
From: Rick Woldenberg
Sent: Fri 11/14/2008 7:48 AM
To: cfalvey@cpsc.gov
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Subject: RE: Retroactive Application of the CPSIA

Dear Ms. Falvey,

I am writing in opposition to your legal opinion dated September 12, 2008 that the CPSIA has retroactive effect on existing inventory (the Falvey Opinion). This is my third letter on this subject. I wish to amplify one point for your consideration.

First, I would like to recap my points:

1. The Falvey Opinion will cause widespread loan defaults in corporate America.
2. The Falvey Opinion will prevent those same companies from obtaining audited financials at year end 2008 and perhaps thereafter.
3. The foregoing two issues create serious Sarbanes-Oxley issues for many public companies and officers of those companies.

[N.b., I am now aware of THREE COMPANIES that have filed comments with you acknowledging loan defaults and problems with audited financials, and one company that acknowledged Sarbanes-Oxley issues. Have you consulted with the SEC on the impact of the Falvey Opinion?]

4. Existing Inventory is safe and appropriate to sell off.
5. The silence of corporate America is coerced, not voluntary, and cannot be taken as quiet acceptance.
6. By letter to Christian Fjeld and cc'd to you, I have submitted evidence that the purported retroactive effect of the CPSIA was not known to the public or the business community before passage of HR 4040, raising serious questions of due process. It also raises important questions about the true intent of the legislation.

I want you to know what is happening in the marketplace in direct response to the Falvey Opinion. It is my understanding that Wal-Mart has informed its suppliers of children's products that it intends to return all merchandise, regardless of age, that cannot be proven to comply with the new standards. Supposedly, it intends to complete this transfer by February 10. At least two other major retailers are rumored to have taken a similar position. This tug-of-war over existing inventory is actually a game of "hot potato": whoever ends up with the inventory on February 10 has a massive, perhaps fatal financial problem. Thus, no one is talking about how to sell off existing inventory (the old "yard sale" idea) - everyone is focusing on how to stick the inventory (the problem) with someone else. We are deathly afraid that Wal-Mart's plan will trigger a massive inventory "run on the bank" where all of our dealers will demand to return their unsold inventory, a scenario implying a stand-off between thousands of companies over a financial issue triggered by the Falvey Opinion. As previously noted, it is certainly true that we cannot afford to absorb the hit on our existing inventory. The notion that we could somehow survive the burden of absorbing the entire U.S. supply chain's inventory of our products is nonsensical. If this happens, you should expect widespread corporate bankruptcies.

No sane person could argue that Congress "intended" this result. Clearly, Congress in its rush to punish the entire children's products industries (shoes, electronics, clothing, toys, sports equipment, novelties, books, lamps, etc.) for perceived "bad acts" drafted a law without regard to consequences. It's time to speak the truth - this was not intended by Congress because it couldn't have been intended by Congress. If that's so, the Falvey Opinion must be reversed.

Thank you for considering my views on this urgent matter.

Sincerely,

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