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CPSC UPDATE
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CPSC ISSUES POLICY STATEMENT ON TRACKING LABELS

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The Consumer Product Safety Commission (“CPSC”) recently issued guidance regarding the tracking label requirements which are set to go into effect on August 14, 2009. The new law will require companies to place certain production information on all children’s products and their packaging.¹ The purpose of this requirement is to enable manufacturers and consumers to more readily identify products which pose a safety concern.

The CPSC did not issue a stay of enforcement as many have hoped. However, the CPSC does state that “given good faith efforts by manufacturers....the Commission will not likely seek penalties if required information was inadvertently omitted.” The CPSC stated that it will require compliance with the tracking label provision in the context of product recalls and will exercise its discretion with regard to penalizing manufacturers for noncompliance. Below is a summary of the significant points:

- **Effective Date:** Applies to goods made on or after August 14th, 2009.
- **Covered Products:** Children’s products and their packaging. A children’s product is defined as a “consumer product designed or intended primarily for children 12 years of age or younger.”
- **Responsible Parties:** Both manufacturers and importers are responsible for complying with the Act.
- **Format:** There is currently no specific format. The CPSC expects companies to use their best judgment to develop markings based on the type of business and product. The CPSC may at some point develop a uniform marking requirement. The information does not

¹ Section 103 of the Consumer Product Safety Improvement Act of 2008 requires markings on children’s products which enable:

(A) the manufacturer to ascertain the location and date of production, cohort information (including the batch, run number, or other identifying characteristic), and any other information determined by the manufacturer to facilitate ascertaining the specific source of the product by reference to those marks; and

(B) the ultimate purchaser to ascertain the manufacturer or private labeler, location and date of production of the product, and cohort information (including the batch, run number, or other identifying characteristic).”

necessarily need to be on a single label/location (i.e., the requirement can be satisfied by information contained on several permanent labels). The marks should be visible and legible and should allow the manufacturer/importer to determine the specific source of each product.

- Required Information Must be “Marked” or “Ascertainable”: The label(s) may contain either the specific required information or a code or numbering system. If a code/numbering system is utilized, the information must be ultimately ascertainable by both the manufacturer/importer and consumer (i.e., the name of the manufacturer/importer/private labeler must be identified on the product so a consumer can contact them directly to obtain the required information as represented by the code on the product).
- Permanence: The label(s) should remain on the product during its useful life. A mark on disposable packaging need only be permanent to the extent it is durable enough to reach the consumer. The CPSC expects that in most instances, both the packaging and the product will be marked, where practicable. For products that are meant to stay with or be contained in their original packaging, the packaging would be considered part of the “product.”
- Marking of Sets: For items to be sold as sets/pairs and that function only as sets/pairs, only one item of the set, or an integral part of the set would need to be marked (e.g., shoes).
- Location of Production: The name of the country and the city and state (or administrative region, as appropriate) must be marked or ascertainable. The manufacturer/importer would still be responsible for identifying the specific source of the product in the event of a recall or inquiry from the CPSC.
- Date of Production: The date of production must be marked or ascertainable. This can be a date range if the product is made over a period of time. The date of manufacture is the date of assembly or placement into one package.
- Cohort Information: Manufacturers/Importers are expected to have a reasonable means to distinguish products made from different factories, made with different components, at different times or have other material differences that make the product non-identical from previous products.

Please feel free to contact this office for additional information.