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ATTORNEYS AT LAW

CLIENT ALERT

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A NEW “WORLD WIDE WEB” – THE STICKY IMPLICATIONS OF CONSUMER PRODUCT SAFETY REGULATIONS IN CANADA, AUSTRALIA, THE EU AND JAPAN

With the rise of social media and the Internet, the U.S. has developed www.saferproducts.gov as the public repository for all safety complaints against consumer products. In recent months, numerous other countries have passed broad legislation and/or expanded their existing consumer product safety legislation. These new and expanded regulations are now forcing consumer product manufacturers to be versed in the laws and regulations of several different countries. An incident in one country may now require a manufacturer to report the incident to consumer product protection agencies around the world. As a result, manufacturers must assess their current policies and procedures to ensure they are complying with the laws and are coordinating possible reciprocal reporting obligations.

IMAGINE A company manufactures and sells its products around the world. When the company learns that one of its products may have injured someone in the United States, what reporting obligations does that company have? Must it notify consumer product agencies in the U.S.? Must it notify government agencies in other countries? Does reporting in one country trigger an obligation to report in another? As the consumer product safety laws continue to develop around the world, the answer to all of these questions seems to be yes.

CANADA The Canada Consumer Product Safety Act (CCPSA) goes into effect June 20, 2011 and prohibits the manufacture,

importation, advertisement, or sale of any product that is a danger to human health or safety, or is the subject of a recall, voluntary or otherwise. The most notable aspect of the CCPSA however, is the sweeping reporting obligations that it imposes on consumer product manufacturers both inside and outside of Canada. Unlike many other countries, the CCPSA requires manufacturers to report *all* incidents and/or defects, not just those that present a “substantial product hazard.” Further, the reporting obligations under the CCPSA are triggered by “near-miss” incidents or the *potential* for injury; actual accidents or injuries are not required. Finally, the reporting requirements apply to incidents and/or defects in Canada or *elsewhere*. Thus, if manufacturers conduct business in Canada, incidents reported in any other country may give rise to a duty to report in Canada. With the short period of time given to manufacturers to report incidents to the Minister of Health (48 hours) and the potential for the imposition of civil penalties for violating the CCPSA, it will be important for manufacturers to have a working understanding of the CCPSA as soon as possible.

AUSTRALIA The Australian Consumer Law (ACL) went into effect January 1, 2011, and requires all entities in the supply chain to report to the Commonwealth Minister within 48 hours of becoming aware that a consumer product or related service caused or may have caused a death, serious injury, or illness. Narrower than the CCPSA, the ACL only

requires a report if the individual received medical treatment from a doctor or nurse, and “near-miss” incidents will not trigger reporting obligations. However, like the CCPSA, the Australian Competition and Consumer Commission has stated that the ACL applies regardless of the country in which the incident occurred.

EUROPEAN UNION (EU) The EU regulates consumer products through the General Product Safety Directive (GPSD). Unlike the CCPSA and the ACL, the GPSD only applies to consumer products placed in the EU marketplace. A manufacturer or distributor of consumer products must immediately notify authorities of the Member States when they know (or ought to know) that a product it has placed on the market poses risks to the consumers that are incompatible with the general safety requirement. Generally, a company has 10 calendar days to report a risk, but if the product poses a “serious” risk, the company only has 3 days to report.

JAPAN Japan’s Consumer Product Safety Law requires serious accidents associated with consumer products to be reported to the Minister of Economy, Trade and Industry. A manufacturer or importer must submit a report when it obtains information that a serious accident occurred when a consumer was using a product. Once the report is submitted, the information is publicized in a searchable database maintained by the National Institute of Technology and Evaluation.

WHAT ARE THE IMPLICATIONS OF THESE LAWS? Any incident, regardless of where it occurs, now has the potential to create a reporting requirement in all countries in which a manufacturer conducts business. Manufacturers of consumer products must simultaneously address all countries’ reporting requirements in which the product is manufactured or sold, and carefully consider what reporting obligations, if any, may exist around the globe. Failure to comply with the reporting obligations can lead to significant

penalties in multiple countries. As the legislation allows a significantly short time frame for a response, manufacturers should develop procedures for monitoring and responding quickly to notifications about incidents. Each incident is likely to raise unique issues and questions on a case-by-case and country-by-country basis.

If you have any questions about how to navigate your products through this new “world wide web,” please contact:

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