



June 21, 2010

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

**RE: APRIL 20, 2010 FEDERAL REGISTER NOTICE ON THE PROPOSED INTERPRETATIVE RULE INTERPRETING “CHILDREN’S PRODUCT” REQUEST FOR COMMENTS (DOCKET NUMBER CPSC – 2010-0029)**

I am writing on behalf of the American Apparel & Footwear Association (AAFA), the national trade association representing the apparel and footwear industry and its suppliers, in response to the request for comments by the Consumer Product Safety Commission (CPSC) regarding 16 CFR Part 1500 [Docket No. CPSC-2010-0029], the proposed rule that would interpret “children’s product” (*Proposed Interpretative Ruling*) as used in the Consumer Product Safety Act (CPSA) and amended by the Consumer Safety Improvement Act of 2008 (CPSIA), Public Law 110-314. As the *Proposed Interpretative Ruling* affects all children’s product industries, AAFA understands that the CPSC interpretation of “children’s product” must be flexible in order to be effective for multiple industries. However, in order to minimize product evaluation subjectivity in the regulatory process, AAFA has the following comments specifically pertaining to apparel, footwear, bags and other fashion accessories.

The difficulty in applying the *Proposed Interpretative Ruling* to multiple industries is that each children’s product industry is different in nature and a uniform approach applicable to all industries dilutes the rulemaking’s stated intent to provide manufacturers with clarity. In fact, in some examples, the CPSC seems to apply the *Proposed Interpretive Rule* differently for various products. However, while an industry-by-industry approach would provide the most effective guidance for industries, the process would be overly burdensome and time consuming for the CPSC. Therefore, to ensure that manufacturers understand how this ruling is to be applied, the CPSC should clearly state that this evaluation process will ultimately be done on a case-by-case basis and the criteria that defines a children’s product for one industry may not be the same criteria that is used for another industry.

**A. DESIGNED OR INTENDED “PRIMARYLY” FOR CHILDREN**

We strongly agree that the definition of children’s product should be limited to those products “primarily” intended for children age 12 and under. We further agree that many products’ target markets include children but are better classified as “general use products.” A generic plain white cotton tee-shirt sized adult small is a good example of a “general use product” as children may wear the tee-shirt but the product is intended primarily for adult users.

**B. MANUFACTURER’S INTENT**

We strongly urge the CPSC to use manufacturer’s intent as the primary factor of consideration when making a children’s product determination. We further believe the CPSC should clearly state this within the rulemaking. Weighing manufacturer intent as the strongest and dominant factor gives manufacturers more assurance in what can become a subjective determination. This is especially crucial for the apparel and footwear industry whose designers create products with target markets in mind. Furthermore, how

the public recognizes the product becomes an integral factor in manufacturer's intent as public perception of the product determines whether the target market will in fact buy the product. What is age appropriate, how the product will fit the intended user, what colors and/or styles are popular for different age categories, how will the product be worn, what will the product look like on the typical user, etc., are just some of the questions a designer asks while designing the product. Product design is what derives the industry and is also where the product safety compliance process begins. Any CPSC children's product determination must take this background design process into account.

### **C. MANUFACTURER'S STATEMENT AND PRODUCT PRESENTATION**

Product presentation is closely associated with product design as the marketing materials are meant to further target and attract the intended users. We therefore believe that product presentation should be the second most strongly weighed factor in evaluating whether a product is a children's product. Moreover, as a manufacturer is trying to sell the product to a target market, the CPSC should assume a manufacturer's statement about the product's intended use is made in good faith.

However, the CPSC should not weigh retail location of a product as heavily as other product presentation considerations (illustrations, photographs, advertisements, manufacturer statements, etc.) for the simple reason that manufacturers have limited control over where a product is placed in a store and how it is displayed. For example, an adult product may be inadvertently located with children's products. A manufacturer may design a scarf with an older target market in mind but the merchandiser at the retail store may decide to pair the scarf with a children's ensemble and sell the product in the children's section. Similarly, general use products are sometimes marketed intentionally along with or near children's products but in a manner that is not intended to convert the general use article into a children's product. For example, a retailer may place a large sized beach tote next to a children's bathing suit. In neither case, should the adult product be characterized by regulators as children's product. If a remedy is sought, such a fix might involve relocating the product to an adult section, and not subjecting that class of adult products to children's product safety standards.

While manufacturers have exerted a tremendous effort to ensure product compliance, very rarely, a product or component of a product may not pass a product safety standard for children's products. In these unusual cases, a manufacturer should be able to reclassify the product as a general use product provided the determination is reasonable and the manufacturer exercises due care to ensure appropriate product promotion. For example, a manufacturer may design a decorative scarf with embellishments that is intended to fit in with a line of children's products. However, if the embellishments do not pass lead tests, the manufacturer may instead decide to pair the scarf with an ensemble that is meant for teenagers or young adults on a mannequin and exclusively sell the scarf in a teenage/young adult store. In this case, the scarf becomes a "general use product" as the predominant target market is not children 12 and younger.

### **D. COMMONLY RECOGNIZED BY CONSUMERS**

How a consumer recognizes a product can be very arbitrary and is strongly influenced by the above two factors (i.e., manufacturers intent and product presentation) and should therefore be less important a factor in making a children's product determination. In addition to the product's design and presentation, how a consumer views a product can be extremely subjective and dependant on who you ask and that individual's tastes, background, culture, and body type (especially with regards to the apparel industry). The *Proposed Interpretive Ruling's* discussion of features that distinguish children's products from adult products should not, for the most part, apply to the fashion industry. Small sizes, exaggerated features, colors commonly associated with childhood, decorative motifs and features that do not enhance the product's utility are characteristics that are shared by both adult and children's products (safety features and play value rarely, if ever, apply to our industry). An adult extra small might be comfortably worn by a 10 year old while a children's large might comfortably fit a petite adult. Likewise, large buttons can easily facilitate hands of a child or an arthritic adult, or could be simply a decorative feature that is in style. Within the fashion industry, if these factors are present in a children's product, they will already be reflected within the confines of the "manufacturer's intent."

We also strongly disagree that cost considerations be used in the child's product determination as this consideration is far too arbitrary. Affordable apparel, footwear and fashion accessories are attractive to all age categories – not just children's products. Furthermore, a very expensive, diamond "Hello Kitty" necklace may still be a children's product if sold in a high end children's boutique and if marketing materials advertise the product as a child's necklace.

Finally, the *Proposed Interpretive Rule* takes into account the children's interaction with the product and states, "we further interpret the term "for use" by children 12 years of age or younger to generally mean that children will physically interact with such products based on the reasonably foreseeable use and misuse of such product." In order to prevent general use products from inadvertently being classified as children's products, the CPSC should clarify that this determination will occur as the final assessment. In other words, the CPSC will first determine whether the product is in fact a children's product and then determine whether the product is for use by children 12 years of age or younger.

#### **CONCLUSION**

Thank you for your consideration of and the opportunity to submit these comments. If you have any additional questions, please contact Rebecca Mond at [rmond@apparelandfootwear.org](mailto:rmond@apparelandfootwear.org).

Sincerely,

A handwritten signature in cursive script that reads "Kevin M. Burke".

Kevin M. Burke  
President and CEO