

# Client Alert.

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## Federal Court Ruling Validates Industry Concerns with CPSC Database

By Linda Lane and Nathan Cooper

The Consumer Product Safety Commission's ("CPSC") product safety database suffered its first successful legal challenge in a recent ruling by a Maryland federal judge. U.S. District Judge Alexander Williams Jr.'s opinion in *Company Doe v. Inez Tenenbaum et al.*, No. 8:11-cv-02958-AW, echoes the concerns that product manufacturers have voiced since the implementation of the CPSC database in March 2011 and may cause the CPSC to more closely vet the accuracy of product complaints submitted by the public.

The CPSC database, launched on March 11, 2011, allows the public to submit reports of harm involving a consumer product directly to a publicly searchable database, accessible at [www.saferproducts.gov](http://www.saferproducts.gov). After being notified of a complaint, a product manufacturer, importer, or private labeler, has ten days to challenge the accuracy of the report before it is published by the CPSC in its product safety database. Even if the accuracy of a report is challenged, the CPSC makes the final decision regarding the wording of a published complaint. The CPSC database features the prominent disclaimer that the "CPSC does not guarantee the accuracy, completeness, or adequacy of the contents" of the database. However, this disclaimer provides little solace when a complaint is wrongly linked with a product.

The *Company Doe* action is the first reported attempt by a manufacturer to challenge in court the ability of the CPSC to include a complaint submitted by the public in its product safety database. In this case, an unidentified company filed an action in the U.S. District Court of Maryland under seal against the CPSC for publishing an incident report that the company claimed was "materially inaccurate." The action was filed under seal so that the unidentified company could remain anonymous and not to be linked to what it claimed to be an incorrect complaint against one of its products. Though Judge Williams's seventy-three page ruling is heavily redacted to ensure that the plaintiff manufacturer cannot be identified, it provides sharp criticism of the CPSC's review of the incident report in this case. Judge Williams explained that the CPSC's decision to publish the complaint was "arbitrary and capricious," and thus a violation of the Administrative Procedures Act, because the evidence considered by the CPSC failed to link the injury suffered by the consumer to the plaintiff manufacturer's product.

This decision highlights the concern that industry participants identified when the CPSC database was initially launched—that a lack of quality control over complaints being submitted to the database would lead to misinformation being published to the public. See [3-2-1, Ready for Launch: www.saferproducts.gov](#). The CPSC database is intended to increase transparency by providing a publically searchable and timely database containing product safety information, but there is no reliable way to verify the information that the public is submitting to the database and to ensure that inaccurate information incorrectly linking an injury to the wrong manufacturer is being excluded. It is also extremely expensive for wrongly accused companies, such as Company Doe, to get the CPSC to remove incorrect complaints from their database through litigation. The ruling in *Company Doe* may push the CPSC to more closely scrutinize complaints before publishing them in order to prevent further criticism from the courts. It may also give companies more leverage when challenging the accuracy of reports to be published in the database. Ultimately, however, this problem should be addressed by new

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legislation either dismantling the CPSC database or requiring more evidence supporting claims before they can be published to the public. In its current form, the CPSC database simply does more harm than good by allowing misinformation to be readily disseminated to the public.

Morrison & Foerster has closely followed the Consumer Product Safety Improvement Act (“CPSIA”) as it evolved in Congress and was ultimately signed into law in 2008. We have advised a variety of clients on the implementation of the CPSIA, including the launch of the CPSC database in 2011, and helped them keep abreast of developments emanating from the CPSC. In addition, we regularly represent children’s and consumer product companies and trade associations and assist them with a variety of legislative, regulatory, administrative enforcement, and litigation matters.

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