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CPSC Imposes Record-High Penalties in 2014

By Erin M. Bosman and Julie Y. Park

The Consumer Product Safety Commission (CPSC) recently announced the latest penalties imposed on companies in 2014 for failure to report potential product defects. The first, announced on October 28, 2014, was the largest fine ever imposed by CPSC—a $4.3 million civil penalty agreed to by Baja, Inc. and One World Technologies, Inc., involving minibikes and go-carts. The second was a $700,000 fine against Williams-Sonoma for failure to report Roman shades sold at Pottery Barn Kids.

ALLEGATIONS LEADING TO PENALTIES

CPSC alleged that Baja failed to report that certain minibikes and go-carts posed a safety hazard even after receiving complaints of fire, sudden acceleration, and stuck throttles. According to CPSC, the minibikes and go-carts "contain a defect which could create a substantial product hazard" and "create an unreasonable risk of serious injury" due to fire and burn hazards and "because the throttle can stick due to an improperly positioned fuel line and cable."[1] CPSC also stated that Baja redesigned the fuel line to remedy the hazard but did not inform consumers about the change.

In response, Baja stated that it received four fire reports "out of over 250,000 units on the market" and in three of those instances the cause of the incident could not be determined. Moreover, Baja claimed that the stuck throttles were not clearly caused by the positioning of the fuel line and cable and could have been due to other factors. The dates of the fire reports were not made publicly available. In 2010, Baja announced a voluntary recall of the minibikes and go-carts.[2]

CPSC's allegations against Williams-Sonoma provide a more precise timeline, stating that by August 2007, Williams-Sonoma had received five reports that children became stuck in the inner cords on the Roman shades and that Williams-Sonoma did not report until September 2008.[3] The shades were recalled in August 2009.

STEEP PENALTIES ASSESSED IN 2014

These latest two announcements bring to $12.2 million the total civil penalties imposed by CPSC in 2014, which also include the following:

- A clothing company agreed to pay $600,000 for failing to report drawstrings in children's tops.

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[1] *In the Matter of: One World Technologies, Inc., and Baja, Inc.*, CPSC Docket No.: 15-C0001, *available at* https://www.cpsc.gov/PageFiles/172144/15012CivilPenaltyAgreement.pdf (last accessed Nov. 10, 2014).

[2] "Baja Motorsports Recalls Mini Bikes and Go-Carts Due to Fire and Burn Hazards," CPSC Press Release #10-304, *available at* https://www.cpsc.gov/en/Recalls/2010/Baja-Motorsports-Recalls-Mini-Bikes-and-Go-Carts-Due-to-Fire-and-Burn-Hazards/ (last accessed Nov. 10, 2014).

[3] *In the Matter of: Williams-Sonoma, Inc.*, CPSC Docket No. 15-C0002, *available at* https://www.cpsc.gov/PageFiles/172306/15019WilliamsSonomaCivilPenaltyAgreement.pdf (last accessed Nov. 10, 2014).

- A retailer agreed to pay $2 million for distributing 12 different recalled consumer products.
- A home appliance manufacturer agreed to pay $750,000 for failing to report a safety hazard associated with wall ovens.
- A retailer agreed to pay $3.1 million for failure to report potential hazards with stepladders.
- A retailer agreed to pay $725,000 for failing to report defects in floor cleaners and misrepresenting to CPSC the number of complaints actually received.

COMPLIANCE PROGRAMS

Notably, many of these companies were also required to implement a compliance program designed to ensure compliance with the safety statutes and regulations enforced by CPSC.

These compliance programs impose additional reporting and record-keeping requirements on the settling companies. The companies are also forced to make available to CPSC all information, materials, and personnel deemed necessary by CPSC to evaluate the companies' compliance with the terms of the agreement.

TOTAL PENALTIES INCREASING EACH YEAR

The total penalties announced so far in 2014 are more than double the $6 million in total penalties assessed in 2013, which was up from $4.3 million in 2012.

The significant increase in penalties levied against companies over the past few years shows that CPSC is intent on staking its claim as a serious enforcement agency. Not only is the number of companies facing fines increasing, but the average penalty has been steadily increasing, as evidenced by the $4.3 million fine against Baja. This upward trend reflects a tough stance on enforcement that CPSC has been seeking to build ever since Congress passed the Consumer Product Safety Improvement Act in 2008 in response to heightened consumer awareness and concerns over consumer product safety.

HOW TO PROTECT AGAINST CPSC PENALTIES

We expect that this trend of increasingly aggressive enforcement will continue into 2015. Consumer product manufacturers, distributors, and retailers alike need to take note and ensure they have procedures in place that will allow them to report within 24 hours of obtaining information "which reasonably supports the conclusion that its consumer product fails to comply with an applicable consumer product safety rule or voluntary consumer product safety standard, contains a defect which could create a substantial risk of injury to the public, or creates an unreasonable risk of serious injury or death." 16 C.F.R. § 1115.14(e). While companies have 10 business days to investigate under 16 C.F.R. section 1115.14(d), the recently announced penalties make clear that companies can be penalized for failing to report even if the investigations are inconclusive regarding the role of the product in the reported incident.

These announcements also show that companies are not immune even if they choose to conduct a voluntary recall. In addition, companies can often be at risk for penalties for a failure to aggregate individual reports to conclude that a substantial product hazard might exist. Without appropriate procedures in place, a company could be unaware of complaints that, taken together as a whole, could indicate that there is a potential product defect or hazard that requires reporting to CPSC. Ignorance provides no defense to steep penalties, as CPSC "shall impute to the subject firm knowledge of product safety related information received by an official or employee of a subject firm capable of appreciating the significance of the information." 16 C.F.R. § 1115.14(b). Therefore, information spread throughout the company could be imputed to the company as a whole, exposing the company to liability for poor record-keeping.

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