

## Client Alert.

---

January 4, 2011

# Manufacturers, Importers, and Private Labelers Beware – U.S. Consumer Product Safety Commission Lifts Stay of General Conformity Certification Requirements for Certain Non-Children’s Products, Including Clothing

By Robert Falk and Linda Lane

The Consumer Product Safety Improvement Act (“CPSIA”), enacted in 2008, represented a major overhaul of federal consumer product regulation in the United States and is mostly known for its targeting of so-called “children’s products.” Less well known is that the CPSIA also mandated that domestic manufacturers and importers, including private labelers, of *all* “consumer” products issue **General Certifications of Conformity** (“GCC”) to “accompany” each shipment of their goods, whether or not they are intended primarily for use by children.

In early 2009, the U.S. Consumer Product Safety Commission (“CPSC”) announced a stay of enforcement of the CPSIA’s then new GCC requirements and effectively halted their implementation; the stay was subsequently lifted with respect to children’s products and a few select non-children’s items, such as all-terrain vehicles. However, in a significant year-end development, **the CPSC announced that, effective January 26, 2011, it is lifting its enforcement stay with regard to the application of GCC requirements to carpets and rugs, vinyl plastic film, teen and adult “wearing apparel,” and associated clothing textiles.** *75 Fed. Reg. 81236.* Lifting of the stay with respect to other specified categories of consumer products will continue throughout the year.

A GCC is required to identify the CPSC product safety regulation, standard, and/or requirement to which the product is subject. The certification of the product must be based on a test of each product or a reasonable testing program (and, for some specified products, testing by a third party accredited laboratory). In order to comply with the CPSC’s GCC requirements, a form containing requisite information about the product, the applicable regulation(s), the company certifying compliance, and the testing itself must be completed and “accompany” each shipment of products, either in hard copy or electronically via a printed reference to a URL where the information required for a GCC can be obtained on the World Wide Web. All required information must be provided, at a minimum, in English. (Use of additional languages is optional.)

Since its enactment in August 2008, there has been a flurry of clarifications and refinements with respect to the CPSC’s implementation of the CPSIA. Since the Obama administration took office, the CPSC has also stepped up its enforcement of the CPSIA’s requirements and announced the factors that it will consider in assessing civil penalties, including the following: the nature, circumstances, extent and gravity of the violation; the number of non-compliant

## Client Alert.

---

products distributed; the appropriateness of the penalty in relation to the size of the business charged; and “other factors as appropriate.” Businesses placing consumer products on the market can expect to see the CPSC and courts apply these factors in future enforcement actions, both in recall situations and even where violations, such as the failure to furnish a GCC where required, are technicalities and do not result in a recall.

Morrison & Foerster is advising a variety of product manufacturers, importers, distributors, and retailers and several of their trade associations on issues relating to the CPSIA’s implementation and other product safety requirements and related enforcement and class action litigation.

**For further information, please contact:**

**Robert Falk**

San Francisco

(415) 268-6294

[rfalk@mofo.com](mailto:rfalk@mofo.com)

**Linda Lane**

San Diego

(858) 720-7989

[llane@mofo.com](mailto:llane@mofo.com)

**About Morrison & Foerster:**

We are Morrison & Foerster—a global firm of exceptional credentials in many areas. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We’ve been included on *The American Lawyer’s* A-List for seven straight years, and *Fortune* named us one of the “100 Best Companies to Work For.” Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at [www.mofo.com](http://www.mofo.com).

*Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.*