

November 11, 2008

Consumer Law/Trade Regulation Practice

Consumer Product Safety Commission Announces Proposed Rules under the Consumer Product Safety Improvement Act for Advertisements for Certain Toys and Games in Catalogues and on the Internet

Section 105 of the Consumer Product Safety Improvement Act ("CPSIA"), enacted August 14, 2008, amends Section 24 of the Federal Hazardous Substances Act ("FHSA"). Section 24(a) of FHSA requires cautionary labels on toys or games containing small parts that are intended for children between 3 and 6 years old. Section 24(b) of the FHSA contains similar requirements for balloons, small balls, and marbles intended for children who are 3 or older, or toys or games containing a balloon, small ball or marble. The CPSC has promulgated regulations detailing the labeling requirements for warnings, including prominence, placement, and conspicuousness.

Under the CPSIA, when a product requires the warning set forth in Section 24(a) or (b) of the FHSA, advertising for that product that features a direct means for purchasing or ordering must display the same warning. This applies to catalogues and printed advertising materials, as well as to internet advertising.

Under proposed rules issued by the CPSC on October 6, 2008, the warnings in catalogues and other printed materials would have to meet certain size and placement requirements. Recognizing that it may be difficult to include a warning message next to every product advertised in a catalogue, the proposed rules would allow use of an abbreviated version of the warnings, provided other conditions are met. There are similar requirements regarding the size and placement of warnings in internet advertisements, but abbreviated warnings would not be permitted.

Section 105 also requires that the manufacturer, importer, distributor or private labeler that provides a covered product to a retailer inform the retailer of any applicable warning requirement under Section 24. In addition, a retailer who inquires with the manufacturer, importer, distributor or private labeler whether the product requires a warning does not violate the warning requirement if the party from whom the information was requested provides false information or fails to respond.

The new requirements with respect to websites will take effect on December 12, 2008. With respect to catalogues

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and other printed materials, the requirements will take effect on February 10, 2008. However, certain grace periods are under consideration.

may be addressed herein.

The CPSC is also seeking comment on whether the new rules should apply to catalogues and other printed materials that are distributed solely among businesses.

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