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February 9, 2009

The Honorable Nancy A. Nord
Acting Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Thomas Moore
Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Court Decision on Phthalate Restrictions

Dear Acting Chairman Nord and Commissioner Moore:

On behalf of the Retail Industry Leaders Association (RILA) and our members, we are writing in response to the decision issued on February 5, 2009 by the United States District Court for the Southern District of New York regarding the application of the phthalates limits in Section 108 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") to existing inventory (08 Civ. 10507 (PGG)).

The effect of the court decision is to legally require all retailers to bring their existing inventory into compliance with the CPSIA phthalates limits within five days and gives little-to-no regard for the significant cost or practical aspects of compliance in such an extremely tight window. While product safety is of paramount concern for all RILA members, given the urgency of the issue, we request the Commission to immediately issue clear guidance to implement Section 108. Alternatively, we request the Commission to immediately appeal the decision of the New York District Court and request a stay of the judge's order.

By way of background, RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry--retailers, product manufacturers, and service suppliers--which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

The court's decision on phthalates was unanticipated, and its impact will be to cause enormous disruption in the supply chain. Within hours, retailers began reacting to the decision, implementing extraordinary measures to pull and begin to test potentially noncompliant merchandise from store shelves. As the Commission is probably aware, the financial costs associated with bringing existing inventory into compliance with the new CPSIA lead standards has been estimated to be in the hundreds of millions of dollars. Given the lack of lead time to implement the phthalates standards for existing inventory and the substantive challenges in identifying and testing merchandise, RILA believes the financial impact of bringing existing inventory into compliance with the new phthalate standards will be even higher and more disruptive than for lead.

The combined impact of these actions will, unfortunately, likely cause several manufacturers to cease operations and lay off workers because they are unable to withstand the added costs. We do not believe that when Congress adopted the deadlines in the CPSIA it realized the severe negative impact of applying new standards to existing inventory or intended to cause a massive economic dislocation at a time when so many businesses are already facing financial collapse and we are witnessing the largest job losses in decades.

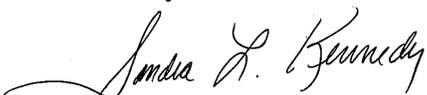
Although the Commission has issued a stay of enforcement of testing and certification requirements for phthalates (and other CPSIA provisions), that action does not diminish the legal obligation of retailers to ensure their inventory complies with the new standards. As a result of this legal obligation, retailers have not changed their own testing and certification requirements for their suppliers. As the Commission is aware, there is not a reliable screening mechanism to determine whether a product contains phthalates, and testing costs are significantly higher than those for lead. There is also significantly less lab capacity to test for phthalates than for lead. As a result, the costs to determine whether products are compliant with phthalates standards are higher and take longer than for lead.

RILA has previously provided comments to the Commission regarding Section 108 of the CPSIA, and we request the Commission to expedite consideration of those and others' comments and to immediately issue guidance to implement Section 108. Alternatively, we request the Commission to immediately appeal the decision of the New York District Court and request a stay of the judge's order. Given tomorrow's deadline for compliance, it is with an obvious sense of urgency that we make this request. RILA recognizes the significant workload the Commission faces in issuing timely guidance on a wide range of CPSIA requirements, yet at the same time, companies cannot implement a workable compliance plan without such guidance.

Specifically, retailers request the Commission to issue guidance on: an acceptable testing protocol for phthalates, products that must be compliant (e.g., are inflatable products to be considered in their inflated or deflated state), products that are outside the scope of the CPSIA, and standards for inaccessible parts (e.g., RILA believes inaccessible parts are by definition not "mouthable"). Absent clear guidance from the Commission, retailers believe they must issue the most stringent guidance for their suppliers. The Commission's press release of February 6, 2009 titled "CPSC Issues Guidance For Complying With Phthalates Requirements In New Child Safety Law," provided little, if any, actual substantive guidance on how to comply and instead only served to highlight the legal obligation that retailers have to report to the Commission any noncompliant merchandise that they identify.

Thank you for your consideration of our views. If you or your staff has any questions, please do not hesitate to contact me or Stephanie Lester, RILA's Vice President for International Trade, at 703-841-2300.

Sincerely,

A handwritten signature in cursive script that reads "Sandra L. Kennedy". The signature is written in black ink and is positioned above the printed name.

Sandra L. Kennedy
President