

Consumer Product Safety and Recall Management Bulletin

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Fasken Martineau DuMoulin LLP

Caveat Venditor - *Let The Seller Beware* - Proposed Consumer Product Safety Legislation Casts A Wide Net

“When I use a word,” Humpty Dumpty said, in a rather scornful tone, “it means just what I choose it to mean, neither more nor less.”¹ Words from an accident prone egg that Canadian business would be wise to keep in mind with respect to the proposed *Canada Consumer Product Safety Act* (CCPSA).

When the Prime Minister, during a pre-Christmas visit to a Salvation Army toy depot, announced the *Canada Consumer Product Safety Action Plan*, a lot of people would have assumed that the government’s Plan was directed at the safety of consumer products such as toys. And, given the rash of toy recalls for lead paint content that had occurred during 2007, they’d have been right. But the government’s Plan is so much more than that as evidenced by Bill C-52 which was introduced in April, 2007.

If enacted in its current form, some manufacturers may be surprised to discover that the products they make are considered to be “consumer products” under the CCSPA and that they have the same responsibilities and potential

liabilities as toy and baby furniture manufacturers.

Understanding what does and does not constitute a “consumer product” will be very important in decision-making with respect to each industry sector’s response to compliance with this proposed legislation when enacted.

What is a Consumer Product

As defined in the CPSA, a “consumer product” is any product that can reasonably be expected to be obtained by an individual for use for non-commercial purposes, including domestic, recreational and sports purposes, and includes any such product’s components, parts and accessories as well as its packaging.

In large part, consumer products will be exactly what you think they will be - toys, personal heaters, ovens, fans, skis, tents, computers, etc. As such, in most case the answer to this question will be obvious to the manufacturer or importer dealing in the product.

What a Consumer Product is not

It is perhaps easier to say what a consumer product is not.

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¹ *Through the Looking-Glass, and What Alice Found There*, Lewis Carroll (1871).

Expressly excluded from the application of the CPSA are the following products:

- cosmetics, devices, drugs and food under the *Food and Drugs Act*²
- pest control products under the *Pest Control Products Act*
- vehicles and equipment under the *Motor Vehicle Safety Act*
- vessels under the *Canada Shipping Act*
- firearms, ammunition, cartridge magazines, crossbows and prohibited devices under the *Criminal Code*
- plants under the *Plant Protection Act* and seed under the *Seed Act*
- aeronautical products under the *Aeronautics Act*

Simply reversing the wording of the definition suggests also that a non-consumer product is any product that is used exclusively for commercial purposes or, at least, a product in respect of which there is no reasonable basis which would lead a manufacturer or importer to expect that the product will be used by individuals other than for the commercial purposes for which it was designed and is used in practice.

Product Evolution a Risk

While manufacturers of construction cranes and industrial boilers may be reasonably comfortable that their products will not find their way into the hands of individuals for non-commercial use thereby becoming “consumer products”, other manufacturers

will not. For example, products produced by commercial restaurant equipment manufacturers, such as ovens and refrigerators originally used exclusively in commercial settings, have gradually over the years found their way into residential kitchens. Humvees, once exclusively driven by armed forces personnel, first found their way into movie stars’ driveways and then into the hands of the general public as Hummers. As can be seen from these two examples, the evolution of product use from exclusively commercial and industrial applications to personal applications is not always expected or within the control of the manufacturer.

Also manufacturers of components and parts which find their way into consumer products will have to be aware that their products, as components or parts of a consumer product, will fall under this new legislation.

Caveat Venditor

The expression *caveat emptor*, let the buyer beware, is well known. However, with the enactment of the CCPSA, manufacturers, importers, distributors and retailers will need to learn the meaning of the expression *caveat venditor* – let the seller beware. In addition to mandated record keeping and incident reporting, the CCPSA provides the federal government with numerous powers. Failure to comply with this legislation could expose manufacturers, importers, distributors and retailers, including their officers and directors, to the possibility of serious fines. The CCPSA also provides for imprisonment for up to 5 years for serious breaches.

For more information on the subject of this bulletin, please contact the author:

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² Amendments to the Food and Drugs Act which correspond to many of the provisions of the CCPSA have been proposed in Bill C-51.

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