



October 14, 2008

Ms. Charyl Falvey  
Office of the General Counsel  
4330 East West Highway  
Room 523  
Bethesda, MD 20814

Dear Ms. Falvey:

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 to request an immediate formal written opinion to be issued which would explicitly exclude children’s footwear from the phthalate ban.

At the past two public conferences on the Consumer Product Safety Improvement Act (CPSIA), several different CPSC staff members have publicly announced that the definition for “children’s toys” as described in the phthalate provision (section 108) in the CPSIA does not include children’s footwear. In fact, on the slide titled “Children’s Products vs. Children’s Toy for Phthalate Certification” in the “Mandatory Third Party Testing for Children’s Products” power point presentation (October 2 conference), children’s shoes were listed as children’s products but not as children’s toys. This is consistent with a plain reading of the statute which provides that the term “children’s toy” means a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays. Based on the prior public statements of the CPSC staff members, as well as the plain language of the statute, many of our footwear manufacturers concluded that children’s shoes do not fall within the definition of children’s toy and therefore are exempt from the phthalate ban.

However, retailers are apparently concerned over the lack of clear guidance from the CPSC. As a result, several of our footwear members have received letters from retailers (such as the one attached) stating that they will no longer accept **any** children’s products with phthalates. This goes well beyond the scope and intention of the CPSIA.

The financial consequences to our members of having to remanufacture products – products that our members felt confident were CPSIA compliant based upon prior public comments by the CPSC – would be significant. In light of the financial challenges already being faced by the industry due to the current economic crises, our members, many of whom are small manufacturers, need clear guidance from the CPSC stating that the phthalate ban simply does not apply to children’s shoes. It is important for the CPSC to show consistency in order to prevent a significant disruption of business. Therefore, I am requesting a formal opinion to be issued by the CPSC reiterating what has already been said publicly by CPSC staff, that children’s footwear is excluded from the phthalate ban. Because manufacture decisions on product design and composition are made many months before the product actually appears on retail shelves, it is important that this opinion be published as soon as possible and not wait for the December 4 phthalate conference.

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](mailto:rmond@apparelandfootwear.org).

Sincerely,

Kevin M. Burke  
President and CEO