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CPSC Proceeds with Launch of Consumer Product Database

In August 2008, President Bush signed into law the Consumer Product Safety Improvement Act of 2008 (the "CPSIA" or the "Act") to enhance the powers of the Consumer Product Safety Commission (the "CPSC") in its protection of American consumers from unsafe consumer products. Among other aspects, the Act directs the CPSC to establish a means by which the public can be made aware of allegedly harmful incidents involving consumer products. Specifically, Section 212 of the CPSIA requires the CPSC to create and maintain a publicly available database to track reports of consumer product safety incidents. The database is slated to be fully operational in March 2011. The database is to include reports of injury, illness, or death - or the risk of such harms - involving consumer products. Section 212 permits the following groups to submit reports to the CPSC for inclusion in the database: (1) consumers; (2) local, state, or federal government agencies; (3) health care professionals; (4) child service providers; and (5) public safety entities. The CPSC is given the task of monitoring these reports under the CPSIA and may, at its own discretion, correct, modify, or decline to post the data. To the extent practicable, the CPSC must turn over an incident report to the manufacturer of the involved product within five business days of receiving the report. The manufacturer is then permitted to respond to the allegations contained therein. Within 10 days of receiving the incident report, the CPSC must post it on the database - affording very little time for manufacturers to respond or for the CPSC to investigate the accuracy of the alleged incident report and the manufacturer's response. In September 2009, the CPSC submitted a report to Congress outlining its plan to create and maintain the database to track consumer product safety incidents. The report noted that the CPSC hoped to have a fully functional database - tentatively named SaferProducts.gov - by March 2011. This would be achieved in various phases wherein the CPSC would launch an awareness campaign, using such means as social networking sites, and solicit thoughts and feedback from key interested groups, including governmental entities, manufacturers/retailers, public interest groups, and consumers. The CPSC also explained that the database itself is to be user-friendly, in an effort to effectively and efficiently communicate information regarding products to consumers. Additionally, the CPSC noted its desire to have a technologically sophisticated database capable of allowing statistical analysis, among other tools, that would aid the CPSC itself in consolidating and assessing incident reports. On April 15, 2010, the CPSC decided by a 3-2 vote to press forward with launching the database. The website, now accessible at SaferProducts.gov, is currently operational though not yet fully functional. Additionally, as part of its awareness campaign, the CPSC has launched certain interactive features, including its own blog, a Twitter account, and an associated Facebook page. As the CPSC pushes forward with launching a fully functional database, consumers will have greater power to publish their alleged accounts of product safety incidents and will have access to other self-described accounts of related claimed incidents. Despite the legitimate concern that the website poses a substantial risk for dissemination of inaccurate, premature, or incomplete reports of consumer product safety incidents, the CPSC has nonetheless voted to proceed. The database may also ultimately prove to be a resource for use by plaintiffs' counsel. Accordingly, manufacturers and retailers must take care to respond in a timely fashion and with careful forethought to notices of pending safety incident reports provided by the CPSC. A manufacturer's and retailer's written response to notice of a pending safety incident report is potentially its first opportunity to explain or refute the nature and/or cause of allegedly harmful product safety incidents, as appropriate in the circumstances. While the CPSC is still determining how to best synthesize manufacturers' and retailers' responses and present them as part of consumer product safety incident reports available on the database, manufacturers and retailers should promptly seek the advice of counsel when confronted with notice of a pending consumer product safety incident report notice by the CPSC. Key Sources:

- Report to Congress Pursuant to Section 212 of the Consumer Product Safety Improvement Act of 2008
- U.S. Consumer Product Safety Commission

- Consumer Product Safety Improvement Act of 2008