



March 26, 2009

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East-West Highway,
Bethesda, Maryland, 20814
TrackingLabels@cpsc.gov
fax: (301) 504-0127

Re: Tracking Labels for Children's Products Under Section 103 of the Consumer Product Safety Improvement Act (CPSIA)

Dear Mr. Stevenson:

On behalf of the Handmade Toy Alliance, [an alliance now numbering 326 independent retailers, toymakers and children's product manufacturers](#) from across the country who want to preserve unique handmade toys, clothes, and children's goods in the USA, we respectfully submit the following comments regarding tracking label requirements under the CPSIA.

We understand and appreciate Congress's intent when it mandated batch labeling on children's items. Certainly the recalls of 2007 in particular highlighted the need for the CPSC and consumers to be able to quickly identify non-compliant products. However, we have found that for some of our manufacturers, the tracking and labeling requirements may be as insurmountable as the CPSIA's third party testing requirements.

In Section 103 of the CPSIA, Congress wisely included the phrase "to the extent practicable." We urge the Commission to interpret this phrase in the widest possible sense and adopt an extremely flexible batch labeling policy based on the particulars of each product, its scale of production, and the feasibility of labeling.

Since the entire benefit of batch labeling is to expedite the recall process in the event of a substandard batch, we feel that manufacturers should be able to reduce or even eliminate batch tracking based on *scale*, *feasibility*, and *efficacy*. Where one of these factors leads a manufacturer to opt out of batch labeling, they should be allowed to do so with the understanding that they are running a risk of a more widespread recall than if tracking labels were in place should their product be found defective. We will explain below what we mean by scale, feasibility, and efficacy in order to illustrate why this approach is necessary.

Scale

The issue of scale is important because the meaning of the term “batch” often falls apart in a non-factory setting. One of our members, Jason Gold of Camden Rose, a small manufacturer in Ann Arbor, Michigan writes:

Sometimes our items are created and assembled from one piece of cherry or walnut, but this is rare. Most of the time what happens is multiple components are created for an item at many different stages. They are then assembled over period of time. So, if we follow the CPSIA labeling mandate each of these multiple component items will have text all over them with production date batch ranges. We will need to be able to keep these production batches separately stored, organized and marked which again adds a tremendous cost above and beyond the actual cost of the label.

We argue that in such a circumstance, which is common in very small scale manufacturing, the entire concept of a batch loses meaning altogether and is no longer relevant.

Also, because the consumer for these types of products is either buying directly from the crafter or from a merchant who buys directly from him or her, we feel that the intimacy of these transactions mitigates the need for batch tracking.

We do not believe that it should be the CPSC's role to define how many units produced annually constitute small scale. Rather, this decision should be left up to the manufacturer with the caveat that if a small-scale producer chooses not to track or label batches, any recall that may be required would have to be based on sales records of the manufacturer or distributor within the time period that the recalled product was available for sale.

Feasibility

For many products, batch labeling is technically unfeasible. The law requires a permanent marker which cannot be removed by the consumer. Certainly for many products, including larger items, apparel, and molded plastics, this standard may be achievable. For many others, however, the standard is impossible to achieve due to either limitations of marking technology, cost, or aesthetics. One example, cited by Heather Flottmann of Liliputians NYC in Staten Island, New York, is decorative hair barrettes. Heather's barrettes are made of ribbon and measure 3/8 inches wide and 1-3/4 inches long. “How exactly would one even go about labeling a barrette?” asks Heather. “This is where the labeling starts to get silly.”

The example of the wooden rattle further illustrates this problem. Camden Rose has been researching this issue for their rattles, which are hand-carved out of cherry wood. They write:

A wood burn brand is commonly used for marking wood. However, in order to comply with the law as it is written, we will need to purchase a wood burn brand for each variety of item we make. For us, that would mean over thirty brands. Each brand costs \$150-200, so the cost is \$4,500-6,000 just to be able to mark each item, not including the labor required. Yet, each wood burn brand must be made specific to the date of batch production. If we make four batches in a year those dollar figures must be quadrupled. So, we would need to cut back on batch

*production and move to segmented yearly production - thus the cost in our situation would be between \$4,500-6,000 per year just in labeling requirements, not to mention the economic costs of a less flexible production cycle. We could use ink branding instead of wood burning, which will lessen the financial blow by using stamp pads rather than brands. However, third party testing for lead would need to be conducted on the ink. Finally, laser engraving is possible. This adds a per item manufacturing cost of \$1.00-1.75. While this cost seems small please realize that if a manufacture creates a quantity of 10,000 of each item that is a labeling cost of over \$10,000. This again must be passed on to the customer - in hard economic times raising the cost of our wooden rattles by \$1.50 is not friendly. Furthermore, this branding would actually **decrease** the value of our products because our core customers have professed over and over again their desire to have items that are not visually branded.*

Whole classes of children's items simply have no feasible way of marking a permanent batch number on the product itself. Other examples include everything from mitten clips to finger puppets. To ensure the continued availability of these products, we need a flexible marking standard that allows manufacturers to opt out of batch labeling where such labeling is unfeasible. Again, we are willing to stipulate that opting out due to feasibility issues would broaden the scope of a recall in the event of a defect.

Efficacy

The intent behind the CPSIA's requirement for batch labeling is not about improving product safety, but rather about improving the ability of the manufacturer and the CPSC to issue accurate and meaningful recall notices in the event of a product recall.

For some product types, batch labeling cannot and will not accomplish this purpose. In these cases, batch labeling lacks efficacy. In such circumstances, the manufacturer should be allowed to opt out of batch labeling.

The clearest example of this lack of efficacy is with small-batch importers. For example, a retailer may import wooden toys directly from Germany or specialty anime figures from Japan. In such cases, the product was not created specifically for the American market and the importer does not have any control over the means of the product's production nor any information about when the product was made. Under the CPSIA, such an importer is considered the manufacturer and is responsible for third party certification. However, the only knowledge the importer would have about batches would be the date of importation, which would bear no relation to production batches and therefore would not serve the intent of the batch labeling requirement. Imposing the batch labeling requirement on such small-scale importers would therefore lack efficacy.

Another example of a lack of efficacy would be construction toys, such as erector sets, tinker toys, wooden blocks, lincoln logs, etc. Each set is made of hundreds of pieces, often of different shapes and sizes. In the production environment, a batch would be based on each part type, not on finished units. Thus, on day one the machinery is set up to make square blocks. The next day, triangle blocks. Then rectangles, circles, arches, etc. Each are kept in bins until they are assembled in different size packages, each with a different selection of blocks. Labeling each individual block with a separate batch number would prove impossible for a manufacturer to keep track of and would be meaningless to a consumer, who would be highly unlikely to sort through a bin of pieces to locate an errant

batch number. Yet providing the consumer with some other tracking number on the product's packaging would neither meet the letter of the law nor would it provide any better information to the consumer. Again, batch labeling would lack efficacy.

Finally, batch labeling lacks efficacy for kitted products which are made from an assembly of pieces, often made by many different manufacturers. Consider an assortment set of musical instruments made up of 5 different pieces and sold together. Must the company which assembles and market such a kit also compile and archive the batch information for each component piece? What if the kit contains an item such a metal whistle, which would not be considered a children's item in most circumstances and whose manufacturer therefore does not track batches as mandated by the CPSIA? The company which assembles the kit might only track batches based on the date the kit is assembled, but this would provide no information whatsoever regarding the origins of the component pieces.

We therefore urge the commission to allow manufactures to opt out of the batch labeling requirement when such labeling would not make product recalls more effective.

Staying Enforcement

We have joined with the National Association of Manufacturers and over thirty other national trade groups to urge the CPSC to stay the CPSIA tracking label requirements for one year. We feel this stay is necessary to allow our members to adapt to the final rules once they are promulgated by the Commission.

Conclusion

We urge the CPSC to consider our framework for defining such practicality by scale, feasibility, and efficacy. We believe this flexibility is essential for the survival of many children's product manufacturers, both large and small, for whom the specifics of their products or their production process is simply incompatible with permanent batch labeling.

Tracking labels are ultimately in the best interests of many manufacturers, especially large scale operations. In the event of a product defect, tracking labels would significantly reduce the cost of a recall. For many small manufacturers, however, this equation is reversed and the cost of batch labeling is far greater than the potential costs of a broad-based recall. Allowing manufacturers to determine which strategy is best for a given product based on the criteria we have defined would not diminish public safety, but it would preserve many small businesses and the livelihoods of their employees.

Finally, we feel that allowing considerable flexibility within the batch labeling requirement of the CPSIA is supported and required by the Regulatory Flexibility Act, which is designed to protect small businesses from regulations which do not take into account the needs of small business.

Respectfully Submitted,

The Handmade Toy Alliance

A listing of all 326 business members of the Handmade Toy Alliance is available at <http://www.handmadetoyalliance.org/members-of-the-handmade-toy-alliance> .