

Company "Doe" Files Suit Challenging the CPSC Database

October 24, 2011 by [Sean Wajert](#)

Multiple [reports](#) indicate that an unnamed company filed a suit last week, under seal, to challenge aspects of the Consumer Product Safety Commission's new public [database](#).

Readers may recall that the Consumer Product Safety Improvement Act of 2008 mandated the creation of a consumer product safety information database, and from the beginning, there was [controversy](#) about the absence of an adequate process for addressing false and inaccurate reports that will scare consumers, harm business, and generate no additional safety gains; the need to employ means to prevent the submission of fraudulent reports of harm while not discouraging the submission of valid reports; the importance of not putting the governmental imprimatur on voluntary data that has not been verified; and the absence of a sufficient time period allocated for manufacturers to evaluate and respond to any proposed report.

The suit was reportedly filed in federal court in Maryland, and relates to material inaccuracies with respect to a report of alleged injury that found its way into the database. The suit apparently asks that the CPSC be enjoined from keeping the complaint about one of the company's products in the public database.

Almost anyone can file a "report of harm," including consumers; government agencies; health care professionals; child service providers; and public safety entities. Consumers could include not just the purchaser of the product but their personal injury attorney, with their own agendas.

Manufacturers have only a limited opportunity to review and dispute information in incident reports before they are published on-line in the CPSC database. Manufacturers have limited control over what information can be removed or amended once posted. The two dissenting votes at the time the CPSC commissioners approved the database made an unsuccessful attempt to amend the final rule so as to give manufacturers more time to comment on or respond to the inaccuracy of postings before they are published to the database and to the public.

The database is accompanied by a weak disclaimer stipulating that CPSC has not verified the accuracy of any report. Observers continue to worry that the agency has not paid sufficient attention to legitimate issues of a manufacturer's goodwill and reputation, to the costs of unnecessary panic among product consumers, and the mischief that plaintiffs' lawyers might cause with unwarranted increase in litigation against manufacturers.

A recent U.S. Government Accountability Office [report](#) on the database found that of 1,800 published reports, manufacturers noted that 160, nearly 10%, had materially inaccurate information.