

# SAFEGUARDS

SGS CONSUMER TESTING SERVICES

HARDLINES, SOFTLINES, ELECTRICAL & ELECTRONIC

NO. 027/09 FEBRUARY 2009

## CPSIA PART 17: US DISTRICT COURT RULES AGAINST THE CPSC'S GENERAL COUNSEL'S ADVISORY OPINION LETTER - COURT HOLDS THAT THE PHTHALATE BAN IS RETROACTIVE

United States District Court, Southern District of New York, issued a ruling on February 5, 2009, on a law suit brought by the National Resources Defense Council, Inc. and Public Citizen, Inc against the US Consumer Product Safety Commission. The lawsuit challenged the Commission's General Counsel's determination that products containing phthalates could be sold if they were manufactured before the February 10, 2009, the date when the CPSIA legislation stated that the phthalates ban would come in to effect.

The Court overturned the Commission's General Counsel's interpretation of the phthalates prohibitions in the CPSIA and found that that the phthalate prohibitions are:

- clear and unambiguous,
- applicable to all covered product offered for sale, including existing inventories,
- scheduled to be effective as of **February 10, 2009.**

The Court found that Congress expressly prescribed the reach of the phthalate prohibitions and that Congress unequivocally and



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unambiguously chose to extend the reach of those prohibitions to covered products, regardless of their date of manufacture, with an implementation date of February 10, 2009.

The CPSC can ask for a stay of the Court's ruling pending an appeal of the ruling. As of the writing of this document, that has not happened. The situation is continuing to unfold and there could be any number of further actions taken.

Unless the Court's order is stayed, as of **February 10, 2009**, it will be unlawful to manufacture for sale, offer for sale or distribute in commerce all covered products containing the prohibited phthalates *regardless of when they were manufactured*.



The products covered are:

Toys for children 12 and younger and certain specified child care articles for children age 3 and younger  $\leq 0.1\%$  DEHP, DBP and BBP

Toys for children 12 and younger that can be placed in the mouth and certain specified child care articles for children age 3 and younger  $\leq 0.1\%$  DINP, DIDP and DNOP

Manufacturers, Importers, distributors and retailers should pay close attention to any developments on this topic in the coming weeks as Congress may be willing to revisit certain key provisions of the CPSIA.

Please contact your SGS representative for the most updated information or use the following link to read the most updated documents on the CPSC website.

<http://www.cpsc.gov/about/cpsia/cpsia.html>



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