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CONSUMER PRODUCT SAFETY LAW

NEWSLETTER OF THE ADVERTISING, MARKETING & MEDIA PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

*** * Special Bulletin * ***

Congress Passes Bill Overhauling Consumer Product Safety Law: President Bush Expected To Promptly Sign Into Law

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The U.S. Senate and House of Representatives last week overwhelmingly approved the conference report on HR 4040, known as the Consumer Product Safety Improvement Act of 2008 ("the Act"). The Act, which is expected to be signed into law by the President, is the result of numerous toy safety recalls that took place last year. It will comprehensively overhaul the way the Consumer Product Safety Commission (the "Commission") does business and will have a dramatic impact on the products and businesses under its jurisdiction. Some of the key provisions of the Act are highlighted below.

Toy Safety

Much of the focus of the Act is on the safety of toys and other children's products. In particular, the Act has a phased-in ban on lead in children's products. It will ban lead levels over 600 parts per million within 180 days, over 300 parts per million within one year, and over 100 parts per million within three years. The Act also bans certain phthalates, which are chemicals used as plastic softeners. Specifically, the Act permanently bans three types of phthalates from children's toys or childcare products at concentrations of more than 0.1 percent: di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), and butyl phthalate (BBP). The Act also temporarily bans other varieties of phthalates pending further study by an advisory board. Other toy safety measures include mandating testing and certification of imported children's products for compliance with safety standards, requiring choking-hazard

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warnings to be in advertisements for children's toys that provide a direct means for purchase of the toy (e.g., catalog and online sales), and adopting ASTM toy safety standards as mandatory product safety rules.

Penalties, Enforcement, and Public Information

The Act will greatly increase civil penalties for violations of the statutes under the Commission's jurisdiction, including failing to report potential safety defects in a timely manner. The amounts will be raised to a maximum of *\$15 million*, up from a current limit of \$1.825 million. It will also increase *criminal* penalties by permitting larger fines, up to five years' imprisonment, and forfeiture of assets associated with a violation. The Act will further remove a requirement that directors, officers, and agents be aware of violations before being criminally charged.

In addition, the Act will authorize state attorneys general to enforce the Consumer Product Safety Act and related laws by seeking injunctive relief, but requires states to give the Commission advance notice of any intent to initiate a state action. It also provides certain protections for employee whistle-blowers.

Also of note is the Act will mandate the creation of a publicly available, searchable Internet database of reports of product-related injuries and deaths. These reports can be submitted by consumers, healthcare professionals, child service providers, and public officials. The database will include the name of the product as well as the manufacturer's name, but will not include the name of the individual who submitted the report. The manufacturer will have an opportunity to comment on the report (which comments may be posted with the report on the database), request that confidential information be redacted, and request that inaccurate information be removed.

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Kerrie L. Campbell Ms. Campbell (formerly Hook) specializes in consumer product safety counseling and represents major manufacturers and retailers in investigation, enforcement and penalty proceedings before the U.S. Consumer Product Safety Commission (CPSC). Ms. Campbell counsels clients concerning compliance with the

Consumer Product Safety Act, Flammable Fabrics Act and other statutes regulated by the CPSC. Ms. Campbell advises clients on potential reporting requirements, product recalls and FOIA requests. She is a member of the Advisory Board for BNA's Product Safety and Liability Reporter and a frequent speaker on CPSC issues.



Ivan J. Wasserman Mr. Wasserman is an experienced CPSC Lawyer who draws upon his strong background in consumer product safety issues to help clients comply with the CPSC's labeling and reporting requirements. When a corrective action is necessary, he helps clients conduct effective product recalls and minimize adverse publicity. In addition, Mr. Wasserman advises clients on the advertising and labeling of products such subject to the jurisdiction of the Food and Drug Administration (FDA).

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