



December 4, 2008

Cheryl Falvey
General Counsel
U.S. Consumer Product Safety Commission
East West Towers/523
4330 East West Highway
Bethesda, MD 20814

By Email & First-Class Mail

RE: CPSIA Applicability to Books and Other Paper-Based Printed Materials

Dear General Counsel Falvey:

On behalf of the members of the Association of American Publishers, as well as various companies, associations and organizations in the book manufacturing, paper, printing, binding, laminate, ink, and adhesives industries, I write to follow-up on our meeting last week with you and CPSC Director of Compliance John G. Mullan to formally request the Office of General Counsel to immediately issue an advisory opinion letter to confirm the limited coverage of books and other non-book, paper-based printed materials under the lead, phthalate and applicable ASTM standards requirements referenced in the Consumer Product Safety Improvement Act of 2008 (“CPSIA”).

As the principal national trade association for the U.S. book industry, AAP represents some 300 member companies and organizations that include most major commercial book and journal publishers in the United States, as well as many small and non-profit publishers, university presses and scholarly societies. AAP members include large and small publishers of children’s books in the consumer marketplace, as well as publishers of instructional and assessment materials for students at all levels of education.

For purposes of requesting this advisory opinion letter, AAP has consulted with a broad coalition of companies, associations and organizations in the book manufacturing, paper, printing, binding, laminate, ink, and adhesives industries to draw upon their expertise and experience regarding their respective roles in the production of books and other non-book, paper-based materials, including the safety testing of the various components that, upon assembly, comprise the finished products. Accordingly, the request for an advisory opinion letter is supported by the American Forest & Paper Association; the Book Manufacturers Institute, Inc.; the National Association of Printing Ink Manufacturers; the

Printing Industries of America; and, The Adhesive and Sealant Council, Inc., which together represent thousands of American companies in the industries noted above.

Our consultation with these allied industries has resulted in the compilation of critical information, including a broad sampling of actual safety testing results, that we believe provides strong evidentiary support for recognizing that books and other non-book, paper-based printed materials – both in terms of their individual components and the assembly process that integrates those components into finished products – should not be subject to the lead, phthalate and applicable ASTM standards requirements referenced in the CPSIA because they do not present any of the health or safety risks to children that those requirements are intended to address.

Accordingly, we request the Office of General Counsel to immediately issue an advisory opinion letter to confirm the limited coverage of books and other non-book, paper-based printed materials under the lead, phthalate and applicable ASTM standards requirements referenced in the CPSIA based upon the following fact-based principles:

1. Books designed or intended primarily for adults are not subject to the lead, phthalate or applicable ASTM standards requirements referenced in the CPSIA, as their content generally would preclude them from being considered “children’s products” or “toys” or “child care articles” as defined for purposes of the CPSIA.
2. Books designed or intended primarily for non-adults over the age of 12 are not subject to the lead, phthalate or applicable ASTM standards requirements referenced in the CPSIA, even though they may be read by some children 12 or younger, as their content and intended use, including grade-level appropriateness for educational purposes, generally would preclude them from being considered “children’s products” or “toys” or “child care articles” as defined for purposes of the CPSIA.
3. Books designed or intended primarily for children 12 or younger are not subject to the lead, phthalate or applicable ASTM standards requirements referenced in the CPSIA, except with respect to any non-paper-based elements that provide play value and are part of such books. These play elements may be comprised of plush, fabric, plastic, metal or wood components, and they may be subject to all relevant requirements of the CPSIA. However, there is no evidence of any Congressional intent to regulate ordinary books and other paper-based reading materials under the CPSIA, and they do not present any of the health or safety risks to children that those requirements are intended to address.
4. Similarly, other non-book, paper-based printed materials, such as flash cards, posters, bookmarks, and worksheets, are not subject to the lead, phthalate or applicable ASTM standards requirements referenced in the CPSIA, as they do not present any of the health or safety risks to children that those requirements are intended to address.

5. Audio books, and educational media embodied in CDs or DVDs that supplement or accompany books, are not subject to the lead, phthalate or applicable ASTM standards requirements referenced in the CPSIA, as they do not present any of the health or safety risks to children that those requirements are intended to address.

While the fact-based principles numbered 1 and 2 above are self-evident, based upon the nature of the books they embrace, as well as the definitions used to define the scope of the CPSIA, we have provided evidentiary support for the fact-based principles numbered 3, 4 and 5 above in terms of information and data regarding the manufacture of the books and other materials they address. Because of the sheer volume of this information and data, the evidentiary support for those fact-based principles does not accompany this letter but can be accessed at a portal website established by RR Donnelley, a leading full-service provider of print and related services, at www.rrd.com/cpsia.

At the website, you will find a clear and concise overview of the assembly process that produces books and most other paper-based printed materials, as well as individual files containing recent testing results provided by a variety of leading vendors for the various components that are assembled in this process to produce finished books and other paper-based printed materials. You will also find test results for some finished books that are popular in the children's market, and tests results for CDs and DVDs that supplement or accompany books. In order to comply with contractual confidentiality obligations, the identities of many of the vendors and the specific products to which the tests relate have been redacted in these files. If the Commission should determine that it needs any of the redacted information, we will contact each vendor to request their approval to provide it. However, if making such requests becomes necessary, we would strongly urge that you allow us to take those actions after issuance of the requested advisory opinion letter, rather than delay issuing that letter.

As we explained in our meeting with you last week, your immediate issuance of the requested advisory opinion letter is a matter of great urgency. The absence of clear and accurate information about the limited coverage of books and other paper-based, printed materials under the CPSIA has created undue alarm within the retail and distribution elements of the marketplace, as major players in these arenas have warned publishers that their books will be summarily taken off the market and returned to them at their own substantial expense unless the publishers can immediately certify that their products meet the CPSIA requirements, regardless of the statutory-based timeframes and testing requirements that make such certification a practical impossibility. Unfortunately, this problem has been exacerbated by the Office of General Counsel's determination that the requirements of the CPSIA apply retroactively to products in inventory, even if they were produced and delivered before the CPSIA was enacted. It is not an exaggeration to state that, unless the misinformed fears that are driving these warnings are allayed by an official statement from the Commission, the potential commercial and other economic harm to the book publishing industry and its allied industries from these threatened actions could be catastrophic.

Similarly, given the essential role that books and other paper-based, printed materials in the form of “ancillaries” and other supplemental educational materials play in the process of educating our children – at schools and libraries, as well as through bookstores – the delay in making needed instructional materials available in this sector will undoubtedly have a severe adverse impact on students and teachers.

Finally, Congress, the Commission and the American people do not want to see the real and necessary product safety benefits to be obtained under the CPSIA derailed or delayed by overloading the testing queues with products that both historically and currently have not been determined to present the health or safety risks that the CPSIA is intended to expose and eliminate. The test results provided on the website should make clear that, in terms of those risks, consumers have nothing to fear from “*How the Grinch Stole Christmas*,” “*The Little Mermaid: Ariel’s Beginning*,” and “*Tinker Bell: A Fairy Tale*” (all published by Random House), “*The Wrath of Mulgarath*” (published by Simon & Schuster), or other books that have been manufactured as explained in the website overview. Your immediate issuance of the requested advisory opinion letter explaining the limited coverage of books and other paper-based printed materials under the requirements of the CPSIA, according to the fact-based principles articulated above, will at least help to ensure that these products do not needlessly contribute to the overloading of available testing and certification capacity.

Please contact me at your earliest convenience if you have any questions about this request or any of the supporting information and data being provided to the Commission through the aforementioned website.

Sincerely,



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