



November 10, 2008

Ms. Cheryl A. Falvey
General Counsel
Office of the General Counsel
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, Maryland 20814

Re: Comments on Advisory Opinion on Retroactive Application of the CPSIA Dated September 12, 2008

Dear Ms. Falvey,

In my November 7 email comment letter, I went on record opposing your September 12 legal opinion that the CPSIA applies its new safety standards retroactively on existing inventory. In this letter, I will address the safety of existing inventory and why so few companies have spoken out on the retroactivity issue publicly.

How Safe is Existing Inventory?: It is time to acknowledge that the new safety standards of the CPSIA were not intended to make children's products "safe" – the new standards were designed to make those products SAFER. Sale of existing inventory is as safe today as it was a year ago or five years ago – the nation's inventory of children's products has not somehow turned "rotten". Products that are known to cause harm have been illegal for years (lead-in-paint), are subject to recall and remain illegal. As to the rest of existing inventory, there is simply no evidence to suggest that it is or was dangerous from trace presence of (entrained) lead. Consider the breadth of the affected products: shoes, computers, clothing, bedding, books, consumer electronics, luggage, toys, housewares, lamps, sports equipment, etc. Does anyone *actually* believe that this massive array of legal products has "dangerous lead levels"? There is no evidence that they do. The notion of a pervasive, unqualified "danger" has been packaged and sold by activists who equate the *presence* of even trace levels of lead with *bio-accessible exposure* to lead. Supporters of the retroactive ban seem to rely on the notion that since lead-in-paint is known to be dangerous to children, it therefore follows that lead under all circumstances is dangerous to all children. This "reasoning by default" is incorrect as a matter of logic

I would further observe that concern for the safety of children is not something invented by Congress last summer. There are countless companies like ours serving the vast children's product industry that devote considerable resources to protecting children from unsafe or inappropriate products. In fact, we are honest and honorable businesspeople who are parents and members of a community. We have always cared about children and recognize the heavy responsibility of the duty of care for our consumers. The fact that some companies have failed notoriously in recent times does NOT prove that all companies and all children's products are

somehow "defective". That logic must be publicly denounced, despite political pressure to the contrary.

Inventory - Damn the Consequences, Don't Bother Me with the Details: The political justification for retroactive effect is borne of hysteria. Supporters of this movement have framed the debate by their "damn the consequences" approach, insisting that new safety standards are so urgent that existing inventory cannot be tolerated. Yet, having unfortunately tarred all inventory with the same brush under the CPSIA, Congress left many industries facing disastrous rules which poorly reflect the reality of their marketplace. The CPSIA pays little mind to practical issues like manufacturing lead times, materiality and proportionality of risk, lot traceability in existing inventory, the needs of our educational system and other niche markets, and the role of business judgment in the all-too-brief transition period set by your September 12 retroactivity opinion. Even the incomprehensibly massive burden of testing expense has been ignored as a consideration in the retroactive ban on existing inventory. For those of us attempting to comply with this legislation, all these "niggling details" are a source of great anxiety and financial strain. The imposition of new safety standards without a right to transition through inventory liquidation trades off negligible consumer safety improvement for systemic national economic risk. I urge the CPSC to recognize the dangerous impracticality of its September 12 legal opinion.

Why Aren't Companies Speaking Out?: It is very risky politically to stand up and criticize any aspect of the CPSIA. Few if any corporations are apparently willing to take on the hostile atmosphere on Capital Hill and in the media – it's a "no win" proposition. Unqualified support for the CPSIA has become a litmus test for "right thinking" people, and with the aid of the media and others, anyone who opposes the "will of Congress" is disgraced. Corporations cannot afford the unthinkable risk to their brands' goodwill by openly questioning the CPSIA. Industry organizations as well are under pressure to not trigger a "public relations nightmare" for their membership. Thus, silence cannot be taken as quiet acceptance in a time of stifled debate. So long as the issue is presented as tighter regulations necessary to protect children from irresponsible companies, it is clear no one will speak out freely for fear of retribution or embarrassment. There is no "whistleblower" law to protect corporations seeking to comment on provisions of this law.

We have chosen to take considerable risk by opposing the retroactive ban publicly. Our comments, which have been delivered orally, apparently must be submitted in writing in order to be considered. In other words, we must stand up to be heard. In so doing, we impose great uncertainty on our valued associates, our families, our dealers who need us as suppliers and our consumers who depend on our products. We have not taken this step lightly. The fact that Learning Resources, Inc. is speaking out alone does not mean that we alone hold these views. There is intense financial and political pressure on companies to "go along to get along".

One Way to Cure Cancer is to Kill the Patient:



The time to save the patient is running out. As a nation, we face rough economic waters ahead. The application of CPSIA standards retroactively is dangerous and unnecessary. I call on you to reverse your September 12 legal opinion immediately. The stakes are too high for any other course of action.

Sincerely,


Richard Woldenberg
Chairman