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CPSC Issues Commentary On Writing Instruments—Confirms That Most Pens Are Not Children’s Products And Not Subject To CPSIA

Irving, Texas, (June 9, 2009) In a statement issued yesterday, the Consumer Product Safety Commission (CPSC) confirmed that the vast majority of pens are not likely to be children’s products and would not be subject to the Consumer Product Safety Improvement Act (CPSIA) requirements.

This commentary was provided in response to a formal request that pen point components be excluded from compliance with Section 101 of the CPSIA filed by the Writing Instrument Manufacturers Association (WIMA) and the **Promotional Products Association International (PPAI)**. The CPSIA makes significant changes to consumer product safety laws and gives the CPSC significant new responsibilities for ensuring the safety of consumer products. Writing instruments are among the most popular promotional products, representing nine percent of total industry sales. Without a well-defined regulatory regime predicated on sound test standards and science-based exclusions that protect children, the threat to this industry is significant.

While the CPSC denied the request to grant an exclusion or stay of enforcement for these product safety regulations, in a formal statement issued by Cheryl A. Falvey, General Counsel for the CPSC, she confirmed that a “general purpose” pen would not need exclusion from the lead limits because such pens are not “children’s products.” Additionally the Commission has confirmed that the vast majority of pens and roller ball writing instruments are not primarily intended for children, whether or not they are sold for use in schools.

This commentary should be of interest not only to pen and writing instrument suppliers, but to the industry at large as it offers insights as to how the CPSC’s staff is evaluating what constitutes a children’s product. In this commentary, the CPSC adheres to a strict interpretation of the phrase “intended *primarily* for children under the age of 12.”

Industry practitioners will be well served to take the required actions to ensure that their products do not fall in that narrow range of “intended primarily for...” as defined by the CPSC and should consider the four pillars of the definition of what is a children’s product under the CPSIA in determining if a consumer product is designed or intended primarily for children 12 years of age or younger:

- A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.

- Whether the product is represented in its packaging, display, promotion or advertising as appropriate for use by children 12 years of age or younger.
- Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.
- The Age Determination Guidelines issued by the CPSC staff in September 2002 and any successor to such guidelines.

“We are very pleased by the CPSC commentary and consider it to be a positive result for our industry. Once again, the CPSC is exhibiting a reasonable approach to implementing the CPSIA,” said Steve Slagle, CAE, president and CEO of PPAI. “In March, we met with Falvey and other CPSC staff to share some of the challenges and concerns unique to the promotional products industry.

“At that time we noted that the language of the law assumes situations in which it is clear when a product is intended for children,” continued Slagle. “However, in the promotional products industry, some products that are not designed or intended primarily for use by children 12 and under may be decorated in a way that may make a product appear to be intended for children. What prevails, the intent or the characteristics of the product?”

In the CPSC commentary, Falvey directly addresses that question and confirms that “even if a pen were colorful, decorated or embellished, such colors, decorations or embellishments, alone, might not result in a ‘children’s product.’ For example, a simple ball point stick pen with the name of an elementary school embossed on it without any other decorations would appeal to anyone... connected with the school...just because an ordinary ball point pen might be marketed once a year as a back to school item does not convert that pen from a general purpose item to a children’s product under the CPSIA.”

In summary, “only pens that are ‘children’s products’ – rather than all pens – are required by the commission to be evaluated further to assess whether they contain lead above the lead content limits...general use pens...including those that are sold to school systems and retailers...would not be subject to the lead limits and testing and certification requirements of the CPSIA.”

To see the entire text of the CPSC General Counsel’s letter and to learn more about this commentary and its effect on the promotional products industry, visit the PPAI product safety page <http://www.ppai.org/Member/productsafety.aspx>. Also be sure to register to attend PPAI’s next webinar, **Consumer Product Safety Improvement Act: Focus on Writing Instruments** on June 24 at 1 pm CST. This webinar will be led by Susan DeRagon, senior associate director of the toys and premiums group for Specialized Technology Resources (STR), the leading product testing lab retained by PPAI to serve as a technical resource for PPAI members. To register for this free webinar click <http://guest.cvent.com/i.aspx?5S,M3,e37c5e09-522f-4ebb-b048-aaf8c4befd15>

Promotional products are an essential element in the marketing mix. Adding your message to a tangible product turns an ordinary message into a marketing experience your audience can see, touch, hear, smell and even taste. Promotional products are the only way to make a sensible—and memorable—impression. For more information about Promotional Products Association International (PPAI) or to learn more about the proven power of promotional products (including research and case studies), visit the PPAI website at www.ppai.org or contact PPAI at 972-258-3040 or PR@ppai.org.

PPAI—the promotional products industry’s only international not-for-profit trade association—offers education, tradeshow, business products and services, mentoring, technology and legislative support to its more than 7,500 global members. Promotional products are an \$18.1 billion industry and include wearables, writing instruments, calendars, drinkware and many other items, usually imprinted with a company’s name, logo or message. PPAI created and maintains the UPIC (Universal Promotional Identification Code), the industry’s only free identification system and universal company database.

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