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MEMORANDUM

October 8, 2008

CONSUMER PRODUCT SAFETY COMMISSION IMPROVEMENT ACT OF 2008

By: David J. Evan, Esq.

The Consumer Product Safety Commission Improvement Act of 2008 (the "Act"), which was enacted on August 14, 2008, makes significant changes to the current regulations and imposes many additional compliance requirements for companies that sell consumer products. Special emphasis is placed on children's products, toys, and products with paint containing lead, phthalates, etc. The most significant changes are summarized below but impacted companies should obtain further information regarding the scope of this legislation and the deadlines for compliance.

1. **General Conformity Certification** – Effective Date: 11/12/08. Every manufacturer (including importer and private labeler) of a product which is subject to a consumer product safety rule *under any Act enforced by the CPSC* and which is imported for consumption or warehousing or distributed in commerce, must issue a certificate stating that the product complies with all applicable CPSC rules, etc. This is not limited to children's products. The manufacturer, importer and private labeler (if applicable) each must certify either on joint or separate certificates, unless specifically exempted.
2. **Children's Product**: The Act defines the term "children's product" to mean a consumer product designed or intended primarily for children 12 years of age or younger.
3. **Children's Products Containing Lead/Lead Paint**
 - a. **General Lead Ban**: Any accessible part of any children's product that exceeds the statutory limits is banned effective February 10, 2009.
 - b. **Lead Paint Ban**: The allowable lead limit is lowered to 90 parts per million for and affects products in inventory or on store shelves as of **August 14, 2009**.
4. **Third Party Testing Requirement for Children's Products**: Every manufacturer (including importer and private labeler) of *any children's product that is subject to a children's product safety rule* must have the product tested by an accredited 3rd party

testing lab and issue a certificate of compliance. This rule will not apply to inventory that was manufactured before the effective date.

a. Effective Dates:

- i. Lead Paint: any children's product manufactured after 12/22/08.
- ii. Small Parts: Notice not yet published. The anticipated effective date is 2/13/09.
- iii. Children's Metal Jewelry: Notice not yet published. The anticipated effective date is 4/12/09.
- iv. All Other Children's Product Safety Rules: Notice not yet published. The anticipated effective date is 9/14/09.

5. **Tracking Labels for Children's Products**: Effective 8/14/09 (for products manufactured on or after that date), the manufacturer of a children's product must place permanent, distinguishing marks on the product and its packaging, that will enable the manufacturer and ultimate purchaser to ascertain the location and date of production of the product, cohort information (including the batch, run number, or other identifying characteristic).
6. **Labeling Requirement for Advertising Toys and Games**: Any advertisement by a company that provides a direct means to purchase a product for which a cautionary statement is required must include the cautionary statement. For advertisements on Internet websites, the effective date is 1/12/09. For catalogues and other printed materials, the effective date is 2/10/09.
7. **Mandatory Toy Safety Standards**: ASTM International Standard F963-07 (the toy safety standard) will be formally adopted by the CPSC on 2/10/09 and will affect consumer products manufactured after that date.
8. **Prohibition on Sale of Certain Products Containing Specified Phthalates**: Effective 2/10/09, the Act bans any children's toy or child care article which contains more than 0.1 percent of six different types of phthalates.

CONCLUSION

In addition to the possible recall and forfeiture of non-conforming products, the Act also provides for increased civil penalties of \$100,000 per violation. The CPSC can also prohibit the export of any non-conforming consumer product unless the importing country accepts the shipment.

Given the increased compliance burden imposed by the Act, it is recommended that companies assess the impact the new law will have on product which is currently in inventory and on store shelves and update their internal procedures as soon as possible.

We will continue to monitor new developments regarding this legislation. Please contact us for additional details regarding these requirements.

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