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Deadline Fast Approaching to Weigh In on New CPSC Consumer Complaint Web Site

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In August 2008 the Consumer Product Safety Improvement Act (“CPSIA”) became law, imposing sweeping changes in consumer product regulatory requirements and beefing up enforcement tools to enhance product safety. Section 212 of the CPSIA requires the U.S. Consumer Product Safety Commission (“CPSC”) to create and implement on its web site, a publicly searchable database of consumer product incident reports. The CPSC seeks comments about the database from all stakeholders by January 29, 2010.

“SaferProducts.gov” to Be Hyped with National Public Awareness Campaign According to the CPSC’s September 2009 [Report to Congress](#), “SaferProducts.gov will be a new Web site, a public portal, that will revolutionize the way CPSC interacts with the public and its industry partners by increasing transparency and openness.” The database “will be a single central location where consumers can go to report product safety incidents, and to search for prior incidents and recalls on products they own, or may be thinking about buying,” says the Report. The web site will go public on March 11, 2011, with a coordinated national multimedia public awareness campaign to command attention.

“No Guarantee of Accuracy” Disclaimer The database is one of the most controversial provisions of the CPSIA, particularly since the CPSC is required by law to provide notice that “the Commission does not guarantee the accuracy, completeness, or adequacy of the contents of the database.” Inaccurate information helps no one and may be damaging. In response to

industry concerns that the database will be a font of unconfirmed inaccurate or misleading claims that will unfairly damage companies, products, and brands, the law requires the CPSC to put procedures into place to notify manufacturers or private labelers of incident reports and not post, remove, correct, or clarify “materially inaccurate” or duplicative information in the database. The problem is, the law doesn’t say how to determine when information is “materially inaccurate.” Nor does the law identify procedures or standards for when the CPSC will not post in the first place or, remove or correct damaging misinformation after posting.

Speak Now About Important Procedures to Be Established Through CPSC Rulemaking

Companies are urged to provide the CPSC staff with comments, concerns, and feedback on how the database will be run, especially how content will be evaluated and posted. As noted above, the comment period ends on January 29, 2010. Some of the most important issues to address to protect company, product, and brand reputations are:

- How can the CPSC prevent the submission of fraudulent reports?
- What kind of information is “materially inaccurate”?
- How should the CPSC process a claim that a report contains materially inaccurate information?
- What disclaimers should the CPSC make about accuracy and where should the disclaimers appear?

[Click [here](#) for a full list of issues and questions identified by the CPSC staff.

Note: The comment period has been extended to January 29, 2010.]

Why It Matters The CPSC’s September 2009 Report to Congress contains much more detail on the planned public awareness campaign than on the specifics of how database content will be evaluated and posted. On one hand, the CPSC says that the database (1) will help identify products to investigate, (2) will help determine when corrective actions will be taken, and (3) will give the public access to “the latest information on consumer product safety.” On the other hand, the CPSC must clearly and conspicuously disclaim the notion that the information on the database is accurate, complete, or adequate. This begs the troubling question: If the information

on the database is not accurate, complete, or adequate, how will it meaningfully or fairly inform the agency or the public about product safety? Companies should weigh in on processes to prevent damaging misinformation about their products and brands from being posted, and to ensure the mandated disclaimer is, in fact, clear and conspicuous and can't be missed by any database visitor, including consumers, state and local authorities, advocacy groups, and the media.

The CPSC is expected to issue a rulemaking this year on the implementation of the database, taking into consideration stakeholder comments.

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