

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland 20814

Re: Tracking Labels

Dear Sir,

We are replying to the request for comments published in the Federal Register on February 26, 2009 on the implementation of Section 103 of the CPSIA (see <http://cpsc.gov/businfo/frnotices/fr09/trackinglabels.pdf>). You have asked for comments on several specific topics. I have responded to your questions below but provide general comments first.

I would note upfront that of all the provisions in the CPSIA that I consider dangerous and ill-conceived, the tracking labels provision has the greatest potential to wreak economic damage and induce unmerited market restructuring. This provision alone may bankrupt companies and wipe out entire product lines, all without improving children's product safety. I call on the CPSC and Congress to stay the implementation of this provision indefinitely to allow for public hearings and reconsideration of this requirement. If the CPSC and Congress proceed with implementation of Section 103 as planned for August 14, 2009, accountability for the irreversible damage inflicted over industry warnings will rest with the CPSC and Congress. This terrible outcome is avoidable by brave action taken in advance. Please table this provision pending development of a sensible risk-based alternative.

General Comments:

a. Children's Product Industry Safety Record Makes Tracking Labels VERY Wasteful. Our company is not unlike most participants in the market, having had virtually no recalls over the years. Notably, recalls for lead-in-paint in children's products (all markets) during the historically high recall period of January 1, 2007 – January 30, 2009 (25 months) involved only 87 companies (125 recalls total). See analysis in <http://learningresourcesinc.blogspot.com/2009/02/cpsia-dont-believe-consumer-groups-snow.html>. Given that many thousands of companies trade in children's products in the U.S. economy, this data confirms that only a minuscule fraction of all children's product companies generate recalls in any given year. Of the 125 recalls for lead-in-paint during the subject 25-month period, one company was responsible for seven recalls, two companies had five recalls, three had four recalls, three had three recalls, nine had two recalls and the remaining 69 companies had one recall each. Many of these recalls were self-induced as the companies turned themselves in as a result of self-policing. In addition, the CPSC exercised no discretion in implementing recalls for the many hyper-technical lead-in-paint violations during this period (see the remarks of Nancy Nord on February 16, 2009 at the New York Toy Fair), thus inflating the apparently dramatic recall figures.

The new requirement to place tracking labels on our products will have a devastating impact on our company and our investment decisions going forward, all without any impact whatsoever on safety or the effectiveness of recalls of our products (if any). We built a strong track record of safety administration in the 25 years since our founding (not by accident), and with the stringent new rules of the CPSIA, the tiny risk of a recall of our items is further reduced. For perspective, please note that I estimate that our company has produced and sold between 750 million and 1 billion units since our founding in 1984. In that period of time, we have had ONE recall of 130 pieces. In that case, we identified the customers who had purchased the recalled items using our computer inventory tracking system, called them each individually and recovered ALL of the recall units. We did this without the use of tracking labels. **Please note that these figures suggest that the expected recall rate for our products is approximately 0.00001%.** How much should we spend to improve recall effectiveness if the risk of a recall over a 25-year period is 0.00001%? Nothing, of course. If we spend 0.5% of revenue on tracking labels under an

implementation of Section 103 (as anticipated), the labeling cost would exceed the annualized cost of recalls by 50,000:1.

If the tracking label provision is enforced against our company, we will incur SUBSTANTIAL incremental expenses which will NOT improve our safety performance. Notably, the labels CANNOT POSSIBLY improve our recall effectiveness. As demonstrated above, the VAST MAJORITY of newly-regulated children's product companies have NEVER HAD ONE RECALL for any reason. If far less than 1% of children's product manufacturers have a single recall in a five-year period, the cost for tracking labels cannot be justified, ESPECIALLY in light of the undocumented benefit of improved recalls (namely, injuries expected to be avoided). There is simply no way the cost and benefit of tracking labels match or relate favorably for consumers or anyone for that matter.

Notably, like so many aspects of the CPSIA, the imposition of the tracking label requirement indiscriminately without consideration of quantifiable risk causes major market distortions. While I am all in favor of "improving recall effectiveness" (whatever that may mean in this case), the cost of more effective recalls should be evaluated against the ACTUAL impact of ineffective recalls. In some cases, where the risk to life is severe (perhaps a good example is cribs or playpens), labels may make sense because consumers and resellers need an easy way to tell which items should be set aside. This reasoning would not apply indiscriminately to other categories of children's products. Improving recall effectiveness will come at a cost, and if there is no actual societal benefit to the change in the system, the cost of the changes will be pure cost to all of us.

I would note further that most items can be easily identified without tracking labels. It is also true that many items are made by only one source, and in fact, many small companies have few sources. Knowing the brand name is sufficient in those cases to identify the source. In addition, many companies (like ours) use sophisticated warehouse management/inventory-tracking software which provides comprehensive control over manufacturing lots. This software helps manage recalls quite effectively. For instance, in the above recall situation, we were able to quickly identify all at-risk transactions using our tracking software. Tracking labels would not have improved and might have reduced the effectiveness of that particular recall.

b. Use Enforcement Discretion to Table or Sharply Restrict the Tracking Labels Requirement. Given the assertion by the CPSC of its broad "enforcement discretion" in granting a permanent stay of enforcement on the ATV industry, I call on the CPSC to use its "enforcement discretion" to permanently stay the tracking label requirement and to redeploy it only in those instances where a clear connection to public safety and prevention of injuries can be made. In the case of our company, with our strong record of safety administration, the nature of our products and their excellent and consistent track record for safety, the application of the tracking label requirements is both wasteful and will distort our economic decision-making. The CPSC should waive the requirement in all cases where there is no demonstrated need for labeling to protect the public. To do otherwise is to sacrifice the small business community to these overreaching and unproductive requirements.

c. The Tracking Label Requirement Will Kill Many Innocent Items Produced by Small Business. The cost of administration of tracking labels will be enough to cause a MAJOR culling of specialty market items. For instance, with more than 1500 items in our current product line, the complexity of the undertaking at our company is simply breathtaking. The impact of tracking labels falls disproportionately on small businesses using small runs to service niche markets. When the expense of tracking, retaining and managing lot information, managing and implementing lot markings, inspecting shipments at factories and at the destination warehouse, rehabbing incorrectly labeled items, training and supervising internal staff and the supply chain simply on tracking labels and the potential liability attached to errors or administrative failures, is considered and added to the cost of small run products, it seems likely that most small businesses will be cutting their product lines. It is also likely that many large businesses will feel similar pressures to reduce product ranges and possibly exit entire markets.

Arguably, the tracking label provisions can only be managed by companies using only large production runs (make-to-order, rather than make-to-stock) or selling very limited product ranges (50-100 items only). Only under these circumstances is the complexity and cost of tracking labels even slightly

controllable. Companies meeting this criteria usually cater to the mass market. Small businesses and start-ups do not typically use large production runs which can bear the expense of tracking labels. Whereas a large company can fairly easily manage the labeling requirements on a P.O.-by-P.O. basis efficiently, small businesses will bear a skyrocketing burden as they attempt to serve the specialty market.

d. The Tracking Label Concept GREATLY Oversimplifies the Task. Tracking labels will be a tortuous process for most companies. Please consider:

1. For many companies with small runs, lot sizes for different components in a single product may vary. For instance, boxes and other print items might be produced in 5,000 piece runs or larger to gain minimum pricing efficiency. If product components are run in different lot sizes or lots out of sequence (for instance, making new product with old boxes), labeling will likely be manual and expensive. Some re-labeling may be required. On some occasions where the finished product itself is made out of sequence with the packaging, an additional step of matching labels (packaging and product itself) will be required. This step will likely need to be verified by statistical sampling at the factory and spot-checked upon arrival, a hugely wasteful and expensive step that will slow companies down to a crawl. Please keep the burden of these activities in mind when considered their low potential value to a company like ours that recalled only 130 pieces in 25 years (none of which caused an injury).

Small lot manufacturers, like crafters, work-at-home-moms and companies catering to special needs, will find the burden of managing the complexity of matching component lots and handling complex labeling requirements unbearable. This will also encourage disregard for the law, faking the labels (never changing the lot number, for instance) or the creation of some kind of black market (selling out of the trunk of your car or at flea market, rather than through stores). Forcing small businesses underground cannot be good policy.

2. Many companies have multiple sources for a single item. The cost and complexity of maintaining and properly labeling items with varying sources will be prohibitive (impossible as a practical matter).

3. Changing labels on each run will be a taxing administrative process. To change a label on both the product and the package may require the involvement of product development staff in some companies or for some products. This will soak up innovation resources to process administrative details. At our company, since our items vary considerably (plain and painted wood, plastic, urea, sewn, roto-cast, injection-molded, electronics, printed, kits, etc.), numerous different labeling protocols must be developed and enforced to ensure proper labeling with consistent quality control. We anticipate this effort will require specialized software at considerable expense. We do not presently own such software and it may or may not be available on the market. We also anticipate that we will need to hire, train and retain a full-time staff devoted just to tracking labels. Given the size of our product line and the frequency of our production runs, we estimate a need to change at least 20,000 – 30,000 labels every year. That could be as many as 600 labels per week at our small company. It will be a nearly impossible task.

4. The task of incorporating lot markings will be new to many small factories. Small businesses use different factories than big companies. Not only do small companies serve different parts of the market, a different supply chain has also developed to serve them. [Please note that the most notorious recalls in 2007/8 were NOT by small companies serviced by small factories; the data does not suggest that size of factory correlates directly to quality.] The shift to tracking labels with this manufacturing base is likely to be a rough one. For instance, our supply chain has never had to change each of our products lot-by-lot. We have not selected our factories for this skill set and do not know if they can manage a process like this. No doubt some of our factories will fail to be good partners for lot markings. The transition to tracking labels will be disruptive to our supply chain, and will be quite expensive. It cannot be done in a short period of time. Even a one year lead-time is unrealistic.

5. Many items which are sold safely and appropriately in the U.S. have ambiguous or unknown sources. Items obtained through trading companies often have intentionally-obscured origins. In addition, just as many importers present themselves as manufacturers, some factories present themselves as

manufacturers but are actually trading companies. As a practical matter, it is not possible to identify the manufacturer in many cases. In other cases, the origin of the item may be impossible to identify because it is a fungible commodity (think of aluminum foil, table tennis balls or paper clips). With multiple sources possible (or even mixed together in one box), **it may be impossible** to properly label items in compliance with the rules. Finally, some items may be sold as "children's products" under the CPSIA definition although they sell freely in the general economy without regulation. For instance, tape measures sold at Home Depot might also be sold as educational materials. Likewise, Reynolds Aluminum foil sold at the grocery store without labels might be sold to schools for science experiments. Labeling common items will be impossible because the sources for such consumer goods are unlikely to cooperate, based on our real world experience. As a consequence, many resellers will have to choose between breaking the law and dropping important supply items. This phenomenon will hammer the school business, among others.

6. Many items have numerous small parts that cannot be marked. A set of blocks cannot be easily marked, for instance. This will slow down many marketers of children's products. In some cases, labeling might even impair the ability of the item to function properly.

7. Production runs do not always have a clear "date". For instance, production runs can stretch over several days or occur in several places at one time. In other cases, production can be done separately for various components, and then simple assembly (put item in a box, for instance) may occur at another date. If the basic item is made at one time but assembled into boxes on several occasions, tracking labels may set out misleading information if the assembly date is shown. Or, if assembly is somehow done wrong, the date would be misleading if keyed off the production date of the basic item. This creates a real dilemma for small businesses. Other permutations may also be troublesome.

8. Owing to the presence of various components in each item, the tracking label requirement will quickly devolve into an implicit requirement to track components back to its source for each production run. This kind of recordkeeping is WELL BEYOND most companies' capabilities (small or large). In any event, the low value of most children's products means that there won't be enough profit to support the development of a recordkeeping system more appropriate to Boeing or Lockheed Martin. It is also well beyond the capability of most of our factories as their computerized automation will not accommodate this kind of complexity. The Dickensian requirement to track such excessive and ultimately useless data will strongly discourage start-ups in children's products and will cause many, if not most, children's product companies to transition away from serving the children's market. This will happen over time as the burden becomes clear to most companies. Niche markets like Education will be crushed by such negative incentives. This has already begun to take place in the thrift store market, as many thrift stores are refusing to sell children's products to avoid the risk of litigation or fines. Like the thrift stores, the rest of us will react to these new costs and risks by adjusting our businesses to the new conditions. In most cases, controlling costs under the CPSIA will mean exit.

9. Many important children's products, especially in the education field, are kits that present special labeling challenges. Labeling kits with many components will be a nightmare and will constitute competitive suicide. Consider a kit with 50 components. For such a kit, we might have to list each source on the packaging and possibly mark the same information on the master carton, providing a wonderful competitive roadmap to our customers or competitors to save money or to steal business. In addition, we might have to label EACH component in the kit with its source. See above for the many challenges that confront kit makers when they try to label the components. If a 50-component kit requires labeling on a component-by-component basis, the biggest single expense in packaging a kit may turn out to be labeling. The cost of such kits will skyrocket to pay for wasteful labeling activities that have never proven necessary or desirable since the United States was founded in 1776, or in any other industrial country that I am aware of. With the anticipated increase in cost, I believe many such kits will be discontinued.

10. Some items are sold in bulk and have no packaging. These items do not fit within the rule and need to be excluded. Some items are packaged for retail and then broken apart for retail in bulk at the store level, too.

11. Some companies market natural materials (such as rocks) as children's products, creating unique difficulties. Companies marketing natural or live materials like clay, plants, insects or animals (or dead

materials like frogs for dissection) to children will not be able to document origin (where did that clay come from, or that frog? What is the origin of the granite specimen?) or easily label the specimens. Needless to say, labeling an ant, a tomato plant or rocks from several locations is absurd.

e. Manufacturers Can Accurately Assess Cost and Benefit of Tracking Labels. In our case, with 130 pieces recalled over a 25-year period, we believe it is in our economic interest to (i) keep making safe products through strict control of our supply chain and other quality control measures, and (ii) take the risk of having to recall more units than necessary by opting to NOT label our products by lot number and other co-hort information. This is CLEARLY a favorable economic decision for our company. At no time in our history would it have made economic sense to label our products by lot to facilitate "more effective recalls". We are concerned that the resources devoted to managing a tracking label program will divert funds from factory inspections or other necessary quality control efforts designed to ensure the safety of our products. Other than situations where labeling is clearly needed to prevent likely injury, the manufacturer is best situated to make this judgment. In some cases, manufacturers have used serial numbers to create their own quality monitoring system where necessary or desirable in pleasing customers or building a brand. We believe the market will operate to provide incentives to manufacturers to reduce costs through labeling, if tracking labels actually adds value.

f. A Requirement to Disclosure Factory Identity In ANY Form Will Kill Companies. The identity of sources is critically-sensitive and confidential data in many cases. Maintaining confidentiality on that information is essential for any private labeler. If private labelers must reveal their ultimate source, their brands will be severely damaged or even destroyed. I note with a sense of dread that senior CPSC enforcement and legal officials announced at the 2009 ICPHSO meeting that the CPSIA requires disclosure of sources in a form that consumers can access. In particular, I recall one CPSC official advising the large assembled group of businesspeople to get past their "mourning process" over disclosure of this confidential data. I certainly hope the agency will reconsider this terrible decision. It is not unknown for large customers to buy certain products with the seeming idea to develop their own version if sales are good. This process will be greatly accelerated if not shortcut by the disclosure of factory identities. Likewise, competitors will feast on the factory identities to reverse engineer deals or steal business.

Were the CPSC to proceed to implement a rule requiring that confidential sources be disclosed AT ALL, the rules of the game would change forever in the Children's Product market. This rule would be experienced as a cost by market participants. That is, manufacturers would discount their ability to capture or retain large accounts for any item they didn't make themselves or make in a controlled factory. In most cases, without the large volume accounts, these products would no longer make economic sense and would be dropped or would never come to market. Interestingly, many companies do good business selling open market items under their own name. [Think of tape measures.] Clearly if there is enough demand to fuel sales for so many private label open market items, this activity must meet a real market need. If the CPSC imposes a disclosure rule governing factory identities, most of this economic activity will end and that market need will go unfulfilled. It will be just too easy to steal sources and the incentive to bring these open market items to the children's market will so greatly reduced as to kill the market. This will benefit NO ONE.

g. Confusion over Labeling Will Cause the Market to SHRINK. I have already heard of one school electing to teach geology using posters rather than rocks over concern about CPSIA compliance. No amount of explaining and hand waving was able to move the school off this decision. Whether or not the school should have had legal worries about the CPSIA, they did in actual fact and the students in that district will now learn about rocks from a piece of paper rather than from specimens. This obviously inferior method of teaching will no doubt negatively affect the quality of education. Like it or not, in the real world, the rules set forth in the CPSIA (including tracking labels) will drive regrettable decisions downstream. No amount of education or "clarification" will fix this problem. Imposing a misconceived across-the-board tracking label rule will result in mass chaos in the market and will damage our schools and our economy. Without a serious trimming and refocusing of this requirement, the CPSC and the Congress should be prepared for high costs to our society from a rule with limited safety upside on any basis.

h. Like Other Aspects of the CPSIA, the Marketing Intent Implicit in the Definition of "Children's Products" Will Cause Havoc. Since the intention of the seller determines whether something is a "children's product" under the CPSIA, it is clear that there will be commercial "wars" over labeling between manufacturers and retailers who repurpose items for sale into schools or to children otherwise. For instance, a marketer could buy pens domestically from a pen supplier and then offer a service to stencil a child's name on them. [This is a popular service in the children's toy and housewares market.] The CPSIA tracking label obligation will not fall on the manufacturer who produced a pen for general use. But how will the downstream value-added reseller get the correct information for the label without the cooperation of the pen supplier (who may not have it himself)? This type of bizarre problem will close the door to the sale opportunity - people will not endure the hassle for labels, they'll find some other way to make money. Unless the purpose of this rule is to end commerce in children's products, the problems implicit in heavily regulating part of the market and leaving the rest completely unregulated will need to be reconsidered. [In this case, we advocate that less regulation is the appropriate solution.] The concept of an "intent-based" rule defining the scope of the labeling obligation is going to shrink the children's market owing to confusion alone. Despite Congressional cries for greater "clarity", I do not believe this structural flaw in the law can be repaired by any amount of clarifying by the CPSC or anyone else.

Your Questions:

Q1. The conditions and circumstances that should be considered in determining whether it is "practicable" to have tracking labels on children's products and the extent to which different factors apply to including labels on packaging.

A1: First and foremost, the term "practicable" needs to take into account the economics of the labeling task. If economics are somehow ignored on "public policy grounds", small business and niche markets are likely to be crushed, assuming the provision is taken seriously and both regulators and the marketplace enforce the provision. If so, important niches served by small businesses will be deprived of existing products (as suddenly uneconomic products are culled from the market) and innovative new products (for lack of economic incentive and for the paucity of start-up businesses). There is a legitimate fear in the market that the tracking label provision will accelerate a move toward a mass market-only economy, where choice is limited to whatever the Wal-Mart's and Toys R Us's of the world will allow consumers to buy. Small production runs suffer from dramatically worse economics under this rule, and that economic disadvantage will tender huge opportunity to the mass market.

I recommend that "practicable" take into account the production run economics, and that therefore the implementation only be imposed on production runs of 50,000 pieces per lot or more. This would have the effect of protecting small businesses, and would tailor the provision ONLY to those large runs which have the potential to do widespread harm. **Please do not interpret any constructive remarks herein about any aspect of tracking labels or implementation of Section 103 as a form of endorsement. I am unambiguously on record as opposing implementation of this provision for the reasons outlined in this letter. Any remark in this letter about how to implement Section 103 is simply in response to your questions, not an indication of any support for tracking labels.**

In addition to economics, I believe there are many manifestations of products that should have some relief from labeling requirements:

- Those items where the all-in cost of tracking labels is more than 0.5% of the landed cost of the item for that production run. [Ex.: low value items or highly complex labeling projects]
- Those items with no "main" part with surface area sufficient to hold a tracking label without destroying its function or aesthetics. [Ex.: pens]
- Those items with multiple components from multiple factories (kits of various kinds). [Ex.: large science kits for schools]
- Those items where the product and its packaging are produced at different times and in different lots sizes. [Ex.: many items made by small businesses for niche markets.]
- Products comprised of small parts. [Ex.: Legos]

- Natural or living materials, as mentioned above.

Re: packaging, as noted above, kits present a particular challenge in labeling as many sources are often found in one package. In addition, many finished goods (open market) in the children's market come from multiple sources, which is usually invisible to the importer. Accessing this information may be difficult or impossible. Relations between importers and factories may fracture if this rule is imposed, as factories depend on "private labels" as much as importers do. *It is further worth noting that if the production of children's products is made sufficiently arduous, expensive or risky, factories will stop serving U.S. importers of children's goods, thus further accelerating the decline on the market.*

Other packaging issues:

- Small facings [Ex.: bags of dice with a tiny header card.]
- Temporary packaging [Ex.: items sold in a B2B market which may or may not be sold to consumers in the non-retail packaging provided. Often the B2B customer doesn't want the seller to know what he is doing with the goods, as the seller may be his competitor. As a consequence, the manufacturer may sell some items thinking that they are NOT for resale and find out later that they were sold at retail.]
- Items without packaging [Ex.: play tables may not come in retail packaging at all.]

I share the concern of many commentators about the requirement that the label be "permanent". I do not know what that might mean. A permanent label should mean anything that sticks with greater durability than a Post-It. Packaging should be allowed to have the tracking information printed on it (in other words, without a label), and the product itself should be allowed to provide the information in any "permanent" means, even if not by label.

Some retailers are said to be currently insisting on "labels", even when the information could be molded or painted on the item. This will add additional costs and arguably will be a worse solution. The requirement by certain retailers for a label is a by-product of the incomplete rules on this requirement as the deadline approaches. Action by the CPSC to stay the implementation of the tracking labels requirement MIGHT get the retailers to back off their varying requirements. Please note that since this provision can be enforced by EACH State Attorney General independent of the CPSC, we believe NO action by the CPSC will have the effect of slowing down the growing body of varying rules on tracking labels in the market as the retailers compete to exceed the expected requirements to ensure none of the 51 regulators capable of enforcing this law will take action. This is creating a truly toxic environment for commerce.

Q2: (a) How permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information would affect: Manufacturer's ability to ascertain the location and date of production of the product; and(b)How permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information would affect: Other business considerations relevant to tracking label policy.

A2a: The manufacturer will be able to determine the location and date of production by its recordkeeping. Standard nomenclature is not necessary to make the information decipherable from the standpoint of a manufacturer. There may be good reason to let manufacturers determine their own form of information as businesses and software systems will vary significantly among the market participants. This is purely a data and recordkeeping function.

Please note that the location of production for many small businesses and their products won't change over many years on an item-by-item basis. For many such items, it is sufficient to note the date of production to identify location. In addition, for companies like ours, simply tying the item back to internal purchase order records will definitively identify the location (and date) of production. Notably, the precise date of production is not nearly as important as the lot identification. Please note that we are not selling consumable products like candy bars. The date of production is largely irrelevant data - the only

information that truly matters is identifying the lot, regardless of when it was made. Any information that would tie a particular unit back to a particular production run is what is needed to make recalls effective. In addition, consumers will only need to be able to make this connection for "more effective recalls". In other words, if the item has the marking "XYZ" on it and that code is recalled, then a consumer can positively identify the item using the code. The rest of the data is irrelevant. Arguably, given the varying levels of education, sophistication and language skills in our country, a truly comprehensive display of data on tracking labels might be counter-productive and impair understanding. In my opinion, the more data provided, the more likely that consumers will be confused. I would prefer a marking like a serial number which is far less complex and much more definitive. This system would also preserve confidentiality of source information which is absolutely critical to preserve economic incentive.

A2b: Anything that would allow each manufacturer to use its discretion in designing and using tracking labels would be quite desirable. As I said, from the point of view of a manufacturer, the key considerations in a recall situation is identifying affected units and clearly describing them for its customers and consumers in general. For many companies, current recordkeeping puts them in a good position to identify items affected, often by date of sale. [Of course, in the case of recalls by date of sale, the manufacturer might be required to accept returns that cannot be distinguished by date of sale or other distinguishing characteristics like product features, components or colors.]

Q3: How consumers' ability to identify recalled items would be affected by permitting manufacturers and private labelers to comply with labeling requirements with or without standardized nomenclature, appearance, and arrangement of information.

A3: As noted above, the consumer only needs to be able to identify the item as recalled or not being recalled. This can be accomplished without the specific co-hort information apparently required by the statute. A "serial number" style for identifier will work well for this purpose. I believe food products often use this means of product identification with great success. The notion that consumers have a valid, non-abusive use for factory identity information is unsubstantiated.

Likewise, resellers of used merchandise, like charities and thrift stores, would be able to effectively monitor recalls using serial number-style markings.

The location and appearance of the information might not need standardization if a summary, serial number-style marking is permitted. Most such markings are usually placed near the other manufacturer boilerplate information and are not hard to find. I think the only instance in which some degree of standardization might be beneficial is if the provision is taken literally and implemented without change as a form of label.

Q4: How, and to what extent, the tracking information should be presented with some information in English or other languages, or whether presentation should be without the use of language (e.g., by alpha-numeric code with a reference key available to the public).

Tracking information should be available in only one language to keep costs down. Use of symbols may be deployed to make the information accessible to people who don't speak English. We do not believe most of the tracking label information has any value to consumers other than to identify lots. A simple alpha-numeric code should suffice for this purpose and eliminate the need for ALL other information.

Q5: Whether there would be a substantial benefit to consumers if products were to contain tracking information in electronically readable form (to include optical data and other forms requiring supplemental technology), and if so, in which cases would be most beneficial and in which electronic form.

Consumers will not benefit from labeling in the first place and will have no way to access electronically readable data like a bar code. Requirements that businesses build a massive Internet-accessible infrastructure for consumers to access night and day online will kill many small businesses and will throw

yet another major roadblock up for start-up businesses. A provision like this would throttle the life out of innovation and growth through new company formation.

Q6: In cases where the product is privately labeled, by what means the manufacturer information should be made available by the seller to a consumer upon request, e.g.: Electronically via Internet, or toll-free number, or at point of sale.

As noted above, we STRONGLY object to the provision of source information to consumers or anyone on any basis and in any form. Notwithstanding the supposed benefits, required disclosure of source identity is misconceived and will wreak unprecedented havoc on our markets. There is simply NO justification for forcing the restructuring of a massive industry for the supposed benefit of revealing source information to consumers. If implemented, consumers may gain access to a lot of useless information but will have no products to buy.

Q7: The amount of lead time needed to comply with marking requirements if the format is prescribed.

A7: I believe that it is appropriate to allow at least TWO YEARS from the promulgation of final implementing rules for transition into a tracking label regime, if the agency elects to proceed with this ill-advised provision, to allow for supply chain re-training, building of appropriate U.S.-side business infrastructure and/or an orderly transition away from operating in the children's market.

Q8: Whether successful models for adequate tracking labels already exist in other jurisdictions.

A8: We are not aware of any labeling requirement comparable to the CPSIA requirements anywhere in the world. We are active in over 80 countries presently and have never had to provide any of the information required by this law in any jurisdiction.

As a closing note, I want to confirm that we have identified no reason to believe that tracking labels will have any material positive impact on safety for children's products. We urge the CPSC and Congress to stay this provision pending development of a more rational and pro-market provision.

Please do not hesitate to contact me with any further questions. Thank you for considering my views on this important subject.

Sincerely,

Richard Woldenberg
Chairman
Learning Resources, Inc.
380 North Fairway Drive
Vernon Hills, IL 60061
Tel 847-573-8420
rwoldenberg@learningresources.com