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The CPSC's New Rule on Children's Products

Under a new Consumer Product Safety Commission (CPSC) rule, a multitude of consumer goods previously considered general use products will be reclassified as children's products in 2011. By a close 3-2 vote, the CPSC recently passed the final interpretive rule defining the term "children's product" as used in the Consumer Product Safety Improvement Act (CPSIA). The new rule provides additional guidance for manufacturers, distributors and retailers on the factors that will be used to determine whether a product is a children's product – generally products designed or intended primarily for children under the age of 12.

The determination of whether a product is a "children's product" is significant because they are subject to additional requirements under the CPSIA, such as compliance with lead content limits under Section 101(a), mandatory third party testing of certain children's products under Section 102, and mandatory tracking labels under Section 103. While the CPSC cautions that the determination of a children's product depends on the unique facts of each product, its final rule effectively expands the scope of children's products. We discuss below a few categories of products included in the final rule.

Sporting Goods and Recreational Equipment

Sporting goods that are marketed to children 12 years of age or younger or have extra features that make them more suitable for such children than for adults may be considered children's products. Similarly, recreational equipment such as roller blades, skateboards, bicycles, camping gear, and fitness equipment may be children's products if they are sized to fit children 12 years of age or younger or if they are decorated with childish features by the manufacturer.

CDs and DVDs

CDs and DVDs that have encoded content intended for and marketed to children, such as children's movies, games, music or educational software, could now be considered children's products. To make the age determination, the CPSC may consider ratings from the entertainment or software industries and whether the digital product was specifically aimed at and marketed to children 12 years of age or younger and has no appeal to older audiences. However, CDs and DVDs that contain content for very young children will be exempted because a very young child would not be in contact with the CD/DVD due to the child's lack of motor skills necessary to operate the media player.

Collectibles

The final rule distinguishes adult collectibles from children's collectibles based on: themes that are inappropriate for children 12 years of age or younger; features that preclude use by children during play, such as the product's high cost, limited production, and display features (e.g., hooks or pedestals); and whether such items are marketed alongside children's products. The fragility of the materials may also be considered because children are less likely to be given items that can break.

Jewelry

The CPSC provided additional guidance on what will be considered jewelry intended for children. Product characteristics that may suggest a product is intended for a child include size, low cost, play value, children's themes as well as sale with other children's products. When determining the age of consumers for whom the product is intended, the CPSC may consider many aspects of an item's design and marketing, including the item's advertising, promotional materials, packaging graphics and text, dexterity requirements for wearing, appearance (coloring, textures, materials, design themes, licensing, level of realism), and cost.

The categories of consumer goods discussed above are some of the ones that appear in the final rule, codified at 16 C.F.R. Part 1200, et seq, which became effective on October 14, 2010. The rule also discusses books, art materials, musical instruments, science equipment, home furnishings and other consumer goods. Due to the complexities of this rule, its effect on the consumer goods industry remains to be seen.

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