



January 12, 2009

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland, 20814

Dear Mr. Todd Stevenson:

RE: Comments to Consumer Product Safety Commission in response related to Phthalates and CPSIA

On behalf of the American Apparel & Footwear Association (AAFA) – the national trade association of the apparel and footwear industries and their suppliers – I am writing in response to the Consumer Product Safety Commission's (CPSC) request for comments on Section 108 of the Consumer Product Safety Improvement Act (CPSIA), "Prohibition on Sale of Certain Products Containing Specified Phthalates."

We are in receipt of the letter dated October 17, 2008 which states that footwear is not covered by the definition of "children's toy" or "child care articles," and therefore not covered by the CPSIA phthalate ban. We agree wholeheartedly with this opinion and would encourage the CPSC to enshrine the letter further in regulations it issues governing application of the phthalate ban.

We are also in receipt of the CPSC letter dated November 25, 2008, which exempts most apparel items from the definitions of "children's toy" or "child care articles" and therefore from the phthalate ban. While we agree with much of what is stated in the letter, we feel it incorrectly characterizes children's sleepwear and bibs as childcare articles. The letter states, "children's sleepwear or bibs, while not considered to be toys, would be considered childcare articles as defined under Section 108, and, therefore, subject to the ban on phthalates." As we will explain further, we find no information to support such a conclusion and, in fact, believe there is substantial information to the contrary. Accordingly, we believe that children's pajamas and bibs do not fall under the definition of "child care articles" and should therefore be exempt from the phthalate ban as well.

The definition of "child care article" in the CPSIA is a "consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething." Merriam-Webster defines pajamas as, "a loose usually two-piece lightweight suit designed especially for sleeping or lounging."¹ Pajamas are **not** designed to "facilitate" sleep (facilitate being defined as "to make easier: help bring about"²), they are simply worn when sleeping. Including pajamas under this definition applies the term "child care article" too broadly.

Many sources recommend ways for parents to facilitate sleep for babies. These techniques include dimming the lights, creating a bedtime routine, avoiding stimulation, rocking and cuddling, but no mention of putting a baby in pajamas. Furthermore, newborn babies may sleep up to 16 hours a day often for only 3-4 hour stretches at a time and cannot distinguish between night and day.³ It is therefore just as likely that a baby will fall asleep wearing pajamas as wearing normal day time clothing.

It is also important to consider the origins of the CPSIA phthalate ban. Section 108 was copied from California's phthalate law which comes directly from the European Union's Directive on phthalates in toys and child care articles. Like the CPSIA, the European Union's phthalate Directive applies to "child care articles" defined as, "any product intended to facilitate sleep, relaxation, hygiene, the feeding of children or sucking on the part of

¹ <http://www.merriam-webster.com/dictionary/pajamas>

² <http://www.merriam-webster.com/dictionary/facilitate>

³ <http://kidshealth.org/parent/growth/sleep/sleepnewborn.html>

children.”⁴ Immediately after its passage, the European Commission issued a guidance defining child care articles and children’s toys. This guidance states: “The main purpose of pyjamas is to dress children when sleeping and not to facilitate sleep. Pyjamas should therefore be regarded as textiles and, like other textiles, do not fall under the scope of the Directive.”⁵

A similar argument to bibs can be made. The definition of bib in Merriam-Webster is, “a cloth or plastic shield tied under the chin to protect the clothes.”⁶ That a child happens to wear a bib while eating does not mean the bib plays a part in facilitating the feeding process. The bib may facilitate laundry by keeping the clothes clean, but not facilitate eating.

The apparel and footwear industry has historically never had a problem with phthalates in children’s products as these products are not designed to be mouthed and therefore do not present a risk of phthalate ingestion. Further, the language in other phthalate initiatives has never applied bans to children’s clothing and shoes. Thus, the CPSC’s opinion is tantamount to informing the industry on November 25 that phthalate rules will begin to apply to certain kinds of apparel two months later – a regulation the apparel industry has never operated under prior to your opinion.

Thank you for your time and consideration in this matter. If you have any questions, please contact Rebecca Mond with my staff at 703-797-9038 or at rmond@apparelandfootwear.org.

Sincerely,



Kevin M. Burke
President and CEO

⁴ http://ec.europa.eu/enterprise/chemicals/legislation/markrestr/guidance_document_final.pdf

⁵ http://ec.europa.eu/enterprise/chemicals/legislation/markrestr/guidance_document_final.pdf

⁶ <http://www.merriam-webster.com/dictionary/bib%5B2%5D>