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Title: The Childrenswear Conundrum: The Consumer Product Safety Improvement Act (CPSIA) and its Impact on the Children's Apparel Industry

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# The Childrenswear Conundrum: The Consumer Product Safety Improvement Act (CPSIA) and its Impact on the Children's Apparel Industry

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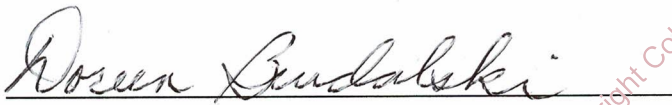
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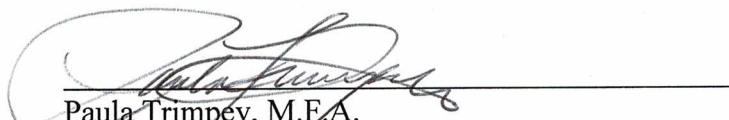
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# The Childrenswear Conundrum: The Consumer Product Safety Improvement Act (CPSIA) and its Impact on the Children's Apparel Industry

By: Kylah Freeman

## 1. Introduction

As in all trades, there are laws and regulations that impact the apparel industry, serving as requirements that manufacturers must follow in order to remain in business. Most of the laws, such as the Wool Products Labeling Act, the Flammable Fabrics Act, and the Textile Fiber Products Identification Act, have existed for decades and are recognized by apparel manufacturers as part of an expected way of conducting business. However, a recently enacted piece of legislation, the Consumer Product Safety Improvement Act of 2008 (CPSIA), is causing controversy among childrenswear manufacturers. Primarily, manufacturers consider the CPSIA disruptive because it requires them to change their methods of handling business. Despite manufacturers' consensus that the CPSIA was created with good intentions, it is viewed as an obstacle by childrenswear manufacturers who are forced to abide by the requirements presented in the legislation. Consequently, children's apparel manufacturers are changing their long-established business methods because of the Consumer Product Safety Improvement Act of 2008 and are learning to cope with the new financial and creative burdens being imposed upon them, but many still demand changes to the well-intentioned law and its overarching influence.

## 2. Background

The goal of the Consumer Product Safety Improvement Act of 2008 (CPSIA) was to introduce new safety requirements for children's products and reform the Consumer Product Safety Commission (CPSC) (U.S. Cong. House). After numerous widespread recalls of

consumer products in 2007, particularly of children's toys imported from China, the 110<sup>th</sup> Congress began to evaluate the CPSC and its legal ability to handle situations of this nature (Bowman VIII). In response to consumers' concerns regarding the recalls and the CPSC's questionable authority, the CPSIA was created and signed into law by President George W. Bush on August 14, 2008, after being passed by both the United States House and Senate (Bowman VIII). Immediately, it became unlawful to sell recalled products, but certain aspects of the CPSIA, including the testing of lead and phthalates as well as proof that the products meet the standards, did not go into effect until February 10, 2009 (O'Donnell and Szabo 1B).

The CPSIA was a bipartisan effort that passed nearly unanimously in both the U.S. Senate and the U.S. House (Bowman 109). The legislation was created with the intention of assuaging consumers' fears and helping the CPSC to "become a proactive agency" (Flaherty 390). The federal government maintains that the various measures laid out in the CPSIA, including the CPSC's increased budget, public consumer database, and third-party testing requirements, all play an important role in resolving the uncertainty surrounding the safety of various children's products (O'Donnell and Szabo 1B). In addition, the government believes that the legislation's stringent requirements will help to "improve consumer confidence in the marketplace" (Flaherty 391).

Initial confusion regarding this legislation arose when the definition of a "children's product" was called into question. According to the CPSC, a children's product is identified "as a consumer product designed or intended primarily for children 12 years of age or younger" (U.S. Consumer Product Safety Commission, "Children's Products"). A manufacturer must abide by the CPSIA if they determine that their product is intended for children, if the product "is represented in its packaging, display, promotion, or advertising as appropriate for children," if

consumers identify the product as being created for children, and if the product meets the Age Determination guidelines distributed by the CPSC in 2002 (U.S. Cong. House). However, the CPSC makes the final judgment regarding whether or not an item is a children's product (U.S. Consumer Product Safety Commission, "Children's Products"). The CPSC provides this definition within the CPSIA contained in Section 108 (e), which is located several pages into the document.

### **3. Implementation**

Due to the broad definition, a plethora of children's products are affected by this law, ranging from toys to apparel to accessories (U.S. Consumer Product Safety Commission, "Children's Products"). With the establishment of the CPSIA, any manufacturer producing items for children aged twelve or younger must use a third-party to test the lead and phthalate levels in its products (O'Donnell and Szabo 1B). Initially, the legislation states that no children's product may have more than six hundred parts per million total lead content in any fragment of the item (U.S. Cong. House). One year after the enactment, the lead limit was reduced to three hundred parts per million total lead content and, after three years of enactment, the limit was one hundred parts per million (U.S. Cong. House). Under the legislation, the CPSC must evaluate and potentially modify the lead limit every five years depending on the minimum lead limit that is scientifically possible to achieve (U.S. Cong. House). This means that the lead limit may further decrease as technological advances make it easier for manufacturers to reduce the lead content in their products.

In order to prove their compliance with the legal lead limit, manufacturers must present adequate samples of the materials used in a product to a qualified third-party for testing (U.S.

Cong. House). The manufacturer will receive a certificate of compliance if its product conforms to the standards outlined in the CPSIA (U.S. Cong. House). In addition, manufacturers must affix a distinguishing label on the compliant product and its packaging that includes “the location and date of production of the product, cohort information (including the batch, run number, or other identifying characteristic), and any other information” that the manufacturer deems important for finding the source of the product (U.S. Cong. House). If a manufacturer’s products do not comply with the lead limit, it is not allowed to advertise them as compliant or sell them in the United States’ consumer market (U.S. Cong. House).

In addition to establishing lead limits, the CPSC established a 0.1 percent phthalates limit in children’s products (U.S. Cong. House). Phthalates, typically used to make plastic more pliable and sturdy, are believed to be more toxic to children than adults and are commonly found in teething rings and bibs (Berman and Smith). As a result, phthalates are not as relevant to the apparel industry as lead, which is more commonly found in embellishments on childrenswear (Berman and Smith). Just as with the lead guidelines, it is necessary for manufacturers to provide samples of their product materials to a third-party for phthalates testing (U.S. Cong. House). If the product materials pass, the manufacturer will receive another certificate of compliance and must affix labels to its products that prove its conformity to the children’s products standards (U.S. Cong. House).

Not all children’s products will pass the lead and phthalate testing required by the CPSIA. To discourage violations and urge manufacturers to familiarize themselves with these federal standards, the CPSIA increased the CPSC’s penalties for violations, which were originally \$8,000 per violation, not to exceed \$1.8 million (U.S. Consumer Product Safety Commission, “CPSC Approves Final Rule on Civil Penalty Factors”). Companies who violate

the requirements outlined in the CPSIA, including the testing, compliance, and labeling requirements or by selling recalled products, now risk substantial fines of \$100,000 per offense, not to exceed \$15 million (U.S. Cong. House). The amount of the fine imposed on a company is determined by the magnitude of the manufacturer's violation (U.S. Cong. House). These increased monetary fines are also coupled with the possibility of up to five years in prison for violation of the CPSIA's requirements (U.S. Cong. House). In addition, the CPSC is not the only group in charge of enforcing the legislation (Bowman 75). It is stated within the legislation that state attorneys general have the right to impose the CPSIA as well (Bowman 75).

The lead and phthalate testing required by the CPSIA also sparked interest in analyzing the use of formaldehyde in the manufacture of textile and apparel products. Within two years of the establishment of the CPSIA, the Controller General and the CPSC were required to perform a study that examined the usage of formaldehyde in the production of fabrics and clothing (U.S. Cong. House). In the 1960s, certain fabrics used in apparel contained formaldehyde, causing irritation and other skin-related health issues (U.S. Consumer Product Safety Commission, "An Update on Formaldehyde"). A study conducted by the Government Accountability Office confirmed small amounts of formaldehyde in very few articles of clothing with only a few articles of clothing exceeding the allowable formaldehyde level (U.S. Government Accountability Office 36).

This finding is not particularly surprising considering that studies conducted over a more than fifty year span by the United States and other countries from whom the U. S. imports its clothing have shown that formaldehyde levels in clothing and textiles have been diminishing (U.S. Government Accountability Office 16). Although some other countries have voluntary labeling systems that allow manufacturers to promote their compliance with formaldehyde legal



limits, the U.S. does not currently have a voluntary labeling system because it has not established a legal limit on formaldehyde in apparel and fabrics (U.S. Government Accountability Office 20). As a result, no changes were made to the CPSIA requiring children's apparel manufacturers to test for formaldehyde, but some United States retailers have set their own limits on the amount of formaldehyde that is permissible in their apparel (U.S. Government Accountability Office 20). Even some manufacturers have established their own formaldehyde limits, suggesting a trend of self-regulation (U.S. Government Accountability Office 20). However, the brands that have established these limits are not forthright about them, making it difficult to designate the manufacturers that self-regulate.

In addition to the creation of new requirements for childrenswear manufacturers and their products, the CPSIA endeavored to improve and modernize the CPSC. The legislation succeeded in increasing the Commission's budget and the number of staff members, improving training, and establishing a public consumer product safety database (U.S. Cong. House). The consumer product safety database was required to be "publicly available, searchable, and accessible through the internet website of the Commission" (U.S. Cong. House). The database includes death and injury statistics, recalls, and other important information regarding the safety of various children's products (U.S. Cong. House). It allows consumers to easily access information about recalls, violations, and statutes, serving as part of the government's response to the consumer outrage caused by the recalled toys imported from China in 2007.

Although consumers and the CPSC are primarily responsible for the information on the website, manufacturers may still comment on the reports that are included on it (U.S. Cong. House). When the Commission receives reports about a manufacturer's products, the CPSC must share the information with the manufacturer listed in the report so that the manufacturer may

offer its remarks, which can be included within the database (U.S. Cong. House). Furthermore, while the manufacturer is not allowed to ask for the report to be excluded from the database, it may request that the Commission remove confidential information from the report (U.S. Cong. House). It is the CPSC's responsibility to make a determination about the confidential information and decide whether or not to include it (U.S. Cong. House). In some cases, the CPSC may not consider the information confidential and may choose to include it in the published report, at which point it is the manufacturer's legal right to challenge the CPSC's judgment in court and request that the information be excluded from the database (U.S. Cong. House).

The CPSC strives to ensure that the information published in the database is accurate and complete for consumer use (U.S. Cong. House). Nevertheless, after investigation, some information may be deemed inaccurate, and it must legally be corrected or removed from the database no more than seven days after discovery (U.S. Cong. House). Presumably, this is in an effort to make sure that manufacturers' reputations are rightfully preserved and that consumers receive the most up-to-date and precise information to protect themselves and their families.

Despite being in control of the database, the CPSC must answer to the appropriate government officials by providing an annual account of the database (U.S. Cong. House). The information must contain "the operation, content, maintenance, functionality, and cost of the database for the reporting year [as well as] the number of reports and comments for the year [that were] received by the Commission under this section, posted on the database, and corrected on or removed from the database" (U.S. Cong. House). Two years after the creation of the database, the Controller General was required to provide a report that included information concerning the database's general usefulness, statistics regarding consumers' use and opinions of the database,

description of the Commission's attempts to notify consumers of the database as well as suggestions for ways to encourage and improve consumer use (U.S. Cong. House).

While the CPSIA focuses on protecting consumers, it also takes into account individuals employed by manufacturers by shielding employees from retaliation brought on by reporting their employers for violating the CPSIA (U.S. Cong. House). This part of the CPSIA is known as the "Whistleblower Protection" (U.S. Cong. House). It states that manufacturers, retailers, private labelers, and distributors may not penalize an employee who reports a violation or testifies against them for such a violation (U.S. Cong. House).

An employee who is dismissed or persecuted by their employer for reporting a violation may challenge the action by filing a complaint with the Secretary of Labor who will investigate the complaint and make a final decision on a case-by-case basis (U.S. Cong. House). If the Secretary of Labor determines that the complainant has a legitimate grievance, the employer may be required to follow affirmative action, to restore the employee to his or her former position with the same benefits and contract terms as well as provide back pay, or to offer the individual satisfactory reparations (U.S. Cong. House). If the Secretary of Labor determines that the former employee's complaint is unfounded, the complainant could be ordered to pay his or her previous employer an attorneys' fee of no more than \$1,000 (U.S. Cong. House).

While all of the requirements from the CPSIA pertain to the United States, the legislation also addresses the rules for products that are imported and exported. Under the CPSIA, importers are recognized as manufacturers and must comply with the various policies, including the lead and phthalates limits as well as the labeling requirements (Bowman 158). A children's product

that does not conform to the policies in this legislative document may be prohibited from entering the U.S. (Bowman 158).

Similarly, the CPSC has the authority to prevent the exportation of consumer products that do not comply with the United States' consumer product safety laws (Bowman 185). If the importing country is aware of the noncompliance and authorizes the products to enter the country, then the merchandise may be exported without interference from the CPSC (Bowman 185). However, the CPSC is allowed to intervene in the export of American products to other countries if they have been recalled in the United States (Bowman 71).

The implementation of the CPSIA assisted the CPSC with the government agency's overall goal: "to protect American consumers against death or injury from unsafe products, including imported products" (Bowman 69). This legislative act is viewed as a defining moment in the CPSC's history, improving the Commission's ability to warn consumers about dangerous products and better defend them (Bowman 69). In addition, it mandates that manufacturers, retailers, distributors, and importers must report any safety concerns regarding their products to the CPSC, forcing manufacturers to take responsibility for their products and keep in mind their consumers' best interests (Bowman 156). Ultimately, it is a positive effort on behalf of the government in response to the widespread recall of children's toys from China (Bowman 69).

#### **4. Initial Confusion**

The enactment of the CPSIA was initially positively regarded and well represented in the media (Bowman 73). Nevertheless, the government's speedy creation and passing of the CPSIA resulted in an abundance of perplexed and apprehensive childrenswear manufacturers (Bowman 73). With the approach of February 10, 2009, the day the legislation took effect, manufacturers

and retailers of various sizes began to voice their concerns regarding the CPSIA (Bowman 73). Topics of confusion included “safety certification of products, deadlines for lower lead limits, and whether some or all of the new regulations would be retroactive” (Bowman 73).

In an attempt to rectify the situation, various trade associations formed an alliance to appeal to the CPSC concerning their trepidations about the CPSIA (Bowman 73). Their concerns specifically focused on the proposed date that the legislation would take effect and the need for manufacturers and retailers to receive assistance from the CPSC in order to ensure compliance with the CPSIA (Bowman 73). Although the appeal mentioned that many businesses championed the legislation and its intention to improve children’s product safety, they mistakenly believed that the government would implement the CPSIA in a systematic and coherent way (Bowman 73). The manufacturers claimed that the CPSC never presented them with resources to assist with compliance (Bowman 73).

In response to manufacturers’ and retailers’ petitions, the CPSC created a *Guidance Intended for Resellers of Children’s Products, Thrift and Consignment Stores* and distributed it in January of 2009 (Bowman 73). The CPSC stressed that its implementation practices focused on manufacturers over retailers, and it further elucidated that the resellers are not compelled to test the lead levels in their children’s products before selling them (Bowman 74). However, the Commission also clarified that resellers could potentially face charges if they sell products that surpass the allowable lead limits, so it is in their best interests to avoid products that are prone to higher levels of lead content (Bowman 74). Despite their best attempts to comply with the standards of the CPSIA, it is statements like these that serve to further confuse individuals who are impacted by the legislation.

It appears that the CPSC's release of a *Guidance Intended for Resellers of Children's Products, Thrift and Consignment Stores* did little to curb the confusion present in various industries, particularly because it did not provide much clarification for manufacturers. In an attempt to address manufacturers' concerns, the CPSC agreed to extend the implementation of the testing and certification requirements one more year, primarily significant for children's apparel manufacturers, craftsmen, and toy producers (Bowman 74). The National Association of Manufacturers, which was part of the original coalition of trade associations petitioning the legislation, insisted that the one year extension was an inappropriate response to their concerns (Bowman 74). The Association explained that the matter was complicated by still compelling its members to follow the CPSIA requirements and risk its ability to sell products to retailers that would raise concerns about being prosecuted for selling non-compliant items (Bowman 74). Therefore, childrenswear manufacturers felt that the CPSC did not provide them with the resources, such as useful workshops, explanatory handbooks, or assistance from CPSC employees, which they needed to feel comfortable with operating their businesses under the legislation's new requirements.

This subsequent criticism from the National Association of Manufacturers prompted the CPSC to release a modified guide intended to "[explain] to small businesses, resellers, crafters, and charities their responsibilities under the CPSIA" (Bowman 74). In a simple format, the guide describes the testing and certification requirements for children's products, exclusions to the lead content limits, and phthalates (Bowman 74). In addition, mainly for the use of resellers, it contains a table of typically resold children's items and explains whether or not they are commonly acceptable to retail (Bowman 75).

Nevertheless, none of the CPSC's attempts to address manufacturers' apprehensions were entirely successful. It has become a debate as to whether the CPSIA or the CPSC's management of the legislation is the true issue (Bowman 75). However, the matter becomes further complicated because the CPSC is not the only group in charge of enforcing the legislation (Bowman 75). State attorneys general have the right to enforce the CPSIA, even giving them the ability to ignore the Commission's one year stay on the CPSIA's testing and certification requirements (Bowman 75). This meant that the state attorneys general could pursue legal action against a business found to be violating the testing and certification requirements even though the CPSC provided them with a one year relief (Bowman 75). Thus, this illustrates the limitations of the CPSC's control over the enforcement of the CPSIA and the additional challenges of the legislation.

To attempt to resolve the confusion and complications associated with the CPSIA, Members of Congress gathered multiple times and proposed several measures to tackle manufacturers' concerns (Bowman 75). At the time, Acting Chairman of the Consumer Product Safety Commission Nancy Nord stated that she felt it was Congress' responsibility to resolve the CPSIA's issues, including its impractical timeframes (Bowman 75). She elaborated by stating that the CPSC's personnel shared manufacturers' opinions regarding the issues with the legislation (Bowman 76). However, her comments only resulted in Congress issuing a statement that the CPSC needed "to (1) establish a clear timeline for its decision making in the coming year, spelling out what the Commission will need to accomplish in order to fully implement the law and (2) address continued confusion in the marketplace" (Bowman 76). In addition, Members of Congress wrote to President Barack Obama requesting a new chairman for the

CPSC, citing Nord's inability to lead the agency and her mismanagement of the enforcement of the law, which led to "undue fear among businesses and consumers alike" (Bowman 76).

The Congress, specifically Congressman John D. Dingell, chairman emeritus of the House Committee on Energy and Commerce, submitted a letter to Chairman Nord containing ten questions regarding the execution of the CPSIA and requesting her response (Bowman 76).

Chairman Nord responded in a twenty-one page document, naming delayed funding, unrealistic deadlines, and its economic impact on manufacturers as some of the primary issues with the implementation of the legislation (Bowman 78-79). Nord and her associates at the CPSC recommended three changes to assist with the improvement of the CPSIA: do not allow the new requirements to influence products produced before the legislation's effective date unless they risk children's health or safety, lower the defined age in the legislation and allow the CPSC to adjust it for certain products that may pose a risk to older children or younger children in the household, and permit the CPSC to handle certification, tracking label, and other problems "using risk-assessment methodologies" (Bowman 79). Despite her best attempts to rectify the situation, none of Nord's recommended changes were implemented or addressed.

Controversy over the CPSIA continued throughout 2009. John Engler, president of the National Association of Manufacturers, issued a statement condemning the government for their impracticable deadlines, making it difficult for manufacturers and the CPSC to effectively ready themselves before the law was instituted (Bowman 80). In this statement, it appears that manufacturers allied themselves with the CPSC in what they believe is a mutually complicated situation.



Nevertheless, the battle between Congress and the CPSC raged on with little progress being made along the way. Members of Congress took issue with Chairman Nord's complaints about the CPSC's budget, and she continued to insist that the deadlines proposed in the CPSIA were unacceptable if it was to be effectively implemented (Bowman 80). Finally, on April 1, 2009, representatives from a variety of industries, including children's apparel manufacturers, rallied on Capitol Hill to request amendments to the CPSIA, citing overly strict product standards, retroactive implementation of the new requirements, unrealistic deadlines, and an exceedingly general definition of a children's product as their primary criticisms (Bowman 80).

To some extent, manufacturers' complaints were taken into consideration as various bills to amend relating to the CPSIA and its presumed issues were presented to the 111<sup>th</sup> Congress (Bowman 80). Some of these include bills to offer respite to small businesses, to create a "conditional stay of the ban on lead in children's products," to exclude second-hand retailers of specific items from lead content and certification requirements, to exclude fabric products from lead content limits, and to explain the relevance of the lead limits and third-party testing obligations (Bowman 81-82). Although many of these bills to amend were presented with good intentions and offered an opportunity to resolve some of the issues associated with CPSIA, none of them were passed or put into practice. Thus, the CPSC and Congress "are [continuing to point] the finger back at each other, and none of them are taking responsibility to make the changes needed" (O'Donnell and Szabo 1B).

Members of Congress and the CPSC were unable to amend the law, and the CPSIA continues to plague childrenswear manufacturers. Although the CPSIA was created in response to the widespread recall of children's toys imported from China, children's apparel manufacturers are still greatly affected by the legislation and its requirements. Children's apparel

meets all of the definitions of a children's product because it is sized for children, often comes in bright colors, and may feature embellishments or decorations that are commonly attractive to children, including oversized buttons or animal patterns on the fabric (U.S. Consumer Product Safety Commission, "Children's Products"). These types of elements tend to be a good indicator of a children's product, and the childrenswear industry typically features some or all of these elements in its apparel (U.S. Consumer Product Safety Commission, "Children's Products"). Consequently, their mandated compliance with the CPSIA has influenced childrenswear manufacturers' commerce, causing them to express their displeasure with the legislation and its influence on their businesses.

## **5. Effects on Manufacturers**

As with other manufacturers in all children-related industries, the children's apparel industry considers the CPSIA and the measures surrounding its implementation confounding (O'Donnell and Szabo 1B). Many opponents of the "new law [are stating it] was reactionary, and because of that, is written very broadly and has unforeseen consequences" (Flaherty 387). Manufacturers are struggling to understand exactly what items are exempt from the strict third-party testing requisite laid out in the CPSIA, and their confusion was only further exacerbated by the CPSC's one year delay of the lead and phthalates testing requirement (O'Donnell and Szabo 1B). Some manufacturers were indiscriminately removing products from their inventory because they were uncertain if they are covered under the CPSIA (Polichetti 1). As a result, the CPSC has endeavored to provide clarification to manufacturers regarding what items are impacted by the legislation, particularly the testing and certification requirements (Polichetti 1). Per the CPSIA, children's apparel manufacturers are required to test every part of their articles of clothing and prove their compliance with the law by furnishing a certificate that

demonstrates their products were tested and conform to the new parameters (O'Donnell and Szabo 1B).

Arguably, small, independently-owned businesses are experiencing the most trouble with the legislation. In early 2009, Jolie Fay, owner of a small childrenswear business called Skipping Hippos, expressed concern about attempting to afford third-party testing for various fabrics and trims that she purchases to make her products (O'Donnell and Szabo 1B). Despite testing her own materials and finding them lead-free, she would need to consult a third-party to test them and receive the proper certification (O'Donnell and Szabo 1B). However, Fay obtained estimates from various testing facilities that were as much as \$90,000 a year, an expense which would force the closure of her business (O'Donnell and Szabo 1B). In spite of numerous appeals from small businesses, the CPSC admits they are incapable of excluding any apparel from the CPSIA other than particular articles, such as unembellished white t-shirts (O'Donnell and Szabo 1B).

Similarly, in mid-July 2009, the CPSC explained that it is unable to exclude crystals and rhinestones from the CPSIA's testing regulations (Polichetti 1). Despite exceeding lead content limits, the CPSC admitted crystals and rhinestones usually contain lead on a molecular level that makes it difficult for children to access it, which poses little health risk to them (Polichetti 1). Nevertheless, the explicit wording of the legislation prevents the CPSC from exempting these sparkly embellishments, resulting in yet another frustration for childrenswear manufacturers (Polichetti 1).

One such company that is experiencing the effects of this particular section of the law is Gymboree. In an effort to comply with the CPSIA, the company tested over twenty-five thousand products and eliminated unnecessary embellishments, including "rhinestones, metal

zippers, snaps, buttons, and grommets that didn't meet the new limits” (Dell G01). Gymboree primarily earns its profits through the sale of young girls clothing, which is known for being more highly embellished (Dell G01). Consequently, Gymboree suffered large financial losses as they were forced to dispose of apparel products that did not comply with federal standards, resulting in a several million dollar write-off (Dell G01).

A clarification to the law was released, unfortunately, a few days prior to the original February 2009 deadline, rendering the law more tolerant of embellishments that are outside of a child’s reach (Dell G01). However, by this point, Gymboree had removed most of its inventory that was considered noncompliant with the original law (Dell G01). As a result, its profits suffered when it was unable to produce clothing with its standard embellishments, which is a feature Gymboree’s customers expect from the brand’s garments (Dell G01). This outcome was essentially anticipated by the CPSC, particularly Chairman Nancy Nord who acknowledged that the Commission’s decision would negatively impact the economic status of manufacturers that produce embellished apparel (Polichetti 1). Nevertheless, Gymboree chose to take a judicious approach to the legislation by ensuring its compliance with CPSIA requirements rather than risking monetary fines, legal action, and consumer outrage (Dell G01).

Gymboree’s decision to accept the CPSIA’s requirements did not sway other apparel manufacturers and trade associations which continued to express their disapproval. Numerous childrenswear apparel and jewelry manufacturers, including the Fashion Jewelry Trade Association and Manufacturing Jewelers and Suppliers of America, reproached the CPSC’s decision to allow rhinestones and crystals to remain regulated by the CPSIA (Polichetti 1). It is their belief that the sparkling embellishments are safe, and the testing of rhinestones and crystals,

as required by the CPSIA, is just another unnecessary burden forced upon manufacturers, retailers, and suppliers (Polichetti 1).

One particular garment influenced by the need for rhinestone and crystal testing is gymnastic apparel. Rhinestones and crystals are considered a customary and nearly essential embellishment for gymnastic leotards, particularly in competition when participants are being viewed from long distances (Polichetti 1). While inexpensive and adequate alternatives are available, they lack the same sparkling quality that rhinestones and crystals characteristically possess (Polichetti 1).

Regrettably, rhinestones and crystals derive their shine from the lead that is imbued into the item when the glass crystal is in a liquid form (Polichetti 1). This shine is what makes the products appealing to children as well as more mature customers (Dell G01). Swarovski, known for its stunning crystals, anticipated a decline in their wholesale profits following the CPSIA's implementation, but most of its products are marketed to adults (Polichetti 1). However, numerous children's apparel products, such as headbands, t-shirts, and cheerleading uniforms, will no longer feature the shimmering embellishment as a result of the legislation's testing requirements (Polichetti 1).

The testing of embellishments was not the only concern for childrenswear manufacturers as fabrics were also initially included among the legislation's testing requirements, again making it burdensome for small businesses. Mimi Sweeny, owner of a small San Francisco-based children's apparel company called Baby Leo, lamented the need for the legislation which requires her to pay for third-party lead and phthalates testing for her various satin and velvet-lined capes (Bohan). At a cost of eight hundred dollars per cape style for lead testing and over

two thousand per cape style for phthalates testing, it is easy to comprehend Sweeny's frustration (Bohan).

As a result of the CPSIA, small childrenswear manufacturers must take responsibility for these expensive third-party testing and certification costs, forcing them to face the possibility of closure (Bohan). Another owner of a small children's apparel company, Janelle Jones, shares Sweeny's frustration (Bohan). Although Jones was willing to fight for an exemption from the CPSIA for her business, her confidence in the situation was precarious, and she began working a full-time job to supplement the loss in income if she was forced to close her company (Bohan). While both Jones' and Sweeny's businesses are home-based and do not employ more than a few people, they are considered manufacturers under the CPSIA's definition, which states "anyone who makes, produces, or assembles a product is considered a manufacturer for purposes of the act" (Berman and Smith).

Critics of the CPSIA maintain that the legislation focuses on large manufacturers as opposed to small businesses, but small businesses experience the burdens as well, if not more (Bohan). This is even more obvious because many large manufacturers sub-contract their manufacturing while most small manufacturers produce their products in the United States. Even "the Consumer Product Safety Commission ("CPSC") has acknowledged that the law as adopted, and the expense of full compliance, may in fact be too burdensome for many businesses" (Goldsmith and Silverberg 28). Some businesses even claim that the overall cost for lead and phthalates testing of their products would cost more than the worth of their inventory (Moore). In some cases, the cost of testing their products and inventory has been passed onto consumers in the form of higher product prices (Flaherty 388). The small businesses that are struggling to survive as a result of the law's requirements have nicknamed it the "National Bankruptcy Act"

because of its overarching influence and the substantial economic impact that it has already made on retailers, manufacturers, importers, and suppliers (Bohan).

In an effort to combat the CPSIA's influence on their business, the Congress received an influx of e-mails, phone calls, faxes, and letters from small manufacturers expressing their concerns and requesting exclusions from the law (Bohan). In January 2009, small manufacturers were in the process of filing a lawsuit against the CPSIA in pursuit of a delay for the law's implementation (Bohan). Two of the primary litigants were children's apparel manufacturers, which is perhaps a sign of the childrenswear industry's widespread frustration and commitment to their businesses (Bohan). The CPSC responded by providing manufacturers with a one year extension for the CPSIA's testing and certification requirements (Bowman 74). It may be assumed that the CPSC's decision was an acknowledgement of small manufacturers' valid concerns, but it appears to have done little to curb manufacturers' resentment directed at the legislation and its execution (Goldsmith and Silverberg 28).

Following the end of the one year stay, children's apparel manufacturers were faced with ensuring that their products comply with the standards established by the CPSIA. However, the one year extension did not prevent one of the most frustrating aspects of the legislation: its retroactive capabilities (Goldsmith and Silverberg 28). Under the legislation, manufacturers must test their existing inventory for lead and phthalates content levels to ensure that they conform to the new standards (Goldsmith and Silverberg 28). The items that meet the law's requirements will need a label distinguishing their source of manufacture before they can be sold (Flaherty 388). If any item in a manufacturer's inventory exceeds the allowable lead or phthalates content limits, it cannot be legally sold in the United States, even if the product complied with legal standards at the time of production (Goldsmith and Silverberg 28). As a result, businesses were

forced to dispose of these noncompliant items, triggering another financial loss for children's apparel manufacturers.

The one year stay provided by the CPSC was simply a delay of the inevitable as manufacturers were encouraged to use the time to prepare to comply with the new law (Goldsmith and Silverberg 28). As the CPSIA effective date approached, more third-party testing facilities emerged in what is being called the creation of "a compliance industry" (Goldsmith and Silverberg 28). The third-party testing labs must be recognized by the CPSC in order for the certification to be valid (Berman and Smith). While manufacturers may consider the testing laboratories a necessary evil, they play a key role in the CPSIA's goal to provide consumers with safer children's products.

Because of the challenging and complicated nature of the law combined with the potentially harsh penalties, it is recommended that manufacturers consult attorneys who "[became] familiar with applicable provisions of law, [subscribed] to periodic updates on the CPSC website, and [kept] abreast of new developments" (Goldsmith and Silverberg 28). The CPSC was overwhelmed with questions and requests from manufacturers, but they were unable to respond to every manufacturer's communication (Berman and Smith). Therefore, it is prudent for manufacturers to enlist legal counsel who can serve as informative advisors (Berman and Smith). Although this is sensible advice for manufacturers that are struggling to understand the complexities of the legislation, it is yet another expense for company owners who are already paying for third-party testing costs as well as their standard business expenses.

In response to children's apparel manufacturers' outrage, the CPSC reviewed the CPSIA for possible exemptions in 2009. With reference to the apparel industry, fabrics were one of the



greatest concerns for manufacturers (Moore). The initial release of the CPSIA required children's clothing manufacturers to test all of the products in their inventory, even if it was a simple cotton t-shirt (Moore). However, following an evaluation, the CPSC chose to exempt "products made of approved natural materials such as wool or cotton and textiles, and non-metallic thread and trim for apparel" (White). This exemption was monumental for children's apparel manufacturers, but it does not exclude closures, such as "zippers, buttons, snaps, or grommets," or embellishments, such as rhinestones, crystals, beads, embroidery, and screen-print ink, which are commonly found on children's clothing (Mittica 59).

Manufacturing Solutions Center, a North Carolina-based company involved with the hosiery industry, played an important role in winning the exemption for fabric and hosiery producers ("Center Helps Win Regulatory Exemptions for Textiles"). Dan St. Louis, director of the Center, presented research and statistics regarding the lead content levels in hosiery and other textile articles, convincing the CPSC that they are fundamentally free of lead ("Center Helps Win Regulatory Exemptions for Textiles"). St. Louis's presentation persuaded the CPSC that fabrics and hosiery products present only a slight or no risk to the public, in this case, particularly children ("Center Helps Win Regulatory Exemptions for Textiles"). This appeal to the CPSC was made by a combination of professional groups, including "the American Apparel and Footwear Association, The Hosiery Association, the National Cotton Council, the Retail Industry Leaders Association, Made in America coalition of family-owned companies, and senior executives with Wal-Mart, JC Penney and several specialty retail chains" ("Center Helps Win Regulatory Exemptions for Textiles"). All of these groups and individuals were strongly invested in the CPSC's decision on this matter as the outcome would ultimately control the future of their businesses.

The approach to lobbying for textile and hosiery exemptions to the CPSIA was inventive (“Center Helps Win Regulatory Exemptions for Textiles”). A chemistry lab professor, Professor Kim Browning, from Catawba Valley Community College in Hickory, North Carolina and an employee from the Manufacturing Solutions Center, Monice Wise, joined forces to prove the absence of lead in clothing, socks, and hosiery (“Center Helps Win Regulatory Exemptions for Textiles”). Professor Browning managed to create a lead-based colorant that demonstrated lead-based dyes are costly and not colorfast, convincing the CPSC that children’s apparel manufacturers and textile manufacturers are unlikely to utilize such dyes (“Center Helps Win Regulatory Exemptions for Textiles”).

Various government representatives from North Carolina, including the primary supporter, Representative Mel Watt, supported the apparel manufacturers in their pursuit of exemptions and signed a letter addressed to the CPSC to accelerate the process (“Center Helps Win Regulatory Exemptions for Textiles”). The letter mentioned seeking “official recognition of [the CPSC’s] staff’s conclusion that unembellished dyed and undyed textile products, including socks and hosiery [,] do not contain lead” (“Center Helps Win Regulatory Exemptions for Textiles”). Consequently, the CPSC agreed to exempt children’s apparel manufacturers from testing dyed and undyed fabrics, other than leather, vinyl, and PVC, that are free of embellishments and closures (Mittica 59; DeVito 46).

Through all of the difficulties with the CPSIA, it is apparent that childrenswear manufacturers must adjust their methods of conducting business, establishing new business structures in order to conform to CPSIA standards (Flaherty 387). Manufacturers need to ensure that they can track their products through the production process and make labels to display the necessary tracking information (Flaherty 387). In addition, businesses must be more vigilant

about gathering customers' complaints with the purpose of communicating the information to the necessary individuals and preventing avoidable penalizations (Flaherty 387). Overall, it appears that the government and consumers are hoping these new requirements will encourage manufacturers to become more aware of their production processes and take responsibility for the merchandise they introduce into the United States' marketplace.

Some larger manufacturers who produce children's apparel took a proactive step toward ensuring their compliance with the CPSIA by altering their business procedures and creating general guides for product testing and compliance policies as a reference for their employees. Updated as recently as September 2014, Kate Spade and Company issued a CPSIA compliance guide (Kate Spade and Company). The document contains general information about the legislation and its requirements as well as the company's instructions for compliance certificates (Kate Spade and Company).

Kate Spade and Company's particular guide applies primarily to suppliers and business that will be shipping products to the company, otherwise known as exporters, suggesting some shift of burden to suppliers (Kate Spade and Company). It contains a General Conformity Certificate that Kate Spade requires its suppliers to fill out and include with their shipments, "[certifying] that products within [the] shipment comply with the applicable CPSC's standards, rules, bans, regulations as identified" (Kate Spade and Company). It includes checkboxes for the various CPSIA requirements, blank sections to be filled out with the necessary product, manufacturer, and testing laboratory information, and an address and contact information for a product safety representative from Kate Spade (Kate Spade and Company). Instructions explaining how to complete the General Conformity Certificate are included with the guide (Kate Spade and Company).

However, not all products that Kate Spade and Company import need to meet the requirements of the CPSIA. The last page of the document is a Manufacturer's Declaration Letter, which the manufacturers include with the products that do not require a General Conformity Certificate under the CPSIA (Kate Spade and Company). Even though Spade requires its exporting manufacturers to complete General Conformity Certificates and Manufacturer's Declaration Letters, Kate Spade and Company still considers it their responsibility to verify the information before introducing the products into the U.S. consumer marketplace (Kate Spade and Company).

Similarly, Macy's and Bloomingdale's issued a similar bulletin regarding General Conformity Certificates for the manufacturers who supply them with their products (Macy's and Bloomingdale's). While not as thorough in their bulletin as Kate Spade and Company, Macy's and Bloomingdale's provides links to resources regarding the CPSIA and CPSC on the first page (Macy's and Bloomingdale's). The bulletin clarifies to childrenswear manufacturers, in and outside of the United States, that they are required by law to include General Certificates of Conformity along with their products (Macy's and Bloomingdale's). Therefore, it is the responsibility of the manufacturers to prove their products' compliance with the CPSIA before the retailer will sell them.

While it is evident that the Consumer Product Safety Improvement Act has affected childrenswear manufacturers' business methods and financial circumstances, the legislation has also inadvertently imposed design limitations on apparel companies. Although undyed and dyed fabrics are exempt from the CPSIA by the CPSC, embellishments are not (Mittica 59). Embellishments are a common design element on children's clothing (Polichetti 1). Rhinestones, crystals, metallic thread, screen-printing ink, and closures are all regulated under the CPSIA

(Mittica 59). As a result, individuals who design for childrenswear manufacturers must take into account the cost of paying for the third-party testing of the embellishments they want to include on their products and whether it is feasible to include them at all.

One company that was already confronted with this issue is Gymboree. After being overly cautious about the CPSIA and its requirements, Gymboree began to actively test embellishments and closures found on their products, including “rhinestones, metal zippers, snaps, buttons, and grommets,” eliminating anything that was incompliant (Dell G01). The new law did not seem to have as much of an impact on other childrenswear companies, such as Carter’s and the Children’s Place (Dell G01). It is probable that Gymboree suffered the most because the company earns the largest portion of its profits through the sale of young girls clothing, which is known for being more highly embellished (Dell G01).

As part of its active response to the CPSIA, Gymboree removed products at risk for noncompliance and modified some of its clothing styles (Dell G01). Consequently, it suffered financially when it was unable to produce clothing with its standard embellishments, a feature Gymboree customers expect from the brand’s garments and which allows the company to price its garments higher than other competing childrenswear brands (Dell G01). Current exploration of the Gymboree online store reveals young girls styles that feature few or no embellishments, with only the occasional ribbon, iron-on or sew-on applique, embroidery, screen print, or ruffle (*Gymboree*, Figure 1, Figure 2, and Figure 3). In addition, many garments are seemingly without closures (*Gymboree*). Despite the initially damaging financial repercussions, it is clear that Gymboree thought creatively and mindfully about its designs since the inception of the CPSIA, and the brand can be respected for its quick response to the legislation’s requirements (Dell G01).



Figure 1. Gymboree T-shirt    Figure 2. Gymboree Dress    Figure 3. Gymboree Cardigan

Similarly, smaller companies are experiencing the creative restrictions of the CPSIA. As previously mentioned, Mimi Sweeney, owner of a small San Francisco-based children's apparel company called Baby Leo, must pay eight hundred dollars for lead testing and two thousand four hundred dollars for phthalates testing on her ten cape styles (Bohan). If Sweeney created a new cape style, she would be required to have a third-party laboratory conduct the lead and phthalate testing again (Bohan). Consequently, the burden of the cost of third-party testing could not only encourage Sweeney to reduce the number of cape styles she produces and sells, but it could also restrict her from designing and offering new styles (Bohan). The lack of new product offerings could result in the loss of consumer interest and, ultimately, profits, potentially forcing Sweeney to close her business.

The CPSC makes it clear that even the addition of a metallic thread ribbon, a zipper, a snap, or a button requires lead and phthalate testing (Moore). Whether it is decorative embellishment, such as rhinestones and crystals, or functional closures, including buttons, zippers, and snaps, small childrenswear manufacturers are severely limited by the legislation,

unless they want to take responsibility for the testing costs (Polichetti 1; Moore). In general, childrenswear designers and manufacturers no longer have the luxury of including an embellishment simply to complement the garment's design or attract their young consumers.

Despite childrenswear manufacturers' concerns about the CPSIA and its penalties, monetary fines related to the CPSIA are not plainly listed for U.S.-based children's apparel manufacturers (U.S. Consumer Product Safety Commission, "Violations"). Instead, the CPSC states that the list of violations included on its website contains manufacturers that have received a Letter of Advice (LOA) suggesting corrective measures they need to take in order to avoid future noncompliance (U.S. Consumer Product Safety Commission, "Violations"). Therefore, manufacturers listed on this webpage admitted to their violations and provided proof of their corrections to the CPSC (U.S. Consumer Product Safety Commission, "Violations"). However, many of the companies documented for violations were based outside of the U.S., potentially suggesting a higher level of compliance for U.S.-based manufacturers (U.S. Consumer Product Safety Commission, "Violations").

## **6. Positive Reception**

Undoubtedly, design limitations, financial burdens, and time constraints were all imposed upon childrenswear manufacturers with the inception of the CPSIA. Nevertheless, apparel manufacturers, politicians, and consumer advocate groups are just a few of the individuals that agree that the legislation has positive aspects and good intentions. The legislation was created to address consumer outrage regarding the health risks of lead-laden toys following a record number of children's product recalls in 2007 (Bowman VIII). As a result, the CPSIA was highly driven by consumers' concerns for the safety of their children (Bowman 145).

Many groups decried the use of lead and phthalates in children's products, maintaining that studies indicate a connection between lead and brain and kidney damage as well as a link between phthalates and health issues in adolescent boys (O'Donnell and Szabo 1B). Politicians from various political parties agreed with consumers' concerns, passing the CPSIA nearly unanimously in both the U.S. Senate and the U.S. House (Bowman 109). With the creation of the CPSIA, environmentalists, medical practitioners, and parents voiced their support of the legislation and hoped that they would be able to purchase children's products "with confidence" (O'Donnell and Szabo 1B). Many consumer advocates, including Matt Wallace of the Oregon Public Interest Research Group, believe that the CPSIA "is a good and much-needed regulation that keeps kids away from dangerous chemicals because at some level we need to be regulating more to help America's littlest consumers" (Moore).

In addition to consumer advocate groups and government representatives, childrenswear manufacturers, some of the biggest critics of the CPSIA, agree that the legislative act is not without its better points. Jolie Fay, owner of Portland-based Skipping Hippos clothing company, and Allen Green, owner of Argo Products Inc., agree that they do not want lead in their children's or grandchildren's products (O'Donnell and Szabo 1B; Polichetti 1). Chrissy Christoferson, one of the owners of Stone Soup, also agrees that she backs the legislation's objective to ensure safe children's products are offered to consumers (Moore).

Certain childrenswear manufacturers respect and acknowledge the benefits of not only the lead and phthalates testing requirements, but the aspects of accountability that it imposes on businesses of various sizes. Levis, a well-known apparel company known for its denim garments, adopted a comprehensive corporate social responsibility (CSR) standard in response to the CPSIA (Lo 29). Several other childrenswear manufacturers, even some outside of the United



States, such as Gildan Activewear, have adhered to several CSR practices (Lo 29). Although it requires a long-standing financial obligation from businesses who adopt it, corporate social responsibility is important for the CPSIA because it assists with product quality and product safety (Lo 29).

For businesses that produce children's apparel, corporate social responsibility also assists with "enhancing brand value by building both [the company's] and [its] customers' belief in the company's commitment to stewardship" (Lo 29). Manufacturers which adopt this approach feel that consumers will appreciate the companies' willingness to take accountability for the products they introduce into the marketplace (Lo 29). Ultimately, this means "a happier customer base, a healthier environment, and long-term corporate profit" (Lo 29).

## **7. Survey and Future Action**

With only eight years passed since the CPSIA was signed into law, many childrenswear manufacturers are just beginning to adjust to the legislation's requirements. While there is no question of the law's permanence and effect on the children's apparel industry, the future of the law remains uncertain. It is apparent that the most pressing question at the moment is how the government can retain the integrity and fundamental purpose of the CPSIA while still addressing the needs and concerns of the manufacturers affected by it.

Since the inception of the CPSIA, manufacturers, government officials, and industry professional groups have all offered their ideas regarding ways to improve the controversial legislation. Certain changes to the law, including several exemptions for textiles and hosiery, have already been put into practice ("Center Helps Win Regulatory Exemptions for Textiles"). Nevertheless, the heated debate surrounding the legislation and its rigorous regulations continues

as manufacturers focus on adapting their business practices and meeting the requirements of the CPSIA even as they hold out hope for improvements to the law.

A survey created and electronically distributed to childrenswear manufacturers throughout the United States did not garner enough responses to produce any conclusive findings regarding childrenswear manufacturers' opinions of the CPSIA. A previous verbal survey conducted among childrenswear manufacturers suggested strong animosity toward the government and its implementation of this law. While manufacturers believed that the government had good intentions, the execution of the legislation was poorly handled in their opinion. They admitted that laws addressing safety concerns are necessary, but they did not believe the requirements should be excessively rigid. In addition, many small childrenswear manufacturers found the CPSIA difficult to navigate and comprehend. Consequently, manufacturers feel they would benefit from having a complete handbook that explains the legislation in clearer terms as well as the opportunity to receive notifications from the government when it enacts new legislation or changes existing requirements.

These comments suggest there are several ways in which the government could attempt to address manufacturers' concerns regarding the CPSIA. The most common complaint concerning the legislation is that it is too vague (Flaherty 372). For small and medium size manufacturers, the cost of hiring a lawyer to interpret the legislation is yet another financial stress, adding to the existing testing and compliance costs required by the CPSIA (Flaherty 372). However, children's apparel manufacturers do not have many options as the CPSC lacks the resources to answer manufacturers' questions and address their concerns in a timely manner (Berman and Smith). As a result, the government should strive to be more specific about the regulations in the legislation, such as the size and location of the tracking label, because the

legislation in its current state “leaves a lot to each company’s discretion,” contributing to the confusion (DeVito 47).

In addition, the creation of a more comprehensive and thorough guide to the CPSIA, perhaps in the form of an electronic handbook, may be helpful to manufacturers as well. It would be appropriate for the CPSC to consult with manufacturers about their concerns and questions in order to produce a useful resource that manufacturers can utilize to ensure their compliance with the legislation. Furthermore, the assistance of physical consultants who specialize in the CPSIA could assist in a smoother transition for manufacturers, providing “advisory opinions on their products” (Berman and Smith).

## **8. Conclusion**

While childrenswear manufacturers have mixed opinions regarding the Consumer Product Safety Improvement Act of 2008, all of them have made adjustments to their business models in an effort to comply with the legislation and demonstrate their support of the legislation’s primary purpose: to protect consumers. Despite already adapting to the legislation, it would still be appropriate for government officials to meet with childrenswear manufacturers and make an effort to understand their perspective. A shared willingness to discuss and collaborate on this topic has the potential to improve the CPSIA, fostering manufacturers’ better understanding of the CPSIA and a more positive outlook on the legislation as well as encouraging increased customer satisfaction and safety. Ultimately, children’s apparel manufacturers agree that the CPSIA has positive and negative aspects that are impacting their businesses, but they support the intentions of the legislation and believe that there is always the possibility for improvement in the future.

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