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September 16, 2008

CONSUMER PRODUCT SAFETY LAW

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

Direct Marketers Should Comment on New Direct Sales Advertising Labeling Requirements for Children's Products by October 15, 2008

[Kerrie L. Campbell](#)

On August 14, 2008, President Bush signed into law the Consumer Product Safety Improvement Act of 2008 (Pub. L. No. 110-314, 122 Stat. 3016) (Improvement Act). The new law imposes many challenging regulatory requirements, significantly strengthens the Consumer Product Safety Commission's (CPSC) resources and structure over time, substantially increases civil and criminal penalties, and creates powerful new enforcement tools.

Retailers and marketers will soon have to comply with new mandatory requirements for labeling in direct sales advertisements for children's products. Under Section 105 of the Improvement Act, any direct sales advertisement for a toy or game for which a choking hazard or small parts label is required must include a similar cautionary statement on or immediately adjacent to the advertisement.

Cautionary statements or warnings required by the Consumer Product Safety Act must be "prominently displayed" in advertisements on Internet websites by December 12, 2008, and are required in catalogues or other printed materials by February 10, 2009. The CPSC has been directed to make regulations concerning the size and placement of such cautionary statements by November 12, 2008. The statute is silent on direct sales advertising on television, leaving companies uncertain about effective dates and labeling requirements for television advertisements.

The CPSC recently published on its website a Request for Comments and Information for the Labeling Requirement, to

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take into account comments and concerns of interested parties before publishing a final rule. **Comments are due to the CPSC no later than October 15, 2008.** The Request for Comments can be accessed [here](#).

This Request for Comments gives stakeholders an opportunity to “weigh in” on important issues before the agency issues a final rule, including:

- appropriate size and placement of warnings
- impact of the requirements on businesses
- catalogue printing schedules and lead time needed to implement changes
- whether a “grace period” is needed
- whether the rules should apply to ads, catalogues, and materials distributed solely between businesses (and not to consumers).

Stakeholders are urged to timely submit comments, including questions and concerns, to the CPSC staff, so that the comments can be considered prior to the issuance of the final rule.

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FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:



Kerrie L. Campbell Ms. Campbell 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) and in matters referred to the U.S. Department of Justice. Ms. Campbell routinely counsels clients regarding compliance with the reporting requirements under the Consumer Product Safety Act, Flammable Fabrics Act and other statutes regulated by the CPSC. She advises clients on product recalls, corrective actions, responses to agency inquiries and Freedom of Information Act (FOIA) requests. Ms. Campbell is a member of the Advisory Board for BNA’s Product Safety and Liability Reporter.

