

From: Rick Woldenberg

Sent: Fri 12/12/2008 10:56 PM

To: 'Judith.bailey@mail.house.gov'; 'Christian.fjeld@mail.house.gov'

Cc: Etienne Veber; 'Michael Gidding (mjg@brown-gidding.com)'; 'Nancy Nord (nnord@cpsc.gov)';

'Joe Martyak (jmartyak@cpsc.gov)'; 'tmoore@cpsc.gov'; 'jmullan@cpsc.gov';

'Brian_hendricks@hutchison.senate.gov'; 'david@commerce.senate.gov';

'Shannon.weinberg@mail.house.gov'; 'Brian.mccullough@mail.house.gov';

'Cathy.hurwit@mail.house.gov'; Larry Lynn; 'MToro@cpsc.gov'; 'william.carty@mail.house.gov';

'patrick.magnuson@mail.house.gov'

Subject: No More Telescopes - Congress Wants You To Squint Instead

I am writing to follow up on the below email on the cost of testing under the CPSIA. The attached document ("Learning Resources – Proposal (2)") is a quote we received to test ONE telescope product under the CPSIA. The cost of the testing is a mere \$24,050 for this single item. The average annual sales of this item are approximately \$32,000 over the past two years. Needless to say, we cannot afford to spend \$24,050 to test this (or any) item. I presume that Congress intended this result and wants us to stop selling telescopes to keep everyone safe. I guess kids can see the planets by squinting from now on. Thanks, Congress!

This absurd result is increasingly common under the destructive and poorly-conceived CPSIA. It is not surprising to me that a law born out of anger and written in a spirit of retribution has created market chaos and many unintended consequences. In my prior correspondence, I have set out many dangerous and unacceptable effects that are wreaking havoc among law-abiding companies. Good corporate citizenship is no help when facing a law which markets itself as "pro-safety" but cripples companies with unbearable financial burdens and pointlessly complex compliance requirements that redirect safety investments into bureaucracy. The CPSIA is simply an invitation by the Federal Government for all children's products companies to find something else to do.

My letters to you are of public record. We are posting them on the Internet for all to see and read. These letters have put you on notice of many problems the CPSIA is creating. When the damage takes place, there will be no way for legislators to disclaim responsibility. I don't want to see the destruction happen, which is why I keep writing you. It is unnecessary and will have lasting effects if not arrested now. I call on you and on Congress to act promptly to convene hearings on the effects of the CPSIA on commerce and markets, and to take immediate steps to partner with industry and the CPSC to rebuild a truly effective CPSIA to address real (not imaginary) children's products safety issues. A stripped down, but focused, CPSIA could add a great deal of safety value without weakening companies, markets and the economy. A vindictive CPSIA salted with bitter distrust and enmity toward industry will simply gut markets and weaken the regulators' ability to patrol markets for real safety issues. The choice is obvious – I urge Congress to choose the right path for our country.

Sincerely,

Richard Woldenberg
Chairman
Learning Resources, Inc.

From: Rick Woldenberg

Sent: Wednesday, November 26, 2008 12:34 PM

To: Mary Toro (MToro@cpsc.gov)

Cc: Etienne Veber; Michael Gidding (mjg@brown-gidding.com); Nancy Nord (nnord@cpsc.gov);

Joe Martyak (jmartyak@cpsc.gov); 'tmoore@cpsc.gov'; 'jmullan@cpsc.gov';

'Judith.bailey@mail.house.gov'; 'Cathy.hurwit@mail.house.gov'; 'Christian.fjeld@mail.house.gov';
'Brian.mccullough@mail.house.gov'; 'Shannon.weinberg@mail.house.gov';
'Brian_hendricks@hutchison.senate.gov'; 'david@commerce.senate.gov'

Subject: Cost of Testing

Mary,

I want to continue our dialogue over the issues presented by the CPSIA. I realize you are swamped with inquiries from many sectors, so I thought I would send this comment in via email.

I have previously raised the serious issue of the high cost of testing under the CPSIA. To be clear, the issue is not about the testing per se, rather it is the cost of the testing to prove compliance with the CPSIA. It is our legal obligation to produce products that comply with the law, of course. Financing proof of that compliance is the problem that confronts industry right now.

The attached lab test is a great example of the dilemma caused by the CPSIA testing requirements. The item in question is a new item called Let's Tackle Kindergarten. This item is similar to other items in our product line and is quite uncontroversial from a safety standpoint.

Because of our experience testing virtually identical items, we know this item is in compliance with the CPSIA on phthalates, lead and its other requirements. Nevertheless, to prove compliance, we will apparently have spend \$6,144.06 on myriad tests. The product will be no more or less safe after this expenditure. No child will be safer or better protected. Our company will simply be much poorer.

High testing costs will have a significant effect on our business and businesses like ours. First, the cost of testing has increased about 5x – 20x under the new law. We do not believe these costs can be recovered because under current economic conditions, raising prices is not an option. Thus, the breathtaking increase in cost becomes part of our overhead.

The testing costs cannot be absorbed by small and medium-sized businesses. At typical net profit levels prevailing in the children's products industry, the \$6,144 cost of testing probably exceeds the anticipated total net profit derived from three or more years' sales of the item. This does NOT take into account the cost of development, the cash expense of buying the inventory or the cost of owning inventory (usually estimated at 2.5% per month). Given that children's products have finite commercial lives (three years is a good life for a consumer product), the CPSIA test costs might exceed the present value of creating a new item for many, if not most, businesses. So, will this product ever come to market? Not under the CPSIA. The only products left for sale will be mass market items where the scale of their production runs can support this wasteful expense. I believe this "mass market world" is not in the national interest as specialty companies like Learning Resources are an important means by which consumers obtain the products and services they need in our economy.

Notably, the gross cash expense required to finance these tests right now is literally unbearable. The law requires that all of this testing must be completed on all products in our line all at once. Several years of "catch-up" testing must be financed in just a matter of a couple months, bunching up the vast expense into one or two financial statements. Together with other excessive costs suddenly imposed by the CPSIA (for instance, lot traceability infrastructure), the economics of producing children's items are being distorted into an unrecognizable form. If children's products companies cannot produce a fair profit, they won't be able to attract financing or risk capital, and the jobs (and products) will disappear. This problem needs a solution *fast*, and if we can't come up with one, no one in Congress or the CPSC should be surprised to see bankruptcies rise inexorably as a result. The price will be paid.

I would appreciate the opportunity to dialogue with you on these rules and other negative incentives under the CPSIA. I am confident that through a partnership with industry, the CPSC

can develop a common sense approach to safety rules and enforcement that will reward those companies committed to compliance while discouraging the bad actors who give the children's products industry a bad name. The time to act is now. My associates in the business community are under intense pressure to pay these exorbitant testing bills – and once the money is shipped to the Chinese testing companies, there will be no getting it back.

Thank you for considering my views on this important topic.

Sincerely,

Richard Woldenberg
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