

January 11, 2010

Via Hand Delivery

The Honorable Inez Tenenbaum, Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Thomas Moore, Vice Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Robert Adler
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Nancy Nord, Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Anne Northup, Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Revisions to CPSIA

Dear Chairman Tenenbaum, Vice Chairman Moore, Commissioner Adler, Commissioner Nord and Commissioner Northup:

As the Consumer Product Safety Commission (CPSC) prepares to respond to Congress with input on revisions to the Consumer Product Safety Improvement Act of 2008 (CPSIA), the Fashion Jewelry Trade Association (FJTA), National Retail Federation (NRF), American Apparel and Footwear Association (AA&FA), Fashion Accessories Shippers Association (FASA), Travel Goods Association (TGA) and Footwear Distributors and Retailers Association (FDRA) collectively urge you to seek authority to grant common sense, risk-based exclusions from the applicable total lead limits. Doing so will be consistent with your mandate, and is in the best interests of consumers and industry, especially small businesses struggling with the impact of bans on safe products.

We again remind you of the adverse economic impact associated with the Commission's denial of a joint industry petition to exclude crystal and glass rhinestones and similar materials from the total lead limits specified in Section 101 of CPSIA on a range of affected industry

January 11, 2009

groups. Rhinestones have been an important and popular component of jewelry, apparel, footwear, dancewear, accessories and many other products. While crystal does not pose a health risk to children, the decision to deny the joint industry petition was predicated on the legislative language of Section 101(b)(1), which was viewed to limit the Commission's ability to grant an exemption if use "could result in absorption of lead, however small the absorbed amount." The failure to grant an exemption or adopt a stay of enforcement on children's products featuring rhinestones has resulted in significant adverse impact on industry which was detailed in a July 15, 2009 letter to you from FJTA (copy enclosed). The adverse impact continues. Looking at 2009 sales overall, for example, one FJTA member reported that sales of children's jewelry at just one customer dropped 41% compared to the prior year, a loss directly attributable to the inability to offer children's jewelry featuring crystal rhinestones.

Requiring the national consumer product safety agency to operate under legislative handcuffs that limit the ability to consider actual risks has deprived the public of a safe, desirable product and cost industry millions, not only in money but in jobs. We urge you to ask Congress to revise Section 101 to give the Commission the ability to truly act in the interests of consumers and to protect small businesses by giving you the authority to grant risk-based exemptions for products that do not pose a significant risk of harm to children.

Respectfully submitted,

Michael Gale, Executive Director
Fashion Jewelry Trade Association
1486 Stony Lane
Kingston, RI 02852

Tracy Mullin, President and CEO
National Retail Federation
325 7th St. NW, Suite 1100
Washington, DC 20004

Kevin Burke, President and CEO
American Apparel & Footwear Association
1601 N. Kent Street, 12th Floor
Arlington, VA 22209

Sara Mayes, President
Fashion Accessories Shippers Association
350 Fifth Avenue, Suite 2030
New York, NY 10118

Michele Marini Pittenger, President
Travel Goods Association
5 Vaughn Drive, Suite 105
Princeton, NJ 08540

January 11, 2009

Matthew Priest, President
Footwear Distributors and Retailers of America
1319 F Street NW, Suite 700
Washington, DC 20004

Enclosure

cc: Senator Jay Rockefeller
Senator Kay Bailey Hutchinson
Senator Mark Pryor
Senator Roger Wicker
The Honorable Henry Waxman
The Honorable Joe Barton
The Honorable Bobby Rush
The Honorable George Radanovich
Todd A. Stevenson, Director, Office of the Secretary
Cheryl Falvey, General Counsel

f a s h i o n j e w e l r y

t r a d e a s s o c i a t i o n

1486 stony lane • north kingstown, rhode island 02852
ph: 401•295•4564 • fax: 401•295•0122
email: fjta@aol.com
www.fjta.org

July 15, 2009

Via Facsimile

The Honorable Inez Tenenbaum, Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Thomas Moore, Vice Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

The Honorable Nancy Nord, Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

**Re: Petition of the Fashion Jewelry Trade Association, Manufacturing Jewelers
and Suppliers Association, Footwear Distributors and Retailers of America,
National Retail Federation, United Dance Merchants of America**

Dear Chairman Tenenbaum, Vice Chairman Moore and Commissioner Nord:

The Consumer Product Safety Commission staff released its analysis and recommendation on a joint industry petition to exclude crystal and glass rhinestones and similar materials from the total lead limits specified in Section 101 of the Consumer Product Safety Improvements Act of 2008 (CPSIA) on July 10. While the staff agrees with the independent safety analysis provided with the petition and concludes that crystal does not pose a health risk to children, the recommendation indicates that the staff's interpretation of the legislative language of Section 101(b)(1) limits the ability to grant an exemption if use "could result in absorption of lead, however small the absorbed amount." The failure to grant an exemption or adopt a stay of

July 15, 2009

Page 2

enforcement will have a devastating effect on the fashion industry in general and the fashion jewelry industry in particular.

On behalf of the Fashion Jewelry Trade Association, we urge you to vote on the request before you in a manner that assures that safe products can continue to be marketed.

Factors Supporting the Petition

The situation with crystal rhinestones is unique compared to other exemption requests.

First, crystal was identified as a material that was intended to be covered by a risk-based exemption process during the legislative drafting of the CPSIA. Granting the exemption is, we believe, consistent with Congressional intent. We believe that by allowing some lead, Congress recognized that some accessible lead could be released, but intended the staff to exercise common sense in acting on exemption requests to assure that safe products could continue to be marketed.

Second, apart from the demonstrated safety of crystal based on accepted risk assessment criteria, the petition indicates that in the remote event of ingestion of crystal accessible lead is likely to be in the range of the amount of accessible lead that could be released from compliant materials and would not exceed exposure limits set by other agencies such as the Food and Drug Administration (FDA).

Third, jewelry materials, including crystal, are covered by a Proposition 65 settlement agreement, later enacted as legislation in California. Crystal used in products for children 6 and under can be used without any limit on total lead content, subject to a 1 gram limit. Crystal used in products for consumers 7 and older are subject to *no* limits on total lead content. Consequently, a legal question exists as to whether the “carveout” for Proposition 65 in Section 231(b) of the CPSIA applies in this case of jewelry materials such as crystal. The State of California has filed a request to exclude from preemption the state’s jewelry law, a petition that remains pending. Confusion in the marketplace abounds due to unresolved questions of preemption.

Fourth, crystal is demonstrably different from other materials, as a review of the test method to test for total lead in crystal demonstrates. Most materials can be tested for total lead using a version of EPA method 3051. The CPSC issued an approved test method on February 1 which specifies that a combination of hydrofluoric and nitric acid be used to digest lead in glass and crystal. The method is based on EPA method 3052. These types of acids are not used to test for total lead in other materials, but because lead is bound into the crystal matrix, a much stronger acid is needed.

The crystal exemption is enormously important not only to the jewelry industry, but to the entire fashion industry. Without an exemption, many makers and sellers of children’s products decorated with rhinestones will be banned. Given the popularity of rhinestones on jewelry, apparel, accessories and other products sold in secondhand venues, a ban will strike a

July 15, 2009

Page 3

further blow at thrift stores who will be barred from reselling used products with crystal rhinestones.

We know that many members of Congress have expressed the view that the CPSIA does give the Commission flexibility to make common sense decisions about products or materials that do not pose a health risk to children. It is hard to see how child protection goals and common sense regulatory policies will be advanced by a ban on a material like crystal which has been deemed safe by the CPSC staff, the State of California, and third-party risk assessment experts. It is easy, on the other hand, to see the adverse consequences of inaction on this petition.

Impact of Failure to Grant the Petition

Millions of dollars worth of safe jewelry that meets the Proposition 65 standards have been withdrawn from sale as a result of the CPSIA and the failure to exclude crystal from lead substrate limits. Children's apparel, footwear, accessories, backpacks and other items featuring rhinestones have also been withdrawn from sale as a result of new lead substrate limits coming into force on February 10. Product lines have disappeared. Some customers are demanding that all products meet standards for children's products, effectively resulting in the disappearance of safe products for teens and adults, at enormous costs. For jewelry, apparel and other companies that have been able to switch some products to plastic alternatives, sales are almost universally down because the "bling" factor has been largely lost. And most importantly, jobs have been lost as a direct result of the failure to exempt crystal from total lead limits.

Here are just a few anecdotes about the economic impact of the failure to grant a crystal exemption.

- A small East Coast company specializing in children's jewelry featuring rhinestones took back \$200,000 worth of products from customers before February 10. Many of the company's other small retail customers have agreed to hold off on returning products in hopes that the exemption for crystal will be granted. The company was forced to stop selling a number of their product lines as customers would not accept acrylic as a substitute resulting in significant lost sales. For the product lines they were able to transition to acrylic - the items do not sell as well since they lack the sparkle and appeal of products made with rhinestones. The result: the company was forced to lay off 1/3 of its employees, a loss of over 15 jobs. If the crystal exemption is not granted, the company expects that many of its approximately 2,000 small business retail customers will ask to return rhinestone products, all of which meet Proposition 65 standards. The company is doubtful that it will be able to survive in the face of the expected expense of reimbursing customers and destroying the returned products with rhinestones, putting the remaining over 35 jobs at risk.
- A small Northeastern jewelry company specializing in children's jewelry took back almost \$200,000 worth of Proposition 65-compliant jewelry as a result of the

new lead substrate limits. Although the company has transitioned to plastic rhinestones, the reduced appeal of this alternative has resulted in a 25 – 30% drop in sales. Continued poor sales are expected without an exemption for crystal. The company has 15 employees, but expects that if sales do not pick up – unlikely without a crystal exemption - it will be forced to reduce its workforce by 1/3, a loss of 5 jobs.

- A New England jewelry distributor has taken back \$150,000 worth of children's jewelry with rhinestone accents that meet Proposition 65 standards. The company is hoping that positive action on the crystal exemption or a stay of enforcement will allow it to keep all 6 employees on the job.
- Another small New England company has issued credits for between \$100,000 – 150,000 worth of rhinestone jewelry, putting it in a precarious cash flow situation and casting a shadow on its long-term viability.
- A small New England jewelry manufacturer whose principal product line is for girls age 4 - 7 reports an enormous drop in sales of its Proposition 65-compliant jewelry since the CPSIA lead substrate limits took effect on February 10. This company reports that of the top-selling items in its line for 2008, 19 had rhinestones. Sales to three of this company's top 5 customers have dropped significantly. For the first 6 months of 2009, sales to the company's largest customer dropped by an order of magnitude compared to the prior year. Sales are down 50% with other customers, who report the rhinestone restriction as the primary reason for their shrinking orders. The company has only a few employees but hours have been reduced and business with its subcontractors is also down significantly. For this company's product line, costs of substituting plastic rhinestones have significantly added to the costs compared to crystal. While less expensive than crystal, plastic cannot be soldered and must be glued separately, adding a costly step to the process. The economic viability of the company is in doubt absent an exemption for crystal.
- One company reports that one customer, which has purchased about 2 million pieces of rhinestone jewelry annually, is experiencing returns even for jewelry that is not intended or designed primarily for children 12 and under, including jewelry featuring crosses, peace signs, initials and similar motifs. Uncertainties in how the CPSC will apply the definition of a "children's product" to jewelry has resulted in returns of virtually all rhinestone products because of concerns about possible civil penalty exposure. This company has 35 employees and 18 representatives. Absent a crystal exemption, returns estimated to reach millions of dollars could force the company out of business, causing a loss of all 53 jobs. This customer's experience is shared by many others. Another customer who has switched entirely to acrylic rhinestones reports that sales have dropped 40%.

- One jewelry company reports it has largely transitioned its product lines to acrylic, but at least one line has disappeared because plastic cannot substitute for crystal. Sales of the new product lines are down, however, because products with plastic rhinestones are less appealing to consumers. This company also reports that the impact of the CPSIA is being felt beyond its children's product line because of customer demands that all jewelry products meet standards for children's products.
- Another New England-based medium to large jewelry company reports that retail buyers are not enthusiastic about products featuring plastic rhinestones. Consumers find the products are lackluster because plastic rhinestones do not have the "bling" appeal of rhinestones. Many thousands of dollars worth of Proposition 65-compliant jewelry remain tied up in inventory pending a positive decision on the crystal petition; the ability to sell products with real rhinestones could have a significant positive impact on the company's bottom line for 2009.
- A major retail chain reports that the financial impact of the lack of a rhinestone exemption amounted to a loss of about \$6.5 million dollars in the first quarter of 2009, due to a combination of very aggressive markdowns in advance of the February 10 deadline and product withdrawals, both as a result of the lack of a crystal exemption for products featuring rhinestones.
- A major apparel and jewelry manufacturer and retailer withdrew almost 62,000 products meeting Proposition 65 standards for children's jewelry with rhinestones prior to February 10. In addition to the many thousands of dollars in lost sales represented by these products, the company spent almost \$34,000 to destroy perfectly safe products. Designing around the loss of rhinestones has resulted in added costs, and the reduced appeal of products lacking the "bling" factor of rhinestones has adversely affected sales of the redesigned products.
- An apparel company reports handling \$75,000 worth of returns of rhinestone apparel from customers.
- A retailer reports incurring \$700,000 in testing costs alone.

Our Request

Real companies have been harmed by the failure to adopt a crystal exemption. Real jobs have been lost because of the lack of a crystal exemption. The jewelry manufacturers, distributors and retailers being harmed are committed to making safe products, and the children's jewelry products that are being withdrawn or destroyed meet Proposition 65 standards. The economic losses and lost jobs are not due to the economy. They are due to the failure to exempt a safe material like crystal in children's products. What is worse, real children are *not* being protected by banning a product, like crystal, that experts agree is safe for use in jewelry, clothing and other products.

July 15, 2009
Page 6

We earnestly hope that when you consider the joint industry request for an exemption for crystal and glass, you consider what your vote means to the many companies in the fashion industry - and to their employees - who make products that all agree are safe, as well as to those who sell used products featuring rhinestones. Please support the exemption request. Alternatively, if you agree with the staff that the legislation limits your ability to act in a common sense fashion, we urge you to adopt a stay of enforcement and to ask Congress to revise the CPSIA so that a permanent exemption can be granted. Neither the Commission's nor the country's resources should be wasted, or one more job, lost by banning a product that your own staff agrees is safe. Please work with us to assure that common sense risk-based decisions are the basis for sensible product safety regulations in the U.S.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael Gale". The signature is written in a cursive, flowing style.

Michael Gale, Executive Director
Fashion Jewelry Trade Association

cc: Senator Jay Rockefeller
Senator Kay Bailey Hutchinson
Senator Mark Pryor
Senator Roger Wicker
The Honorable Henry Waxman
The Honorable Joe Barton
The Honorable Bobby Rush
The Honorable George Radanovich
Todd A. Stevenson, Director, Office of the Secretary
Cheryl Falvey, General Counsel