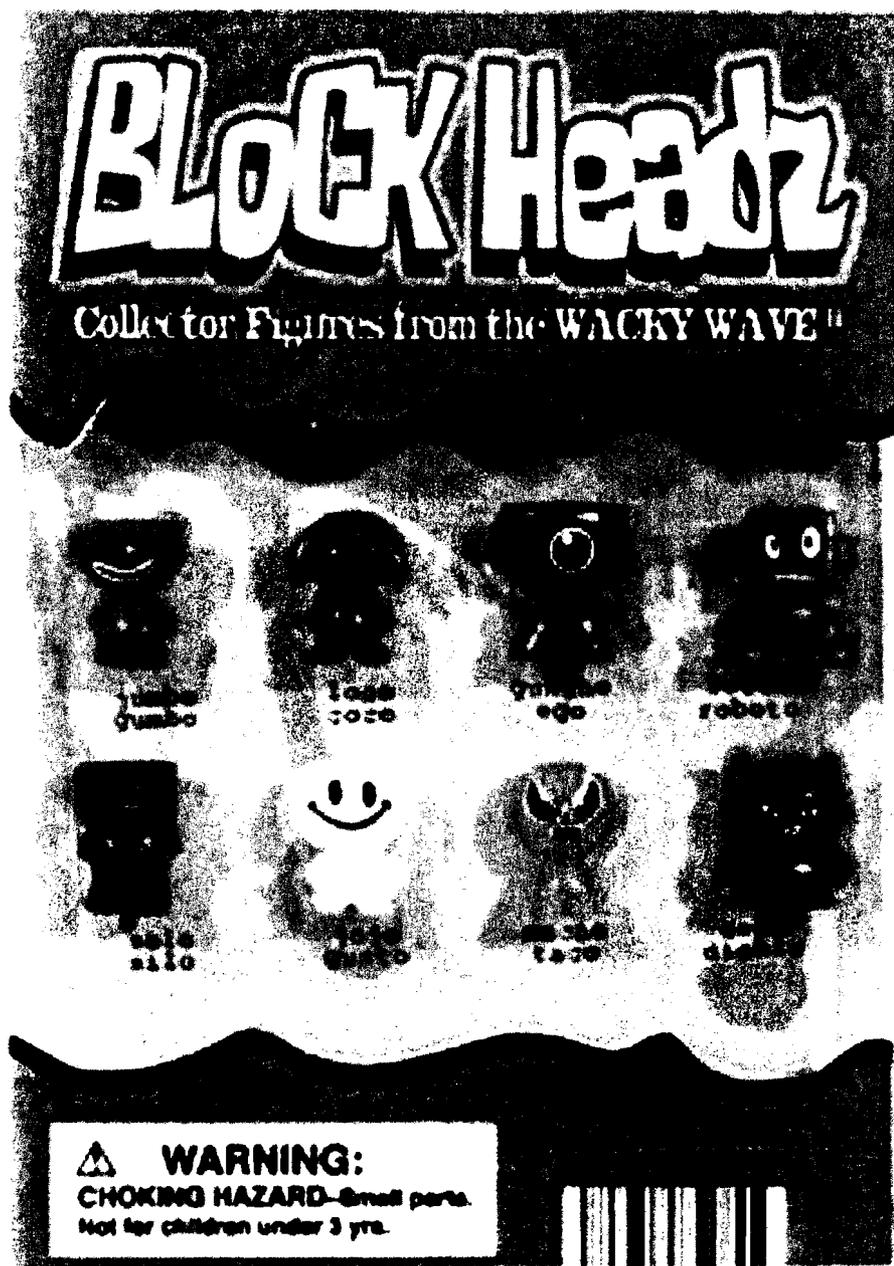
Actual Vending Machine Displays



Actual size 5" x 7"

Figure 2

Actual Vending Machine Displays



Contact Information

Actual size 5" x 7"



2009-0010-0105

106 Corporate Park Dr Suite 409
White Plains, NY 10604
914-269-2500 fax: 914-269-2499

April 27, 2009

**“TRACKING LABELS FOR CHILDREN’S PRODUCTS UNDER SECTION 103 OF THE CPSIA;
REQUEST FOR COMMENTS AND INFORMATION”**

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

Dear Sir:

We would like to thank you for providing MAM USA the opportunity to participate in the decision making process of section 103 from the perspective of a manufacturer. Our brand “MAM” is one of the leading international suppliers of pacifiers and bottles in the US market for the past 25 years.

As a European based manufacturing company and supplier of baby care items in the premium price segment we have the ultimate interest in assuring the highest quality products go to market. It goes without saying that all our products are in compliance or exceed all applicable worldwide standards and regulations.

Our parent company CEO, Mr. Peter Roehrig is in a leading functionary of the European standardization group (Convenor of CEN TC 252 WG 5 feeding drinking sucking and similar functions) and as such is deeply involved in all health- and safety related issue regarding our product groups.

We internally discussed your questions with our technical experts and colleagues from QA and hope you find our response helpful.

With kind regards

Michael J. Tedesco
CEO
MAM USA Corporation

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.

*For all of our products it is definitely not practicable to put consumer-readable tracking labels on the product itself. Due to the small size of many of our products, it is moreover impossible (not only not practicable) to put tracking information on the product which is big enough that they are readable for the consumer. Also the use of electronically readable tracking information is impossible or not practicable for these products (for more details see answer on question 5). Printing is not possible on silicone parts (e.g. our bottle-teats). Moreover we cannot use printings on many of our products due to food- and/or saliva-contact reasons. Also the use of RFID chips is not possible for our products. Most of our products are sterilized by the consumers in the microwave, which would definitely destroy any RFID chip (and moreover would represent a flammability hazard). The only (theoretically possible) way of putting tracking information on our products would be a laser coding system. But with such systems there would be significant restrictions according readability and size of the labeling (not sufficiently readable by consumers). Moreover most of our products (like pacifiers, baby bottles, feeding nipples, teethers, cups, ...) will be boiled, washed, sterilized, etc, so every coding on the surface will become unreadable after some time!
With respect to the cost argument, tracking labels on the product itself would only be practicable for products with a retail price of over 100 USD.*

Considering all the points mentioned above, tracking labels for our products are only practicable (and possible) on the packaging.

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

For the manufacturer it would be even easier, more efficient and possibly even more accurate to use their own nomenclature instead of a standardized one (it is imaginable that the manufacturer wants or needs to include information which can’t be represented by the means of the standardized nomenclature...).

b. Other business considerations relevant to tracking label policy.

If a standardized nomenclature would be required, manufacturers would need to establish a separate coding system for products shipping to the US-market. If an individual nomenclature is allowed, it is possible for the manufacturer to use the same coding system for worldwide deliveries. Therefore a standardized nomenclature system would increase the costs per product for implementation of the labeling requirements.

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.

If the content of the required labeling is defined, this would be in any case sufficient for the consumer to identify recalled items. The use of standardized nomenclature, appearance, and arrangement of the information would not increase the consumer’s

utility of the labeling requirements, but would cause higher implementation costs and would require longer lead times. Therefore it would be more advantageous to establish labeling requirements without standardized nomenclature, appearance, and arrangement of information.

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 would not make any difference for us whether the information is placed in English language or with using a predefined alpha-numeric code. Nevertheless to place the information in English language would make it easier for the consumers to read the information (they won't need to "translate" the information using a public available key). Therefore we would suggest placing the information in English.

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.

For our products electronically readable tracking information would in no way offer any benefit to the consumer. Because of the needed technology for reading such a coding, it would be very hard or even impossible for the consumer to access the underlying information. Moreover all technologies we can think of for including tracking information in an electronically readable form are not practicable for our products. Whether they are impossible to place on our products or they would significantly increase the manufacturing costs and therefore the consumer price of our products.

For example the 2D-Datamatrix-Code which is suggested in the EU-study (which is referenced in the comment request), can only be placed on our packaging. It would be impossible to place such a Datamatrix-Code on our products. This is because of the following points:

- *The needed contrast for reading such a Datamatrix-Code can not be established on the used plastic materials of most of our products*
- *The minimum size which is required for placing such a code on plastics is too large for some of our products*
- *Most of our products have only very small or even no plain surface (due to design reasons our products consist of curved surfaces). To keep the Datamatrix-Code readable it must be placed on a nearly plain surface (because otherwise the scanned picture of the code would be distorted).*
- *We are offering products with a very unique, premium design. Placing noticeable markings / codes on our products would significantly disturb this unique design, which would probably lead to a decrease in our sales.*
- *Even on the products where a 2D-Datamatrix-Code would be possible (product big enough; even surface; sufficient contrast with laser achievable), we don't see any substantial benefit for the consumer, as the opportunity cost of decoding the information would be higher than the value of our products.*
- *For the trade tracking label information on the product is not of any benefit, as they anyhow have the packaging. Moreover, if there is a recall the trade will not take the legal responsibility and cost to differentiate between good and bad (e.g. by*

checking the tracking labels) – they will just send everything back to the manufacturer.

For example RFID-chips: Here the costs for implementing such a system would be extremely high. Using such a system for our products would result in an increase of the consumer price of about 20 to 60 % (depending on the product). Moreover most of our products will be sterilized in the microwave by the consumers, what will definitely destroy any RFID chip (and would represent a flammability-hazard).

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.

*At the moment we are not producing privately labeled products for the US market. Nevertheless we would like to comment this question as follows:
Who manufactures a product can be a very valuable trade secret. The company which is outsourcing the production is interested in not disclosing its sources to the competition. A brand manufacturer is interested in not disclosing that it sells private label as well. This information should only be accessible to the CPSC in the case of a recall. For the consumer only the company which takes responsibility for the product in the US is of real importance, which is the domestic manufacturer or the importer.*

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

The needed lead time heavily depends on several factors which are not defined yet (e.g. size and required readability of the code, electronically readable or not, format of the code, ...). Therefore a reasonable estimation of the needed lead time is not possible at the moment. But due to our high variety of different products (which would probably lead to the need for different application technologies for the tracking label information) and the needed implementation of the prescribed coding format into our existing systems, we would estimate the required lead time for tracking label information on the product itself with 18 to 24 months.

Putting a code with a prescribed format onto the packaging of the products would be significantly less problematic, but nevertheless would require at least a lead time of 12 months for implementing the prescribed coding format into the existing systems in our factories. To date we are using several different methods of applying the production date and lot number on the packaging of our products, e.g. printing, laser coding, embossing. Therefore every system would have to be adopted or even replaced to comply with the CPSIA.

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

We can provide a short example on how tracking labels are handled in aviation. There the EASA (European Aviation Safety Agency) requires a seamless tracking system for every single part of an aircraft, starting at the manufacturer of the part and ending with documentation of the dismantling from the part at the end of its lifecycle. A very complex (and costly) documentation system is used to ensure this. But even in this very security-sensitive domain, not every single part needs to be labeled itself (of course there are some parts for which this is required, but by far not for all parts). They differentiate for which parts this labeling makes sense and for which it does not.

Therefore such a differentiation should also be done for all products which are subject to the CPSIA legislation (e.g. tracking labels on the product itself only for products with a retail price of more than 100 USD; no tracking labels for small products; ...).

2009-0010-0106



April 27, 2009

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

To whom it may concern:

Comments on "Notice of Inquiry: Tracking Labels for Children's Products under Section 103 of the Consumer Product Safety Improvement Act."

The Specialty Graphic Imaging Association (SGIA), representing the interests of those facilities engaged in the production of children's products through screen printing and digital imaging technologies, including the associated supplier base, offers the following comments on the Commission's Notice of Inquiry. As a provider of children's products, the SGIA remains committed to working with the CPSC to develop a system that will allow the public to identify and resolve any problems regarding a specific product. We remain concerned that there is insufficient time to fully digest all input received on this matter and to create a thoughtful and meaningful tracking label system that addresses all the concerns throughout the supply chain. We offer the following comments to both highlight the difficulties to those within our industry sector regarding implementation as well as elements of confusion that may result at the consumer level.

We request that the Commission vote to implement an emergency stay of enforcement for the tracking label provision contained in Section 103 of the CPSIA for a full year, until August 14, 2010. Delaying the enforcement of the tracking label provisions will ensure an orderly transition through the development of a harmonized approach that can be implemented throughout the supply chain. Further, we believe that for a tracking label system to be truly effective, all elements of the supply chain must be educated and understand their roles and responsibilities. Only through systematic implementation will the tracking labels be able to truly facilitate a recall system that is transparent to the ultimate consumer.

Even though the legislation specifically indicates that the labeling provision would only impact those products manufactured on or after the August deadline, SGIA recommends that any policy issued by the CPSC strongly reiterate this position so as to alleviate confusion both in the marketplace and by the manufacturer.

The remainder of our comment addresses the questions raised by the Commission in their Notice of Inquiry.

1. Conditions and Circumstances that should be considered whether it is practicable to have tracking labels on children's products.

As the provisions of the CPSIA apply to all children's products, regardless of size of firm producing said product, the ability to physically attach a label, whether by hang tag or imprinting, to all products is not feasible. For example, a small screen printing facility produces twenty t-shirts for a local church function. The shirts are to be worn by children during an athletic event. Or, a retail shop imprints a design onto one shirt that will be worn by a child. In both instances, the shop in question is performing a value added service and producing a children's product. At this time, short production runs generally do not private label nor do they include batch or run numbers or other identifying characteristics. In determining the feasibility of implementing the tracking label system, the CPSC needs to consider the impacts such a system would have on these value added supply chains. And more specifically, to those small businesses that would be required to implement tracking systems. Any tracking system developed must be easy to implement and understand for the small manufacturer.

Further, SGIA does not see the value in requiring tracking labels for all children's products. It is simply not practical for facilities producing small production runs as well as products that are uniquely created to develop a tracking label system for each final product. We ask the CPSC to explore the feasibility of allowing the use of the general conformity certificate to meet the requirements of a tracking label for short or small production runs of children's products. This certificate will be required for all shipments of children's products with no exceptions. In reviewing the information requirements for the general conformity certificate, the date and place of manufacture is required. Use of this certificate provides the needed transparency as well as ability to track a product if recalls are necessary. And, since the certificate should be available electronically, consumers would have access to this information.

2. Compliance Issues and impact on manufacturers and other business considerations

Currently, the CPSC's tracking label initiative is a "one size fits all approach." Tracking labels for apparel items should differ than tracking labels affixed to toys or large stationary children's products. Additionally, the approach taken for short run productions and one of a kind children's products needs to be fully addressed.

As stated above, SGIA strongly believes that the Commission should seek alternative means of implementing the tracking label provision for small production runs of children's products.. Imposing tracking label requirements would cause an undue economic burden as well as an unnecessary reporting burden. Again, we urge the CPSC to consider the use of the electronic certificate for smaller operations.

3. Provision of tracking information in languages other than English or through alpha-numeric codes.

SGIA recommends that all tracking label information be provided in English. This is a requirement for the general conformity certificate and should be carried through to the tracking label provisions.

4. Electronic Tracking Labels

For the entire printed apparel market, including short runs, the use of electronically readable forms would not be appropriate.

5. Private Labeled Products

SGIA supports the use of the internet to make information publicly available.

6. Amount of Lead Time Needed to Comply with Marking Requirements

As previously stated, while the CPSIA states that products manufactured before the implementation date are not affected by this provision, it is imperative that the Commission include a definitive statement addressing this issue in any policy or guidance issued on tracking labels. Inclusion of a statement will establish clear policy in the marketplace.

Implementation of any new system within the manufacturing process requires time. SGIA recommends that the Commission provide a twelve month implementation time frame to allow manufacturers to both assess and implement possible changes required as a result of any guidance issued.

Conclusion

The Specialty Graphic Imaging Association appreciates the opportunity to provide comment on this important implementation aspect of the CPSIA. If judiciously applied, we believe that this provision can play an important role in facilitating recalls as well as consumer education. We urgently request that the Commission vote on the request for a stay of enforcement as proposed by the National Association of Manufacturers in their letter of March 24, 2009. A "one size fits all" approach for tracking labels does not take into account the vast array of children's products nor the manner in which they are produced. Additional time allows the Commission to truly craft a workable tracking label system.

Thank you, and if you have any questions regarding our comments, please contact me directly at 703-359-1313 or at marcik@sgia.org.

Sincerely,



Marcia Y. Kinter

Vice President – Government & Business Information

Stevenson, Todd

From: Stefan Roehrig [Stefan.Roehrig@mambaby.com]
Sent: Monday, April 27, 2009 3:53 PM
To: Tracking Labels
Cc: Michael Tedesco; Herfried Schwarz
Subject: tracking labels
Attachments: CPSIA TRACKING LABEL LETTER 090427.doc; 090423
_HS_Answer_Comment_Request_Tracking_Labels_CPSC_V3.doc

Dear Sirs,

Please find our comments to Section 103 of the CPSIA attached.

Best Regards,

Stefan M. Roehrig

Int. Sales

MAM Babyartikel GmbH

Lorenz Mandl-Gasse 50

A-1160 Vienna, Austria

(T) +43 1 49 141 0 (F) +43 1 49 141 404

MAM USA Corporation

106 Corporate Park Drive, Ste 409

White Plains, NY 10604

(T) 914 269 2506 (F) 914 368 2110

Stevenson, Todd

From: Marci Kinter [marcik@sgia.org]
Sent: Monday, April 27, 2009 3:25 PM
To: Tracking Labels
Subject: Comments on Notice of Inquiry
Attachments: Tracking Label comments.doc

Please find attached our comments.

Thank you
Marci Kinter
SGIA

Marcia Y. Kinter
Vice President - Government and Business
Information
Specialty Graphic Imaging Association
<http://www.sgia.org>
10015 Main Street
Fairfax, VA 22031
P - 703-359-1313
F - 703-273-2870

<http://www.sgia.org/events>

2009-0010-0107



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

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

April 27, 2009

Via e-mail

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

**RE: Tracking Labels for Children's Products under Section 103 of
the Consumer Product Safety Improvement Act:
Request for One Year Stay of Permanent Label Requirements
Due to Adverse Impact on Apparel with Imprinted Information**

Dear Secretary Stevenson:

The following comments are submitted with respect to Section 103 of the Consumer Product Safety Improvement Act of 2008. These comments concern questions raised by the Commission Staff in the *Federal Register*, Vol. 74, No. 37 of February 26, 2009.

We are requesting, for reasons of practicability, that manufacturers of children's apparel and accessory products, such as, but not limited to t-shirts and underpants, be granted a twelve-month stay from the permanent labeling requirements of Section 103. In the past several years, various clients in the children's t-shirt/underwear/accessories business have devoted resources and required their manufacturers to change production methodologies so as to replace traditional garment labels, with the result that marking information for country of origin, fiber content and

care labeling required under other federal laws is now being imprinted directly on the product.

Vendor investment in these processes will be adversely impacted by the introduction of variable printing requirements for information listed in Section 103.

In particular, we request that the Commission exempt companies in the apparel/accessory industry from having to include manufacturer address, batch and manufacturing date information in the garment imprint marking, for at least the one-year period extending to August 14, 2010, or until nine months after a general coding methodology is established by the Commission.

We also request, on behalf of various clients, that the Commission stay of the permanent marking requirement under Section 103 limit the requirements for a tracking label to the packaging or hangtags of apparel during the period of the stay. Our clients sell to many different retailers and face the prospect of having to comply with differing requirements with respect to labeling imposed on their garments by their customers. In addition, the production cycle for holiday/winter apparel lines, which will extend past August 14, 2009, is already underway; while wholesale inventories of those articles are being built up during the pre-August 14th period, with markings based on production plans from months ago, deliveries to retailers will not occur for several months. Manufacturers and importers now face the uncertainty that identical apparel manufactured before and after August 14th will be sold together in retail stores, creating the appearance of non-compliance with the requirements for garments manufactured before August 14, 2009 that are sold alongside later produced merchandise during the fall selling season.

Section 103 of the Consumer Product Safety Improvement Act, titled “Tracking Labels for Children’s Products,” reads:

(a) IN GENERAL.—Section 14(a) (15 U.S.C. 2063(a)), as amended by section 102 of this Act, is further amended by adding at the end the following:

“(5) Effective 1 year after the date of enactment of the Consumer Product Safety Improvement Act of 2008, the manufacturer of a children’s product shall place permanent, distinguishing marks on the product and its packaging, to the extent practicable, that will enable—

“(A) the manufacturer to ascertain the location and date of production of the product, cohort information (including the batch, run number, or other identifying 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 Section 103 labeling requirements require that the manufacturer be able “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.”

Manufacturers can ordinarily determine the manufacturing location through a single code in instances where multiple sources for the same product may be used; if only one source is used in production, the manufacturer will not require any information to determine the source. Likewise, Section 103 labeling requirements require that the ultimate purchaser be able to ascertain the manufacturer or private labeler. In the case of apparel, this can be accomplished through existing

marking required by the Federal Trade Commission, using the RN or WPL number. Identification of the manufacturing location then ordinarily becomes a straightforward process, known to the manufacturer/private labeller.

The Section 103 labeling requirements also require that the ultimate purchaser be able to ascertain the date of production of the product and cohort information. "Cohort information" includes the "batch, run number or other identifying characteristic." For apparel, this requirement is unclear because there is no established meaning for even date of production. It appears to relate to the particular production run, but there is no guidance as to whether this is limited to the period for cutting and assembly, or to the knitting-to- shape period, or might be identified using the print run that may better coordinate with required garment testing for children's apparel under other sections of the CPSIA.

Issuance of a stay of the permanent labeling requirement will have the salutary effect of allowing adequate time for the development of standardization in the Section 103 marking requirements. We note that, while the Commission may authorize various means for companies to provide such information, including product coding for what is often proprietary manufacturer information, even that approach establishes additional investment requirements for companies imprinting such information, particularly where there are small, multiple production runs of particular designs of licensed product, which we submit warrants there be a stay at this time.

Including such information as part of the print process involves significant cost changes in the labeling methods for apparel and accessory companies that have, in many instances, only recently abandoned use of labels for imprinting of information. Companies have been able to utilize the imprinting methodology because of the standardization of information that is imprinted in apparel, such as country of origin, fiber content and care labeling that is identical for multiple articles of apparel. Consumers prefer the imprinting because it ends the label irritation experienced by smaller children, which often resulted in labels being cut out and discarded.

Vendors have only recently invested in manufacturing changes to eliminate the use of labels in children's products and implement a printing process for previously required government information. Changing from uniform printing molds needed to meet Customs and Border Protection and Federal Trade Commission labeling requirements to molds that will require variable information, whether batch number, manufacturing dates or purchase order/production number information, and, depending on ultimate interpretation of the requirements, manufacturer name and address, without clear guidance as to the particular information that will be considered sufficient by the Commission and by the retail industry, has created considerable uncertainty as to how to proceed. Prior to the CPSIA, the needed marking was straightforward, while Section 103 will now require flexible new systems that have not previously been needed, with additional capital investment by many overseas suppliers.

For many companies, particularly our various clients producing merchandise under licenses, such as in the areas of underwear, t-shirts and accessory categories, the business model

often involves ongoing production for replenishment of store inventory. Because production cycles routinely run for nine to twelve months, from product/ print creation through fabric and materials/packaging selection, purchase and manufacturer, the industry will require more implementation time from a Commission notice in response to the current round of comments than is practicable for the multiple suppliers to change printing procedures prior to August 14, 2009.

For their goods entering production, companies with licenses often have been in the position that requires constant rotation of a series of multiple designs created for each licensed character for each particular selling season. Frequently, purchase orders allow for multiple designs to be rotated for an individual SKU. In some cases, different licensed characters may also be packaged together, potentially increasing the complexity of the required declarations. Under Section 103, disclosure of the details of multiple small production runs that are packaged together may prove necessary, depending on order flow, and the tracking label requirement will now require additional costly changes for the purposes of distinguishing between rotating small production runs for each individual design that may be manufactured on an ongoing basis during a particular selling season. Allowing a twelve- month stay will afford time for there to be adjustment of the manufacturing model and investment in upgraded marking systems, so as to attempt to minimize the complexity of required information, or, alternatively, to create systems necessary to code for it.

Issuance of a stay, even if this should need to be combined with package marking, such as sticker labeling, for the period of the stay, will also provide necessary time for agreement on

uniform coding methods by the Commission, and limit the impact of the new requirements on this year's Christmas selling season, which may be of critical importance to the economic recovery. Many garments to be sold in the Christmas season have already entered into their production cycles, which will extend beyond August 14, 2009. In light of the overall uncertainty in the methods for requirements, including multiple requirements of different retailers, an interim learning period is warranted.

We sincerely thank you for the opportunity to express comments on the Commission staff proposals.

Sincerely,

TOMPKINS & DAVIDSON, LLP

Robert T. Stack (e-signature)

Robert T. Stack, Esq.

Stevenson, Todd

From: Robert Stack [rstack@tdllp.com]
Sent: Monday, April 27, 2009 4:11 PM
To: Tracking Labels
Subject: Tracking Labels Under Section 103 of CPSIA-Request for Stay for Apparel with Imprinted Information Instead of Labels
Attachments: Tracking Labels for Children's Products under Section 103 of the CPSIA- Apparel with Imprinted Information Instead of Labels.pdf

Dear Mr. Stevenson:

Please see attached comments on the effect of the tracking label requirement on apparel and accessories for which other required marking information is being printed on the article instead of on labels attached to the article.

Sincerely,

Robert Stack, Esq,

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

The contents of this message may be privileged, under the attorney - client privilege or under the attorney work product rule. Intended recipients should keep this message in a separate folder with other privileged communications relating to the same matter. If you have received this message in error and are not an intended addressee, please delete your copy of this message and notify the sender of this.
Thank you

Stevenson, Todd

From: Robert Stack [rstack@tdllp.com]
Sent: Monday, April 27, 2009 4:52 PM
To: Tracking Labels
Subject: Tracking Labels under Section 103 of the Consumer Product Safety Improvement Act: Labeling for Sets

Dear Secretary Stevenson:

The Commission's *Federal Register* notice of February 26, 2009, invited comments on circumstances that should be considered in determining whether it is practicable to have tracking labels on products and their packaging. There are various apparel and accessory sets, examples being suits, track suits, hat/glove sets, scarf/glove sets, pants/belt sets, and skirt/belt sets, that are designed for use together. In such circumstances, the "product" required to be labeled should be considered to be the set, so that if the articles are manufactured by a single entity, only one component should need to bear a permanent label with the tracking label information for the entire set.

We also support the use of code information for this, particularly with respect to information on the package or header card, as these frequently already will have company contact information for the distributor, and consumers have become familiar with use of the packaging as the location for company contact information.

We additionally note that if the merchandise is sold with a warranty, this should obviate the need that the manufacturing information be permanently added to any of the individual components, as the warranty information with the code or detailed information relating to the manufacturer is likely to be maintained by the consumer, and the Commission should take into account company policies for the filing of warranty cards by the purchaser.

Thank you for your consideration.

Sincerely,

Robert Stack, Esq.

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

The contents of this message may be privileged, under the attorney - client privilege or under the attorney work product rule. Intended recipients should keep this message in a separate folder with other privileged communications relating to the same matter. If you have received this message in error and are not an intended addressee, please delete your copy of this message and notify the sender of this. Thank you

2009-0010-0108

Made in USA Strategies, LLC

2256 N. Upton St.
Arlington, VA. 22207

703-524-7197
jim.schollaert@verizon.net

April 27, 2009

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

PUBLIC COMMENT

Section 103 Requirements for a Tracking Label on Children's Products

This public comment submission on Tracking Labels under Section 103 of the Consumer Product Safety Improvement Act of 2008 is made on behalf of the Domestic Sock Maker's Coalition by Made in USA Strategies. Made in USA Strategies is the Washington Representative of The Domestic Sock Maker's Coalition (DSMC), a group of 25 domestic sock manufacturers. The DSMC strongly protests against the imposition of a new requirement for a permanent tracking label on all children's socks and packaging, detailing the place and date of production (including the batch and run number).

Sock Industry Particulars

First, in recognition of the impracticality of placing a label on a sock, the general requirement for placing a label directly on apparel products listing size, country of origin and fiber content, among other things, has never been extended to socks. Such information is instead placed on the sock packaging. We would not expect that the tracking label requirements of the CPSIA would be treated any different from earlier apparel labeling requirements, and would thus also exempt socks from labeling on the actual product itself.

Second, it would be a prohibitive and pointless expense to require the date of production to be placed on the label for each pair of socks, let alone the batch and run number. Socks are typically produced in large volume runs, often over several days long. Especially in the many greige mills which produce socks for various brands and labels, socks are often produced and stored in bulk and then labeled at various times as orders from various customers are filled. Labels for sock packaging are expensive, and are typically ordered in large volume printing orders for a year or more of production.

Third, since many sock brands regard their producers as commercial secret, a requirement to list the name and locality of the manufacturer on the sock label would publicize business confidential information.

Stay of Enforcement Request

If the CPSC is not prepared to exempt the sock industry at this time from this ruinously expensive and pointless tracking label requirement, at the very least, we would request that this tracking label requirement be granted a one year stay of enforcement until the CPSC is able to announce their decision on the sock industry's request for exemption from lead and other testing and certification. It would make little sense for the CPSC to announce a permanent decision to require tracking labels for children's socks if children's socks were subsequently exempted from the lead testing and certification requirements, because they are inherently lead free.

Background

The domestic sock industry has had an unblemished record for over a hundred years without a consumer product safety issue. Apart from this tracking label requirement, the DSMC has already petitioned the CPSC on February 11, 2009, to determine that socks consisting solely of textile fabric be classified as products that inherently do not contain lead, or contain lead at levels that do not exceed the lead content limits under section 101 (1) of the CPSIA. Because of the SKU-intensive nature of the domestic sock industry's many small shipments, the costs and complexity of a CPSIA requirement for a unique, detailed certificate of compliance to accompany each sock shipment would alone put most of these companies and their thousands of employees out of business, for no apparent consumer protection reason, at this time of extreme economic difficulty for the nation. A tracking label requirement, though equally ruinous, would thus add insult to injury, placing the domestic sock industry in double jeopardy.

So we have already requested an exemption from the onerous requirements of third party testing and issuance of unique and specifically detailed certificates of compliance with the new CPSIA standards for every product shipment. This exemption request remains under consideration by the CPSC. In the interim, socks currently fall under the 12 month stay of enforcement announced by the CPSC in the Federal Register on February 9, 2009 for manufacturers of products subject to an applicable consumer product safety rule.

Yet these domestic sock mills are now facing the possibility of being tasked with extremely expensive and impractical requirements for a permanent tracking label on all children's products and their packaging, effective August 14, 2009.

On January 22, 2008, the CPSC heard testimony and received evidence from textile and apparel industry representatives, and apparel retailers regarding technical and scientific information to establish that all the components used in apparel fabric production, the fiber, yarn, dye and other processing chemicals, are inherently free of lead content that would violate the limits promulgated by the CPSIA of 2008. After thousands of leading retailer and other industry lead tests using both wet chemistry and XRF spectrometry analysis, only a few children's apparel products with hard parts such as zippers, rivets, buttons or snaps failed the lead content tests.

Socks are by their nature, pure knit apparel products with no hard parts. Unusual socks which bear metal or non-textile decorations would not qualify for this exemption. In any case, third party testing of component parts would focus the testing on any unusual non fabric sock ornaments which might reveal lead content.

Over 100 sock companies were surveyed by the Hosiery Technology Center of Hickory, NC for the January 22 presentation, to determine if any sock mills detected lead in their product testing, or had lead detected in their sock mill effluent which is monitored on a regular basis according to EPA and state regulations by local sewage treatment authorities. No instances of lead detection were reported. In addition, the commercial dyeing industry was surveyed to ascertain if any commercially available apparel dyes contained lead in violation of the CPSIA standards, and no dyes containing lead were found. Since socks are the product of a consistent production process using lead free inputs, with an impeccable consumer product safety record, socks should be exempted from the 3rd party testing and shipment certification requirements of the CPSIA. The certification requirement could be replaced with the requirement of a guarantee of compliance with the provisions and standards of the CPSIA of 2008 which could be placed on each invoice or packing list for each shipment if necessary.

All material components and all processes meet the standard of the law and they have for years. Domestic sock manufacturers are subjected to a variety of tests already including strict regulation by the EPA and OSHA. There are no known findings of lead in any sock products marketed in the U.S. There is no risk of introducing non-compliant product into the marketplace because the component parts of socks, textile fibers and yarns, are lead-free. And textile apparel dyes have been free of lead content for years.

In conclusion, third party testing and certification requirements, and a tracking label requirement are potentially ruinous and pointless hardships on the sock industry as a direct over reaction to the presence of contaminated products from overseas. We believe that placing a ruinously expensive burden of proof requirement on innocent domestic sock manufacturers would be highly counter productive not only to our national economy but to the credibility of our consumer product safety regime itself.

Our domestic sock industry will continue to adhere to the highest standards of consumer product safety and we appreciate and support the mission of the Consumer Product Safety Commission. We also appreciate the difficulty that the language of the CPSIA of 2008 as hastily passed by Congress presents to the Commission. If you have any further questions about this submission, or the domestic sock industry, please contact Jim Schollaert, at 703-524-7197, cell-202-380-5039, e-mail address jim.schollaert@verizon.net. Thank you for your attention.

Sincerely

Jim Schollaert, Executive Director
Made in USA Strategies

Stevenson, Todd

From: jim schollaert [jim.schollaert@verizon.net]
Sent: Monday, April 27, 2009 4:20 PM
To: Tracking Labels
Subject: Public Coment on Tracking Labels for Children's Products
Attachments: CPSC-DSMCTrackingLabels4-27-09.doc

On behalf of the domestic sock companies in the Domestic Sock Maker's Coalition (DSMC), I am submitting the attached public comment on "Tracking Labels for Children's Products Under Section 103 of the CPSIA of 2008.

Jim Schollaert, Executive Director
Made in USA Strategies
703-524-7197

2009-0010-0109



1700 N. Moore Street, Suite 2250, Arlington, VA 22209
Phone: (703) 841-2300 Fax: (703) 841-1184
Email: info@rila.org Web: www.rila.org

April 27, 2009

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

Re: Tracking Labels

Dear Secretary:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to respond to the Consumer Product Safety Commission's (CPSC's) questions on the application of the Consumer Product Safety Improvement Act of 2008 (CPSIA) tracking label requirements. RILA proposes a stay of enforcement of the tracking label requirement until the CPSC can issue detailed guidance on how to comply and manufacturers and retailers have sufficient time to incorporate that guidance into the manufacturing process.

By way of background, RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry--retailers, product manufacturers, and service suppliers--which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

The tracking label requirement in Section 103 of the CPSIA is intended to facilitate recalls by allowing manufacturers, sellers, and consumers to quickly identify affected products. Currently, whenever a recall occurs, retailers act with an abundance of caution to remove from shelves and stop the sale of all items that are potentially subject to the recall, and then use tracking systems to identify the specific products within that possible universe that are subject to the recall. This abundance of caution helps to assure that recalled products do not end up in the hands of consumers, regardless of whether there is a tracking label on a product.

Manufacturing deadlines within supply chains have already passed to meet an August 2009 effective date for tracking labels, and retailers have already individually developed their own traceability systems to comply with the new requirement. Because the CPSC has not issued guidance on how the tracking labels should be implemented, retailers are struggling to determine whether their already developed tracking label systems will be acceptable under the law. To prevent costly and duplicative efforts that would be required if their systems do not in fact comply with CPSC guidance, RILA respectfully requests the CPSC to issue a stay of

enforcement of the tracking label requirement. During this stay, the CPSC could initiate rulemaking to clarify the elements required by law (*e.g.*, location of manufacturer, date of production, etc.). Without a stay, manufacturers and retailers must, within a short time period and with limited guidance, develop *ad hoc* tracking labels that may or may not be compliant with the CPSC's guidance. If the CPSC is unable to issue a stay, it should provide detailed guidance (yet allow "flexibility in the framework") on the requirements as soon as possible.

Practicability

The practicability of using a permanent tracking label on a children's product should be assessed by examining various factors, including size and surface area of product, the effect on the aesthetic value of the product, whether the product consists of multiple components or interchangeable parts rather than one single component, cost to add a permanent tracking label, and type of product.

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

Size and Surface Area

The size and surface area of the product are important factors when determining practicability. Certain children's products, such as children's earrings and small building blocks, may be too small for a permanent tracking label. This is especially true when the label must represent information including dates, locations, and batch numbers that might make the label too long to add to a small product and still be legible for the average consumer even when using an alphanumeric code rather than full text language. The surface area of the product might prohibit the use of a permanent tracking label. For instance, a hair band may be large enough to wrap around a wrist but the width of the band is too narrow to allow the use of a tracking label. This may also be true for toys with small intricate parts such as jacks.

We believe it is Congress' intent to use size as a determining factor when deciding if it is practicable to use a permanent tracking label. House Report 110-510¹ states that "[i]n determining the feasibility of placing distinguishing marks on products--as opposed to their packaging--the Committee expects that manufacturers will give primary consideration to the

¹ THOMAS (Library of Congress). House Report 110-501 - CONSUMER PRODUCT SAFETY MODERNIZATION ACT. 14 April 2009 <http://www.thomas.gov/cgi-bin/cpquery/?&dbname=cp110&sid=cp110UnfB8&refer=&r_n=hr501.110&item=&sel=TOC_96719&>

product's size.” The report uses children’s building blocks as an example of an item that would require a label on the container but not the individual blocks. The report compares this to a crib, which is large enough to have a tracking label on the crib itself. Additionally, it should be sufficient under Section 103(a) for manufacturers to place an appropriate mark on the main component of the toy if one exists, the most practicable large component, or the component that the manufacturer believes a consumer would look to in the event of a recall. For example, it would be sufficient to mark any container that the consumer would normally keep, an electronic component or other singular part of a product set (and not each part). It is generally recognized that many products may stay with their original packages. In this regard the packaging should also be considered part of the “product”.

Aesthetic Value

The aesthetic value of a product is also of interest when determining practicability. Jewelry is defined as an object worn for personal adornment². It is meant to be displayed, and the surface area and size of the product is such that adding a tracking label would mar the aesthetic value of the jewelry. Adding a tracking label to an item meant to have decorative value will detract from the aesthetic value of the product. This would be different from adding a tracking label to the permanent tag of a shirt because the tag remains hidden while the shirt is worn.

Multi Item Sets and Interchangeable Parts

Another factor that would affect practicability of using a permanent tracking label on a product is whether the product is a component of a multiple item set or an item with interchangeable parts. Examples of multiple set components include building blocks, board games, and bathroom accessory sets. A sippy cup with a removable lid is an example of an item with interchangeable parts.

The components of a multiple item bathroom accessory set, such as a soap dish or toothbrush holder, are large enough to each accommodate a permanent tracking label. It is likely that these items are also available for purchase individually from the set, so it would be important for each individual item to have its own tracking label for cases where the soap dish from the original set breaks and is replaced by a matching soap dish purchased separately. In the event of a recall of the replacement soap dish, it would be important for each item to have a tracking label so the consumer would be able to identify the specific product subject to the recall.

Conversely, multi-item sets that do not contain components that may not be individually sold do not need to contain tracking items on each separate component. For example, the components of a board game do not need individual tracking labels because it is practicable for the main game board and box containing the game to have tracking labels. The size of the individual game pieces can be very small and may prohibit the use of a tracking label on each piece. The individual pieces do not have a function outside of playing the game; therefore, the board and game pieces are likely to be kept together because they are purchased together in a box and are not readily available for purchase separately. In the event of a recall of one of the game pieces,

² Merriam-Webster Online. 14 April 2009 <<http://www.merriam-webster.com/dictionary/jewelry>>

for example, the consumer would be able to look at the accompanying game board for a tracking number that represents the particular game piece at issue.

The U.S. Country of Origin Marking Requirements³ allow exceptions from labeling for products where marking the container would reasonably indicate the country of origin. The CPSC should adopt this exception for children's products with permanent packaging or a main component intended to remain with the products. Some examples of these types of children's products include Lincoln Log sets and the accompanying packaging (the packaging would be labeled, but the logs would not be labeled), or farm kit with a barn and animal accessories (barn would be labeled but the animals would not be labeled).

Cost

The cost incurred to add a permanent tracking label to a product may also be a factor in determining practicability. For example, fine diamond jewelry can be micro-engraved or laser imprinted with a code that would help locate the owner if stolen jewelry is recovered. One could argue that if a small ring can be engraved, a small toy can also be engraved. This, however, might not be practicable because the expense of a diamond ring would compensate for the costs to micro-engrave the ring. A toy manufacturer might not be able to afford a micro-engraving or laser imprinting process.

Another cost factor to consider is the expense associated with mold changes. Recurring date and lot code changes would require a new mold or re-tooling of an existing mold for each product. The repetitive mold changes could, in many cases, exceed the cost of the actual product thus making it prohibitive for the manufacturer to produce the product. The U.S. Country of Origin Marking Requirements⁴ allows exceptions from labeling of products that "cannot be marked prior to shipment to the United States except at an expense economically prohibitive of its importation." A similar argument should be made for the labeling requirements of the CPSIA. Some examples of these types of children's products include an inexpensive plastic ball or action figurine.

The type of product would also affect the practicability of adding a permanent tracking label. The Textile Products Identification Act⁵ exempts certain products from labeling requirements directly on the product based on the type of product. For instance, socks do not need to have a permanent care label under this Act; therefore, we contend the information required for the label can be on the package instead. Moreover, a requirement to add a tracking label to socks could make the socks uncomfortable or aesthetically unappealing to consumers.

³ 19 CFR 134.32-134.33

⁴ *Ibid.*

⁵ 15 U.S.C § 70

Standardization

House Report 110-501⁶ reminds us that the purpose of Section 103 is to help ascertain the identity of the manufacturer in the event of a recall. This need was brought to light in the summer of 2007 during the recall of more than a million children's products. The Committee on Energy and Commerce observed that several manufacturers had difficulty determining the location of manufacture for the recalled products, which made it difficult to determine the origin of the products and the source of the problem prompting the recall. We hope the CPSC can provide clarity on defining the requirements of Section 103, recognizing also that flexibilities need to be built into the framework to accommodate the wide variety of products subject to the requirement.

The CPSC should take into consideration defining certain key terms in Section 103. For example, the CPSC should allow companies to use country codes that are already acceptable to comply with Customs and Border Protection (CBP) or Federal Trade Commission marking rules, such as in CBP regulations at 19 CFR § 134.45.

The CPSC should clarify that the date requirement allows for a date range during which the product was made. For example, "date of production" could encompass several different dates within the production process. In Congressman Dingell's comments on H.R. 4040, he states that "[t]he Committee intends for this provision to aid in determining the origin of the product through the supply chain and the possible cause of the recall⁷." Congressman Dingell goes on to say that the date requirement should not be interpreted as a daily date change, but instead may indicate "a period of time if such label will accurately identify the product in the event of a recall⁸."

Location of the tracking label on the product itself should be left up to the manufacturers; it will not be feasible to create a standardized location for the placement of the tracking label on the product because children's products subject to the requirements of the CPSIA vary from baby bottles to cribs to tricycles. It would be difficult if not impossible to identify one particular location for the placement of tracking labels, and manufacturers should have flexibility to determine the appropriate location for a tracking label, such as in the vicinity of the Country of Origin markings or on the care label of an apparel product.

Business Proprietary Information

The CPSIA tracking label requirement indicates that the ultimate purchaser must be able to ascertain either the manufacturer or the private labeler. Many companies are concerned that a tracking label should not require business confidential information (such as confidential factory information) to be disclosed to competitors. The CPSC should require manufacturers to provide

⁶ THOMAS (Library of Congress). House Report 110-501 - CONSUMER PRODUCT SAFETY MODERNIZATION ACT. 14 April 2009 <http://www.thomas.gov/cgi-bin/cpquery/?&dbname=cp110&sid=cp110UnfB8&refer=&r_n=hr501.110&item=&sel=TOC_96719&>

⁷ Honorable John D. Dingell. Speech in the House of Representatives. Congressional Record Full Text for the 110th Congress. 19 December 2007. Page 2668.

⁸ *Ibid.*

information to facilitate a recall, but companies should not be forced to reveal proprietary information, such as the name of the foreign manufacturer. 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.

Section 103(a) of the CPSIA, amending Section 14(a) of the Consumer Product Safety Act, does not mandate disclosure of a *foreign* manufacture. 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 U.S.* 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...)”

Meanwhile, disclosure of foreign manufacturer name to a purchaser does not in any way facilitate a recall. A good solution to facilitate recalls is to allow an alphanumeric code that could help consumers easily identify products affected by a recall. Retailers are willing to provide proprietary information to the CPSC, provided it is accorded proprietary treatment, but to publicly reveal that information would undermine companies’ competitiveness.

Alpha-Numeric Codes Should Be Allowed

Congress intended Section 103 to provide a consistent method by which to identify manufacturing information in the event of a recall. In the interest of keeping the tracking labels as short as possible, and subsequently making use as widespread as possible, we suggest using an alpha-numeric code rather than full-text language.

An alpha-numeric code will provide manufactures a flexible approach to complying with the tracking label requirements. Children’s products covered by the CPSIA vary in many ways, including shape, size, materials, and manufacturing process. Requiring a regimented full-text language format for tracking labels may make the use of such labels prohibitive for certain industries. For instance, the baby pacifier manufacturer will not have as much leeway with using a full-text language tracking label on their product as a crib manufacturer may have. On the other hand, any manufacturer, if given enough flexibility within the requirements, will be able to create an alpha-numeric code to represent the required information. The manufacturer could provide guidance for interpreting the code either on the product packaging, an insert card accompanying the product, on the manufacturer’s website, or by contacting the seller and/or using seller’s customer service 800 number.

Technology in Traceability

As noted earlier, the CPSC should not mandate uniformity in how companies comply with the tracking label requirement. Identifying unsafe products before they enter the stream of commerce is key for retailers, and as a longer term solution, some companies may choose to use technology such as an Electronic Product Code (EPC) for certain product traceability. When practicable, the use of technology to locate non-conforming products while they are in transit

would enable manufacturers and sellers to remove such products prior to their arrival at the store for available purchase.

Existing technology, such as RFID, bar codes, or QR codes that are compatible with EPC, would enable manufacturers to code much more information to the product than would be identifiable in an alpha-numeric code, such as: (1) origin of the product; (2) manufacturer's name; (3) components of the product, depending on product type; (4) notice of use, which could be written in the language of the seller's area; (5) address of the company in charge of collecting consumers' claims; (6) safety information; and (7) conformity of the product with intended use.⁹ Such information also could be included in an electronically readable form such as optical media (CD or DVD).

Companies choosing to use this type of technology for certain products could have additional benefits as well, including counterfeit verification, which would be extremely beneficial to consumers outside of product safety concerns. In addition, such a system could be eventually expanded to general consumer products (possibly even food and pharmaceutical items).

To alleviate customer privacy concerns, the microchip could be made to have a two-part antenna, and one part would be removed at point-of-sale, thus rendering the second part (embedded in the product) useless unless it is held up to the RFID reader directly. Alternatively, a kiosk could be set up in the store where customers, after they have purchased the product, could take the product and deactivate the embedded RFID chip, making it only readable if it is held directly against the RFID reader.

Private Label Information for Consumers

The seller of a private label product should be able to provide manufacturer information of a recalled product to the consumer electronically via the internet, through the use of a toll-free hotline number, or at the seller's place of business. The consumer should be able to call a toll-free hotline number provided by the seller and have the seller identify pertinent manufacturing information. Finally, manufacturer information for recalled products should be posted on the recall poster already required by the CPSC.

Implementing Guidance for Tracking Labels

After guidance is issued, a lead time of approximately eighteen (18) months would be needed for compliance. Potentially affected product is manufactured many months in advance of any CPSC prescribed compliance date, and molds, which are required for some products, are made several months prior to the actual product. In order to keep the cost of changing the product from outweighing the value of the product in many cases, the tracking label would ideally be part of the mold and should be determined prior to the making of the mold. If the mold is already made and must be changed, this is a costly and time consuming process. Therefore, permanent stickers should also be considered as acceptable tracking labels.

⁹ Balme, Louis J. Feasibility Study for a Post-Manufacturing Traceability System Between the People's Republic of China and the European Union. November 2008. p. 11.

Traceability Database

If a recall occurs, a manufacturer can readily—on its website, in-store media and kiosks, and otherwise—provide customers the necessary information so that they might then determine, based on the product's mark, its location and date of production and cohort information. Nothing in the statute requires or suggests that manufacturers need to maintain an accessible online database of information on all marked children's products. The Commission should use caution and investigate thoroughly the suggestion in their reference in the request for comment of a centralized, quasi-governmental database of the sort envisioned in the Feasibility Study of the EU-China Trade Project.

Conclusion

We respectfully request that the CPSC issue a stay of enforcement of the tracking label requirement. This will allow sufficient time for the CPSC to issue guidance and for manufacturers and retailers to incorporate such guidance into their supply chains. The CPSC needs to provide detailed guidance on the approved factors that can be considered when determining the practicability of adding a permanent tracking label to a product. The CPSC should also issue standardized definitions for labeling requirements such as date and lot codes while allowing flexibility in the execution of the tracking label.

RILA members place the highest priority on ensuring the safety of their customers and the products sold to them. RILA appreciates this opportunity to comment on the CPSIA's tracking label requirement. Should you have any questions about the comments as submitted, please don't hesitate to contact me by phone at (703) 600-2022 or by email at jim.neill@rila.org.

Sincerely,



Jim Neill
Vice President, Product Safety

Stevenson, Todd

From: Stephanie Lester [Stephanie.Lester@retail-leaders.org]
Sent: Monday, April 27, 2009 4:24 PM
To: Tracking Labels
Cc: Ashley Boroski; Andrew Szente; Jim Neill; Falvey, Cheryl; Mullan, John
Subject: RILA tracking label comments
Attachments: Draft RILA Tracking Label Comments FINAL 04 27 09.pdf

Attached please find RILA's comments in response to CPSC's Federal Register notice on Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act; Notice of Inquiry; Request for Comments and Information.

Please do not hesitate to contact me or my colleague Jim Neill (jim.neill@rila.org) if you have any questions or concerns.

Thanks,
Stephanie Lester

Stephanie Lester
Vice President, International Trade
Retail Industry Leaders Association
1700 N. Moore Street, Suite 2250
Arlington, VA 22209
Direct Dial: 703-600-2046
Fax: 703-841-1184
stephanie.lester@rila.org

To learn more about RILA, go to www.rila.org



FRUIT OF THE LOOM.

2009-0010-0110

One Fruit of the Loom Drive • P.O. Box 90015 • Bowling Green, KY 42102-9015 • 270-781-6400

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

Re: COMMENTS: CPSIA TRACKING LABELS -- NOTICE OF PROPOSED
RULEMAKING

Fruit of the Loom, for itself and its subsidiaries, including Russell Brands, LLC and Vanity Fair Brands, LP, submits these comments regarding the proposed rulemaking for tracking labels, under Section 103 of the Consumer Product Safety Improvement Act of 2008 (CPSIA).

As a major importer and distributor of basic apparel, including socks, sportswear and sporting goods, we have a keen interest in the subject of consumer product safety, particularly for children's products. We agree it is essential that companies be able to pinpoint supply chain problems and address them quickly, to minimize harm to consumers. But well-meaning laws and regulatory schemes can have unintended consequences, if all involved do not have sufficient time to design and implement the best solutions. Critical open questions include:

What is a "production" date? Can a manufacturer, depending on its systems and processes, choose from among the date of assembly of a garment or item of equipment, the date a label is sewn in or attached, the date a design is applied, and the date the item is placed in a package or box?

If a manufacturer assembles and packages goods on different dates and locations, could it provide different tracking dates, locations on the item's label versus its package?

In Section 103(a)(5), what does "to the extent reasonably practicable" modify? In certain circumstances, could a manufacturer be justified in providing tracking information that is not "permanent," or in not providing tracking information at all, on labels or packaging?

What does "enable the ultimate purchaser to ascertain" mean? Would it suffice for

a manufacturer to provide a code which would allow the manufacturer to determine the production location, date and cohort information, upon request? (We believe it's important that manufacturing codes be permitted, as explained below.)

How specific does date and cohort information need to be? We assert that, depending on the volume, systems and processes of a business, it may be reasonable for a tracking label to show the month and year, or the week of the month and the year, if it's not reasonably practicable – feasible -for the manufacturer to provide the exact day.

What flexibility can be allowed for tracking disclosures on packaging, when packaging includes collections or assortments of products that have different production dates, locations and cohort information?

To allow ample time to flesh out these questions, and for the CPSC to give clear guidance in a final rule, we ask that the CPSC:

1. Stay enforcement of CPSIA Section 103(a) for at least twelve months, for manufacturers who make good faith efforts to comply, to allow adequate time to resolve open questions regarding tracking labels.
2. Issue guidance making clear that the tracking label requirement is not retroactive and that no enforcement action will be taken against manufacturers, retailers or others for sale or distribution of product on or after August 14, 2009, if such product was manufactured prior to that date. In particular, we ask that the CPSC assure the business community that it will accept a manufacturer's reasonably substantiated assurance that product was made prior to the effective date. (It will be devastating to the business community if retailers feel compelled to return or destroy product because they fear they would otherwise have to was made prior to the effective date, as no law requires such products be labeled to include date of manufacture.) If, for example, a manufacturer can establish that it implemented a compliant Section 103 tracking program for goods manufactured on or after the effective date, that should serve as presumption that any product from such manufacturer which does not include a tracking label was produced prior to the effective date.
3. Take adequate measures to ensure manufacturers can protect confidential and proprietary business information, such as the specific location of manufacturing contractors and subcontractors.

By taking the above actions, the CPSC would allow manufacturers to establish their own feasible, interim methods, to provide labeling and packaging, to the extent practicable, which permits manufacturers and ultimate consumers to ascertain the location and date of

P. 3

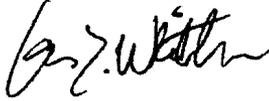
production. We submit this should be construed to allow manufacturers to use codes that will permit them to determine, directly or upon request from consumers, the manufacturing date and location. We submit also that it is not practical for manufacturers to provide tracking labels on product and packaging, by the effective date, and that no enforcement action should be taken against manufacturers who choose one method or the other, during the stay.

We also hope that Congress reconsiders the need for tracking labels or, at least, provides the CPSC with maximum flexibility to implement this requirement in a manner that does not unduly burden manufacturers and retailers.

We urge the CPSC to take full advantage of the broad congressional mandate to construct the tracking label requirement in a way that meets the CPSIA's public safety objectives while minimizing economic harm to businesses that are fighting to remain competitive in extremely difficult economic circumstances.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Whitaker", written in a cursive style.

David T. Whitaker
Senior Vice President & General Counsel

Stevenson, Todd

From: DWhitaker@fruit.com
Sent: Monday, April 27, 2009 4:38 PM
To: Tracking Labels
Subject: Tracking Labels Comment
Attachments: CPSIA tracking comment 042709.pdf

Please see attached, in response to the CPSC's request for comment. Thanks much,

David Whitaker
Senior Vice President & General Counsel
Fruit of the Loom

This communication contains information which is confidential and may also be privileged. It is for the exclusive use of the intended recipient(s). If you are not the intended recipient(s), please note that any distribution, copying or use of this communication or the information in it is strictly prohibited. If you have received this communication in error, please notify the sender immediately and then destroy any copies of it.
