

CONSUMER PRODUCT SAFETY UPDATE

The beginning of 2013 has been filled with significant news in consumer product safety laws. Both in the United States and abroad, manufacturers must remain on their toes to stay abreast of new laws and trends. The following are just a few of the recent developments of which manufacturers should be aware.

CPSC HOLDS TOP EXECUTIVE PERSONALLY LIABLE FOR ALLEGED DEFECTS. On May 3, an administrative law judge held that the former CEO of Maxfield and Oberton Holdings LLC, which manufactures toy magnets called “Buckyballs,” could be held personally liable for alleged defects in the magnets. The administrative complaint alleges that Maxfield refused to stop selling the magnets, which the CPSC claims can cause severe injury if accidentally swallowed. In the *Maxfield* decision, the judge relied on two Supreme Court decisions, *U.S. v. Dotterweich* and *U.S. v. Park*, to hold that corporate officers can be held individually accountable for company violations under public health and safety laws.

This was the first administrative complaint filed by the CPSC in more than a decade. Inez Tenenbaum, CPSC Chairman, stated, “Under my leadership, we’re more willing to use administrative complaints. We think [a product] should be recalled or taken off the market, and you say ‘no’ – so let’s go to an impartial administrative law judge and let that judge decide.”

CPSC REQUIRES COMPLIANCE PLAN AS PART OF SETTLEMENTS FOR FAILING TO REPORT. In two recent cases, the CPSC required companies to implement comprehensive compliance plans as part of their settlement agreements for allegedly failing to timely report product defects or substantial product hazards in compliance with the CPSIA. In March of this year, the CPSC required Kolcraft Enterprises, Inc. to adopt a specific compliance plan in

response to an alleged reporting failure, and in May, the CPSC instituted the same requirement for Williams-Sonoma as part of its voluntary settlement.

The CPSC required Williams-Sonoma to include the following language in its settlement agreement:

Williams-Sonoma has also agreed to maintain and enforce a system of internal controls and procedures designed to ensure that:

- information required to be disclosed by the firm to the Commission is recorded, processed, and reported, in accordance with applicable law;
- all reporting made to the Commission is timely, truthful, complete, and accurate; and
- prompt disclosure is made to Williams-Sonoma’s management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to adversely affect, in any material respect, the company’s ability to report to the Commission.

The same language was used in the Kolcraft settlement announcement. Because being proactive will help companies in future dealings with the CPSC, this is a good time for companies to re-evaluate their compliance programs or institute programs if they do not already have one.

NEW CPSC CHAIRMAN. In February of this year, CPSC Chairman Inez Tenenbaum announced that she would not seek a new term. As reported by the CPSC, “Immediately after her July 2009 swearing in, Chairman Tenenbaum established a leadership philosophy aimed at making the agency more accessible and transparent; making education and advocacy a priority; and being firm, but fair, in enforcing safety laws and working to keep unsafe products

out of the hands of consumers.” It will be interesting to see what additional changes will be brought about under a new chairman.

EU’S NEW CONSUMER PRODUCT SAFETY RULES. The European Commission plans to introduce new consumer product safety rules to provide more uniformity within the somewhat fragmented safety regulations across the European Union. The rules will become effective in 2015.

TUCKER ELLIS CONSUMER PRODUCT SAFETY TEAM NEWS. In February, our team participated in a panel discussion with over 500 participants at the International Consumer Product Health and Safety Organization’s Annual Conference entitled “Reporting Best Practices Along the Supply Chain and Around the World,” and in September we will present at the Advanced Product Safety Management Course at Saint Louis University on international compliance and regulations trends and issues.

ADDITIONAL INFORMATION

Tucker Ellis will continue to monitor significant national and international events in product safety and will provide updates as necessary. Please contact one of the following Tucker Ellis attorneys for further information:

- **Karl Bekeny**
216.696.2699
karl.bekeny@tuckerellis.com
- **Peggy Doyle**
415.617.2234
peggy.doyle@tuckerellis.com
- **Clifford Mendelsohn**
216.696.3921
clifford.mendelsohn@tuckerellis.com
- **Chelsea Mikula**
216.696.2476
chelsea.mikula@tuckerellis.com
- **Kevin Young**
216.696.4691
kevin.young@tuckerellis.com

This Client Update has been prepared by Tucker Ellis LLP for the use of our clients. Although prepared by professionals, it should not be used as a substitute for legal counseling in specific situations. Readers should not act upon the information contained herein without professional guidance.

© 2013 Tucker Ellis LLP. All rights reserved.