



LEGAL ALERT

CONSUMER PRODUCT SAFETY UPDATE

www.swlaw.com

May 12, 2009

SNELL & WILMER

Founded in 1938, Snell & Wilmer is a full-service business law firm with more than 425 attorneys practicing in eight offices, throughout the western United States and in Mexico. Representing corporations, small businesses, and individuals, our mission is to take a genuine interest in our clients, understand their objectives, and meet or exceed their expectations. For more information, visit www.swlaw.com.

Gary Wolensky
714.427.7022
gwolensky@swlaw.com

Elizabeth McNulty
714.427.7034
emcnulty@swlaw.com

Brad Petersen
602.382.6202
bpetersen@swlaw.com

Jessica Charles
714.427.7533
jcharles@swlaw.com

Snell & Wilmer
L.L.P.
LAW OFFICES

CPSIA Alert: Tracking Labels - Section 103

Today the CPSC posted the public comments regarding tracking labels on its website. They received nearly 130 comments regarding Section 103 and the tracking label provisions. These comments can be viewed here: http://cpsc.gov/about/cpsia/cpsia_comments.html.

Additionally, today the CPSC held its staff public forum on tracking labels in Bethesda, Maryland. The forum was also broadcast live on the internet. Commissioner Nancy Nord opened the meeting with a few general remarks. It is apparent that she has a very clear understanding of the strain this is putting on businesses and hopes that the staff can tailor their guidance to the comments they have received. The forum was broken into two panel discussions. Both panels had representatives from various retail, manufacturer, and distributor associations and interest groups. After each panel discussion the CPSC staff asked questions of the presenters and the floor was open to comments from the public.

The majority of comments focused on the practicability of tracking labels for certain products and the need for increased time to implement these provisions because there has been very little guidance from the CPSC. Most presenters were in agreement that a one-year stay for tracking labels should be granted by the Commission.



It seems that the Commission staff believes that unique identifiers or codes on the children's products will suffice to satisfy this section of the CPSIA. The staff also believes that the word "practicable" in Section 103 does not necessarily mean that if a permanent label is not practicable that no label should be affixed to the product. It seems that they are leaning toward the position that some label, even if is not permanent, is better than no label. The staff did indicate that they will most likely not prescribe a format for the tracking labels

anytime soon. This means that a business' reasonable interpretation for the format of the tracking label is adequate for now since formal guidance has not yet been provided.

Over all, the meeting did provide some useful information about where the Commission staff is headed; however, it will still be awhile before they process all of the comments received and issue formal guidance regarding Section 103 and tracking labels.

* * *