



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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Via Electronic and First Class Mail

December 16, 2009

Richard Woldenberg
Chairman
Alliance for Children's Product Safety
2000 K Street, N.W. Suite 500
Washington, DC 20006

Mr. Woldenberg:

I write with reference to your September 18, 2009 letter regarding tracking labels and, in particular, the obligation of manufacturers under Section 103 of the Consumer Product Safety Improvement Act (CPSIA) to have "ascertainable" certain required information. You write that this requirement, "has been interpreted to mean that manufacturers must be able to produce 'detailed production information, including the means to distinguish products made from different factories, made with different components, at different times' for any product pulled from any shelf anywhere and at any time." The July 21, 2009 Statement of Policy (Statement of Policy) and accompanying Frequently Asked Questions (FAQs) regarding tracking labels, describe a measured approach to this issue, tailored to the particular character and type of the businesses involved, and not the absolute requirements that your letter suggests.

Section C.2. of the Statement of Policy provides:

"Each manufacturer is ultimately responsible for making a reasonable judgment about what information can be marked on their product and packaging, given the character and type of their product and packaging, **and what required information can be ascertainable, given the character and type of their business.**

(Emphasis added).

Your letter suggests that the manufacturer lacks flexibility regarding information that must be "ascertainable." As with the "marking" requirement, however, the manufacturer's reasonable judgment and consideration of the manufacturer's particular circumstances, are guiding issues.

Without such an approach, an absolute requirement to have ascertainable all required information would in effect swallow the Commission's considered course with respect to marking. The passage your letter cites from section C.9. of the Statement of Policy regarding "different factories, made with different components," does go on to say in the next sentence: "The business and recordkeeping practices of peer manufacturers should be considered." What hand crafters might be able to track about the cohort information of their products could be very different than large manufacturing operations. The Statement of Policy recognizes this.

The Statement of Policy in section C.2. continues:

The question of what should be ascertainable is a different question than whether that specific information can be marked on the product or packaging. While there are foreseeable limitations of what a manufacturer might reasonably be able to mark on a product or packaging, the Commission expects the basic information referred to in Section 103(a) to be ultimately ascertainable by the manufacturer and the consumer.

This section of the Statement of Policy further explains that what can be marked and what can be ascertainable are separate questions. This means, for example, that although a manufacturer, for some legitimate reason, might not be able to mark batch or cohort information on a product, they are not then discharged of the obligation still to look closely at their business and make a reasonable judgment about what required information can be ascertainable.

Finally, an FAQ directed to hand-crafters available on our website¹ reiterates the Commission's measured approach to the question of what should be "ascertainable":

What information can be ascertained about your product? If someone handed you one of your products sold last year, what would you be able to tell them about the materials used? Keeping your receipts and purchase orders will help you to better know the source of your product and its components and when you began using them. Ask your fellow hand crafters if they have any tips or ideas that can help.

The obligation to be able to ascertain certain required information is treated in the Statement of Policy with the same reasonable and measured approach, considering the character and type of a particular business, that applies to the issue of what information might be marked on a given product.

¹ <http://www.cpsc.gov/about/cpsia/faq/103faq.html#103q8>

Richard Woldenberg
December 16, 2009

I hope this information is helpful. If you have any further question, please feel free to contact me at acooke@cpsc.gov or 301-504-7628.

Sincerely,

A handwritten signature in cursive script that reads "Anthony M. Cooke".

Anthony M. Cooke