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Subject: Deaf Ears and the CPSIA - What can We Learn from Bernie Madoff and Harry Markopoulos?

Please find below an important article appearing in today's Washington Post. This article makes clear that the children's products industry does not object to the safety goals or standards in the CPSIA but strongly objects to the mechanisms and rules in the new law to achieve those goals. Ironically, it appears that the staff of the regulatory agency responsible for implementing the new law, the CPSC, shares these serious concerns. The only body seemingly oblivious is Congress.

The convenient conclusions and posturing of safety activists suggests an intent to simply not hear or an indifference to the nature of industry objections. The alarmist approach of safety advocates can be used to justify any outcome since the cost and consequences of their proposals are always measured against the abstract notion of "erring on the side of safety". While that may sound good, it's really just an aggressive way to encourage Congress not to think about the details or nature of the rules that the safety activists support.

If Congress decides to place its head in the sand on the issues raised by industry (including retroactivity and pre-emption), it risks true economic disaster. Having experienced this law firsthand in our offices, the details of complying, the cost, the market disruption, the suffocating complexity and nitpicking absurdity of what must be done in a vain attempt to comply, I become more despondent by the day. By all appearances, our message is falling on deaf ears. Without your help, we feel increasingly lost. This will not end well.

I would like to call your attention to recent coverage in the Wall Street Journal and elsewhere of the story of Harry Markopoulos. Mr. Markopoulos was the lone voice tirelessly prodding the SEC into action for nine long years on the alleged Ponzi Scheme of Bernard Madoff. Mr. Markopoulos was an unknown hedge fund investor competing with the respected Mr. Madoff in the marketplace, in his own words "a nobody". Perhaps because of Mr. Madoff's golden reputation and securities industry connections and because of Mr. Markopoulos' own low profile, Mr. Markopoulos was largely ignored. In fact, the SEC even seems to have discarded his memos, and had to request new copies recently. Mr. Markopoulos must have felt increasingly desperate in his attempts to stave off an unprecedented catastrophe - to no avail. The explicit warnings of Mr. Markopoulos, as we now know, sadly came true in shocking, horrific detail.

It seems to me that the sad tale of Harry Markopoulos, Bernard Madoff and the missing \$50 Billion illustrates that objective truth is independent of its messenger. Since the time of Shakespeare, difficult and inconvenient messages have been ignored at the peril of the listener, often because the messenger was disdained or unknown. But even "nobodies" are sometimes right on. I hope you won't let the media have good reason someday to herald today's rising voices in opposition to the CPSIA - after the meltdown is too far advanced to halt. You have an opportunity to build a bridge to industry now and fix this mess before the cancer spreads too far. Companies are wasting vast sums of money in unproductive attempts to satisfy the CPSIA's overreaching demands without making anyone safer. That money is largely irrecoverable.

Let's not let this law lay waste to our nation's corporate capital for one more day. I call on the Rush Subcommittee to hold urgent talks with industry to rework this law and implement new rules as soon as possible in January.

Thank you for considering my view on this critical and urgent matter.

Sincerely,

Richard Woldenberg
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Toymakers Assail Costs of New Law How Consumer Protections Will Be Implemented Is Onerous, Manufacturers Say

By Lyndsey Layton and Annys Shin
Washington Post Staff Writers
Sunday, December 21, 2008; A03

Selecta, a German toymaker, carves whimsical cars and characters from native woods, colors them with vegetable dyes and coats them in silky beeswax. No lead, no toxic varnishes. Not even waste -- the company heats its factory with leftover woodchips. Just the kind of toymaker in demand after scares about tainted playthings from China.

But this holiday season, Selecta is preparing to pull out of the U.S. market. Its problem, executives say, is consumer legislation that is adding crushing costs to selling toys in America.

The law, which takes effect Feb. 10, was passed by Congress in response to recalls of lead-laced toys and growing health concerns about chemicals in plastics. The \$22 billion toy industry says the requirements have created confusing bureaucratic layers and startling new costs that will decimate a business already struggling through a punishing recession.

For the first time, manufacturers will have to pay independent testing laboratories to verify that every component of a product meets new limits for lead and does not contain six chemicals that Congress has banned from plastic children's products.

Learning Resources, an Illinois manufacturer of educational toys, says one lab wants \$24,000 to test a certain model of children's telescopes. Many companies say that the law does not spell out exactly what must be tested and that the uncertainty is creating havoc with business plans.

Manufacturers say the law will have unintended consequences: halting the sale of kids' bicycles, requiring clothingmakers to discard millions of dollars in inventory, and banning products that pose little or no safety threat.

"This business is being ruined, and it has nothing to do with safety," said Rick Woldenberg, chairman of Learning Resources. "It has to do with mania."

Consumer advocates say the law offers needed protection. "There's no unfettered right to sell your products if you can't prove they're safe," said Rachel Weintraub <<http://www.washingtonpost.com/ac2/related/topic/Rachel+Weintraub?tid=informline>> of the Consumer Federation of America <<http://www.washingtonpost.com/ac2/related/topic/Consumer+Federation+of+America?tid=informline>> .

Toys on shelves now are a mix; some would meet the new safety regulations, others would not. Some large retailers, such as Wal-Mart <<http://www.washingtonpost.com/ac2/related/topic/Wal-Mart+Stores+Inc.?tid=informline>> and Toys R Us, are requiring suppliers to comply with the new requirements ahead of their effective date. But other stores are selling old stock this holiday season,

sometimes at a discount, to shed inventory before the law takes effect. Shoppers concerned about lead and chemicals should ask retailers or manufacturers about the contents of their products, experts say.

While toy giants such as Hasbro

<<http://www.washingtonpost.com/ac2/related/topic/Hasbro+Inc.?tid=informline>> and Mattel <<http://www.washingtonpost.com/ac2/related/topic/Mattel+Inc.?tid=informline>> began changing their materials even before the law was passed, some owners of medium and small businesses say they do not have the time -- or the money -- to comply with the tough new provisions.

Backers of the new law say the toy industry had plenty of warning that government was making safety regulations tougher. California, which has the largest state economy and often sets trends because of its market muscle, approved a toy safety overhaul similar to the federal legislation in 2007. That ban takes effect next month.

Lead, a neurotoxin that can injure the brain, reduce IQ and cause behavioral problems in young children, has been banned from paint in the United States since 1978.

But lead paint was discovered in 2007 on thousands of imported toys, a scandal that alarmed consumers and revealed an industry where manufacturers do not always know what kinds of materials suppliers are using. Congress passed the Consumer Product Safety Improvement Act to set strict limits for lead in any toy or child's product and to force manufacturers to prove compliance before they can sell them.

The law also prohibits phthalates, one of the few chemical bans ever approved by Congress. Phthalates interfere with the endocrine system and may cause reproductive problems, especially for fetuses and infants. Research shows that children ingest the chemicals by acts as simple as chewing on a rubber duck.

Congress permanently prohibited three phthalates from toys and approved a temporary ban for three others in toys or child-care products that the child "can bring to his mouth," pending further study.

Most toymakers interviewed said they had no problem with prohibitions against lead or harmful chemicals. The implementation of the law is causing concern, they said.

"The law was poorly thought through by Congress," said Bob Burns, a spokesman for the Bicycle Product Suppliers Association. "I don't think enough time and consideration was given to this lead content limit and all of the consequences it's going to have. It has potentially created a huge economic impact at a horrible time in the U.S. economy."

Bicycle suppliers are upset because components such as the valve on a tire contain lead. Although children are not likely to ingest that lead, it may be at high enough levels to violate the new ceiling of 600 parts per million. Unless the manufacturers get an exemption, the law would make it illegal to sell kids' bikes.

Another problem is that the agency charged with interpreting and enforcing the law is overwhelmed.

"Because of the way Congress approached this, we will do our best to implement it, but it leaves us running ragged," said John G. Mullen, who heads the compliance office at the Consumer Product Safety Commission

<<http://www.washingtonpost.com/ac2/related/topic/U.S.+Consumer+Product+Safety+Commission?tid=informline>> , which has about a dozen staffers wading through hundreds of requests from manufacturers seeking exemptions from the law.

Businesses as varied as ballpoint pen makers and book publishers have clamored for special consideration. The National Association of Manufacturers

<<http://www.washingtonpost.com/ac2/related/topic/National+Association+of+Manufacturers?tid=informlin>>

e> has petitioned the commission to exempt certain materials, products and inaccessible components. If CPSC does not make those exemptions, "hundreds of thousands of materials and products may be banned or will have to be tested for lead unnecessarily and at great expense," the petition said.

The commission can exempt materials that do not pose a health hazard or products that have lead embedded inside them that cannot be touched by a child. But that requires rulemaking, which can take years.

Two legal opinions issued by the commission have triggered particular controversy.

Cheryl Falvey, the CPSC's general counsel, ruled that the phthalates ban applies only to merchandise sold after the law takes effect Feb. 10. Retailers can still sell products containing phthalates that were made before the ban took effect.

That outraged several members of Congress, especially Sen. Dianne Feinstein <<http://projects.washingtonpost.com/congress/members/f000062/>> (D-Calif.). Recently, the Natural Resources Defense Council <<http://www.washingtonpost.com/ac2/related/topic/Natural+Resources+Defense+Council?tid=informline>> and Public Citizen <<http://www.washingtonpost.com/ac2/related/topic/Public+Citizen+Foundation?tid=informline>> filed a lawsuit asking a federal court to overturn Falvey's ruling.

"The commission's decision will allow manufacturers to stockpile and retailers to continue selling banned products after the ban date," said Aaron Colangelo, an attorney with the Natural Resources Defense Council.

On the lead limit, Falvey ruled the opposite. She said the limit applied to any children's product sold after Feb. 10, even if it was made before the law passed. That forces manufacturers to either prove that merchandise already in stores meets the requirements or pull it from shelves.

After Feb. 10, it will be illegal to sell the banned products, even to export them. Manufacturers who borrow money against invoices may find themselves unable to pay creditors because the underlying merchandise is unsalable.

"One day they're an asset; the next day they're contraband. The same thing happened with Prohibition," said Woldenberg, whose 300,000-square-foot warehouse is filled with plastic toys.

He has been shipping them back to China, where they were made, to have them tested for lead and phthalates and shipped back to his Illinois warehouse. Woldenberg said he is confident that his products will meet the standards but is less certain he can afford the cost of proving it.

Testing costs can be exorbitant, and neither the law nor the CPSC spells out how extensive testing must be.

Jamie Kreisman owns Beka, a small company in St. Paul, Minn., that makes wooden puppet theaters, easels and blocks. Kreisman sent one of his best-selling items, a 68-piece set of natural wood blocks, for lead testing by an independent lab. He paid a U.S. lab \$500 to confirm that his unfinished blocks were in fact unfinished blocks.

"There was no lead to test, no surface finish to test," he said. "They wrote us a formal report and gave us a bill."

The law also requires a complicated tracking system allowing customers to trace a product's manufacturing origins. Woldenberg said that going back to his warehouse and attaching labels to each product could take years.

"The whole administrative and shipping side has become crazy under this," said Rex Tompkins, president of Europlay, which represents Selecta in the United States.

The problems of the retailers and the toymakers are beside the point, Colangelo said. "Congress decided these toys are unsafe," he said. "That's critical here. We're not talking about unsold inventory of something innocuous. We're talking about something that Congress decided was unsafe and shouldn't be on the shelves."

<http://www.washingtonpost.com/wp-dyn/content/article/2008/12/20/AR2008122001878.html>